Attachment H

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

THE HIGHWAY 68 COALITION,

Petitioner,

Case No. M116436

COUNTY OF MONTEREY, BOARD OF SUPERVISORS OF THE COUNTY OF MONTEREY,

Respondents.

Order of Interlocutory Remand

OMNI RESOURCES, LLC,

Real Party in Interest.

This matter came on for court trial on January 13, 2014. An Intended Decision was issued. Objections were filed and the court ordered further argument on June 27, 2014. All sides were represented through their respective attorneys. The matter was argued and taken under submission. This statement of decision is stayed. The court issues an interlocutory remand.

Background

Petitioner, The Highway 68 Coalition (Coalition or Petitioner), challenges the approval of Real Party in Interest, Omni Resources, LLC's (Omni) project at the intersection of Highway 68 and Corral de Tierra Road (the Project). Respondents, County of Monterey and the Board of Supervisors of the County of Monterey (the County or the Board), certified a Final Environment Impact Report (Final EIR) on February 7, 2012 for the Project. The Coalition filed a Petition for Writ of Mandate under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.).

The Coalition contends (1) the EIR did not properly investigate or disclose the uncertainty in the water recharge scheme; (2) the water balance analysis is defective; (3) water demand was not accurately quantified; (4) Condition 86 provides an improper water cap; (5) water rights are uncertain; (6) the EIR did not fully disclose information about groundwater and soil contamination; (7) the EIR did not adequately discuss the County's Storm Water Ordinance; (8) the EIR did not provide accurate information about traffic; (9) there was improper piecemealing; (10) the cumulative impacts of the wastewater from the Project were not adequately addressed; (11) at least four reports relied on by the EIR were not available for public review; (12) the EIR did not address the Project's consistency with 2010 Monterey County General Plan Policy PS-31 (Guidelines, § 15125, subd. (d); Cal. Code Regs., tit. 14, § 15001 et seq. (Guidelines)); (13) the EIR did not address the Project's consistency with 2010 Monterey County General Plan Policy C-1.3 and Toro Area Plan polices T-3.1, T-3.3 and T-2.6; and (14) the statement of overriding considerations should be vacated.

Judicial Notice

All requests for Judicial Notice are granted and with the exception of OMNI Resources for Judicial Notice of (1) State Water Resources Control Board Low-Threat Underground Storage Tank Closure Policy; (2) the 9th Edition of the Institute of Transportation Engineers Trip Generation Manual, published in September of 2012; and (3) June 1996 article for the Institute of Transportation Engineers Journal. Each of these requests is dated July 5, 2013. The court also denies OMNI's Request for Judicial Notice of three (3) pages of the Institute of Transportation Engineers; Trip Generation 7th Edition. This Request is dated December 13, 2013.

Administrative Record

The administrative record (AR) was admitted into evidence. The County's request to strike portions of the administrative record is denied.

Standard of Review

"[A]n agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. ([Pub. Resources Code,] § 21168.5.) Judicial review of these two types of error differs significantly: While we determine de novo whether the agency has employed the correct procedures, 'scrupulously enforc[ing] all legislatively mandated CEQA requirements' we accord greater deference to the agency's substantive factual conclusions. In reviewing for substantial evidence, the reviewing court 'may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,' for, on factual questions, our task 'is not to weigh conflicting evidence and determine who has the better argument.'

"In evaluating an EIR for CEQA compliance, then, a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts. For example, where an agency failed to require an applicant to provide certain information mandated by CEQA and to include that information in its environmental analysis, we held the agency 'failed to proceed in the manner prescribed by CEQA.' In contrast, in a factual dispute over 'whether adverse effects have been mitigated or could be better mitigated' the agency's conclusion would be reviewed only for substantial evidence." (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435 (some citations omitted).)

Discussion

(I). Water recharge

The Coalition argues that the EIR overlooked the uncertainty in Omni's reports because Omni's consultant, Whitson, only addressed the potential increase in recharge and the EIR treated the information as proven.

Omni contends that substantial evidence supports the County's determination that the recharge will avoid impacts to groundwater based on expert opinion and Condition 84.

(A). Notice of Determination – February 2012

> **Finding 2**: "'B-8' ZONING REGULATIONS - The approved project would be consistent with the B-8 zoning on the subject property.
> "**EVIDENCE** a) On September 7, 1993 the Board of Supervisors adopted Ordinance No. 3704 amending the original B-8 provisions relative to development of commercial uses. These provisions are found in Zoning Ordinance (Title 21 of the Monterey County Code) Section 21.42.030 H (1) which states that the 'B-8' District does not affect the *'construction or expansion of commercial uses where such construction or expansion can be found to not adversely affect the constraints which caused the 'B-8' district to be applied to the property.'* The approved project would collect storm water and direct it to a groundwater recharge system that will result in a positive water balance. The project will not use more water than is directed to the groundwater basin. To insure that the water balance is maintained, limitations have been placed on the project to restrict the amount of water used. Therefore, the project would not adversely affect the constraints which caused the 'B-8' District to be applied to the property." (AR 5-6.) (Boldface, italics and all capitalization in original.)
>
> **Finding 9:** "**WATER SUPPLY** - The project has an adequate long-term water supply and manages development in the area so as to minimize adverse effects on the aquifers and preserve them as viable sources of water for human consumption.
> "**EVIDENCE:** a) The existing groundwater basin in the El Toro area is in overdraft and this has resulted in the placement of the 'B-8' Zoning Overlay District in an area of the Toro Area Plan including the project site. The project would use a maximum of 9.0 acre-feet per year (AFY) of water and the underground water recharge system approved for the 99,970 square foot project would return 9.66 AFY of water to the underground basin which results in a net positive water balance.' (AR 9-10.) (Boldface and all capitalization in original.)
>
> **Condition 86**: "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." (AR 61-62.)

(B). Final Environmental Impact Report – Master Responses

(1). Master Response No. 2: Validity of Water Balance:

"**B. Rainfall** [¶] The water balance analyses are based upon long term mean annual rainfall data for the County. Rainfall data and correction factors were derived from Monterey County Water Resource Agency data analysis. The average rainfall factor assumed by Whitson (October 14, 2009, 'Potential for Increased Groundwater Recharge") was 15.5". This information was derived from the Laguna Seca Subarea Phase III Hydrogeologic Update (November 2002, prepared for the Monterey Peninsula Water Management District by Eugene B. Yates, Martin B. Feeney, and Lewis I. Rosenberg). This is considered to be a conservative number given that the Geosyntec Report 2006 assumed an average annual rainfall of 16.70" per year. As for potential change in rainfall caused by climate change, at this time there is no way of knowing how climate change will affect rainfall in the project area. If climate change leads to increased temperatures and increased evaporation it may also lead to increased rainfall. Therefore the County has utilized rainfall data used to calculate the water balance that is an average of known data." (AR 101.) (Boldface in original.)

(2). Master Response No. 3: Storm Water Recharge:

"Commenters expressed concern regarding the ability to demonstrate recharge of groundwater and questioned the County's practice of including recharge in the water balance analysis. Commenters also questioned the ability of storm tech chambers to accomplish introduction of water into groundwater.

"The use of retention basins to recharge groundwater is a recognized technology among professional agencies in California. In response to comments regarding the potential efficacy of the technology proposed for the Project, the County reviewed the Cal Trans Final Report ID CTSW-RT-050 (2004) regarding BMPs for stormwater detention. The County also reviewed several documents prepared by the Central Coast Regional Water Quality Control Board which is coordinating an interagency project 'Development and Implementation of Hydromodification Control Criteria Methodology for the Central Coast Region and Other California Municipalities' (See Appendix K). The project, which is ongoing, has as one of its objectives to determine appropriate technologies for enhancing infiltration. Based on the County's review of the materials submitted by the applicant, review of the materials cited above and County staff's professional experience with respect to storm drainage issues, staff believe that the retention

proposal for the Proposed Project is reasonable. Measures to ensure adequate maintenance are included in proposed Mitigation Measure 4.7.6.

> 'The County is also adding a provision that would require the applicant to adopt BMPs or other proposed recommendations that might emerge from the work of the Central Coast RWQCB should these be available to inform specific project engineering for this element. The following text would be added to MM 4.7.6: 'In the design of the drainage facilities for the Project, the applicant shall incorporate any appropriate BMPs or other proposed recommendation from the Central Coast Regional Water Quality Control Board 'Hydromodification Control Criteria Methodology Study' that are adopted in the CCRWQCB at the time of Project design. These design features shall be reviewed and approved by the County Water Resources Agency and Building Services Department for consistency with the BMPs and/or recommendations and with County standards.'

"The applicant has provided additional material on the use of the Storm Tech Chambers, but notes that this is an example of a specific product by a specific manufacturer. Storm Tech Chambers are that company's product. There are comparable technologies manufactured in the U.S. with equal efficacy. See also Master Response 4 below.

"The El Toro Groundwater Study prepared by Geosyntec, dated July 2007, included additional suggestions and recommendations for improved management, utilization, and preservation of water resources in the El Toro Planning Area including the following: Evaluate the feasibility of retaining surface water runoff and enhancing aquifer recharge. Accordingly, the proposal to include a retention facility in the Project design is consistent with these recommendations for addressing groundwater resources in the El Toro Study Area." (AR 103-104.) (Footnote omitted.)

(3) Master Response No. 4: Maintenance of Drainage Facilities.

"Comments expressed concern with the success of the recharge facilities if they are not maintained. There were two components to this concern: the first relates to how would they be maintained and who would insure that maintenance occurs, and secondly would this be affected by the possibility that there may be more than one property owner involved in the center.

"As stated on page 264 of the Draft EIR (Mitigation Measure 4.7.6), the applicant would be required to sign a Drainage and Flood Control Systems Agreement for the maintenance of project related drainage facilities. The mitigation measure requires the agreement to include a summary of required annual maintenance activities and provisions for the preparation of an annual report by a registered civil engineer. The annual report would be submitted to the MCWRA for review and approval. The MCWRA and Monterey County Counsel would approve the agreement prior to filing of final map or issuance of building permits in the event that there is no final map.

"If the drainage facilities are not properly maintained, the agreement identifies a process through which the MCWRA is granted the right by the property owners to enter any and all portions of the property to perform repairs, maintenance, or improvements necessary to operate

the drainage and flood control facilities for the project. The MCWRA retains the right to collect the cost for said repairs from the property owners. According to the MCWRA, there are many subdivisions in Monterey County that are required to submit annual drainage reports. The approved drainage analysis, drainage plans, and annual drainage reports will be available at the MCWRA." (AR 104.)

(4). Response to Comments by Landwatch

"F.2. The commenter asks for clarification of the amount of stormwater currently retained on-site and whether that amount of water was deducted from the 10.04 acre/feet per year of groundwater recharge that would result from implementation of the proposed on-site stormwater retention/detention system as shown on Table 4.7.A of the DEIR. The existing pre-project water balance is 0.9 AFY as shown in Table 4.7.B. When this is added to the negative water balance of -1.3 AFY for the proposed project, this results in a total water balance change of -2.2 AFY". (AR 148.)

(C). Balance Hydrologies, Inc., August 26, 2010 –Peer Review - Revised Evaluation of Potential for Increased Groundwater Recharge, Proposed Commercial Project, Corral de Tierra Road and Highway 68. (October 14, 2009, prepared by Whitson Engineers.)

Document Review: "The source document used by Whitson as the basis for their calculations is the *Laguna Seca Subarea Phase III Hydrogeologic Update* (November, 2002, prepared for the Monterey Peninsula Water Management District by Eugene B. Yates, Martin B. Feeney, and Lewis I. Rosenberg), referred to, in the Whitson report and in this letter, as the Hydrogeologic Study. The Hydrogeologic Study uses commonly accepted methods for calculation of groundwater recharge, and presents classifications and mapping of soil characteristics (Figure 1-2) and land use and vegetation categories (Figure 1-3) used in defining soil moisture budget zones (Figure 1-4) for the subarea.

"In their conclusions, the authors of the Hydrogeologic Study state that their modeling indicates that in the Laguna Seca subarea native vegetation consumes 72 percent of annual rainfall through evapotranspiration of soil moisture, with an additional 6 percent of rainfall consumed by phreatophytes through evapotranspiration of shallow groundwater. With an estimated 3 .5 percent of annual rainfall leaving the basin as streamflow, this leaves less than 19 percent of annual rainfall contributing to groundwater recharge through deep percolation for the entire basin. Area 88 in the Study, which appropriately represents the project site in the Whitson analysis, has one of the lowest rates of recharge in the basin, with estimated recharge of 0.6 inches per year or 4 percent of annual rainfall.

"The Whitson report uses the classifications and mapping presented in the Hydrogeologic Study, to characterize the project site. The methodology and findings presented in the Hydrogeologic Study are applied to a site-specific analysis of existing conditions and the potential for increased groundwater recharge at the Project site. Existing conditions are found to minimally support groundwater recharge at the site largely due to the high evapotranspiration. This is consistent with results for areas of similar rainfall and topography in the central and northern California coastal regions. The report estimates 0.9 acre-feet per year (0.7 inches per

year, or 5 percent of annual rainfall) for pre-development recharge including the off-site hillside zone. This is reasonable based on the information provided in the Hydrogeologic Study.

"The Whitson report also presents calculations for groundwater recharge under two proposed development scenarios; Option 1, a standard development scenario and Option 2, a LEED alternative development scenario. Whitson's findings indicate a substantial increase in groundwater recharge with both scenarios and additional recharge benefit from the LEED alternative. The analysis estimates that 75 percent of annual rainfall on impervious surfaces could contribute to groundwater recharge at the project site for Option 1 and 80 percent for Option 2. Based on results from continuous simulation models prepared for similar areas, and for the purpose of calculating potential for groundwater recharge, these are reasonably conservative estimates for recharge. The continuous simulation models indicate roughly 10 percent of annual rainfall on impervious surfaces is lost to evaporation. The companion assumption to the 75/80 percent recharge is that the remaining 25/20 percent of annual rainfall would go to runoff from large storms, evaporation from impervious surfaces and evapotranspiration of soil moisture. The results of the analysis indicate that recharge could be as much as 9.9 acre-feet per year (50 percent of annual rainfall) in the Option 1 case and 10.3 acre-feet (52 percent of annual rainfall) in the Option 2 (LEED) case for the entire site including the former service station and the adjacent hillside. The findings presented in the Whitson report are consistent with results found in other studies using continuous simulation modeling in the central and northern California coastal areas." (AR 642-643.) (Italic in original, figures omitted.)

Conclusions: "The calculations presented in the Whitson report are consistent with the model from the Hydrogeologic Study upon which they are based, and with general practice. Appropriately conservative assumptions regarding potential recharge from impervious surfaces are used to arrive at the results.

"In areas with lower annual rainfall (generally less than 20 inches per year) and high evapotranspiration, modeling results consistently predict increases in groundwater recharge when runoff is collected directly from impervious areas and retained in infiltration facilities. This is enhanced in the proposed site design by holding the runoff in subterranean vaults which eliminates the majority of losses due to evapotranspiration and allows infiltration and deep percolation of the captured water. Furthermore, in areas of low rainfall and high evapotranspiration, the ability to capture and infiltrate from impervious surfaces provides additional benefit during times of drought. In such times, no recharge is likely to occur under existing conditions, but considerable recharge from the infrequent storms can be accomplished with rainfall captured from impervious surfaces.

"The Post-Development Drainage Area Characteristics table contains an error in the Total Landscape Area (7.3 ac should be 1.8 ac); however the number is not used in any of the calculations so the error is immaterial with regards to the results of the analysis." (AR 643.)

(D). Whitson Engineers, October 14, 2009 – Revised Evaluation of Potential for Increased Groundwater Recharge, Proposed Commercial Project, Corral de Tierra Road and Highway 68, Monterey County, California

"This report evaluates and summarizes the potential increase in groundwater recharge that may be achieved by increasing the percolation of on-site stormwater.

"The Drainage Area of 15.3 acres includes the project site (11.0 ac), a portion of the area of the adjacent hillside which currently drains onto the project site (3.6 ac), and the former service station parcel (0.7 ac). These areas are shown in Figure 1 at the end of this report. Drainage from adjacent roads is not included in this analysis.

"The amount of annual precipitation that contributes to groundwater recharge is computed as the remainder after evapotranspiration (ET), direct runoff, and soil moisture storage are subtracted from rainfall. This approach is commonly taken because precipitation, ET, runoff, and soil moisture may be calculated from commonly available measured data, whereas generally there are no measurements that directly relate to percolation.

"For the pre-development case, we have calculated the annual recharge rate based on the results presented in the *Laguna Seca Subarea Phase III Hydrogeologic Update* (November 2002, prepared for Monterey Peninsula Water Management District by Eugene B. Yates, Martin B. Feeney, and Lewis L. Rosenberg), hereinafter referred to as the Hydrogeologic Study.

"The Hydrogeologic Study estimated that the average annual groundwater recharge rate due to rainfall, averaged over the entire study area, was approximately 2 inches for the study period (1989-2001). During an average rain year (represented by water years 1983-1995) this figure is approximately 1.7 inches (p. 61 in the referenced study). For the land uses and soil types within the current project's area, however, the Hydrogeologic Study indicates an average annual groundwater recharge rate somewhat lower." (AR 718-719.) (Figure omitted.)

"The recharge rates for the existing drainage area may be computed as follows:
"[¶...¶]
"Therefore,
"Project Site (Zone 88): 7 afy/132 ac = 0.6 inches
"Adjacent Hillside (Zone 4): 75 afy/728.9 ac = 1.2 inches
"Service Station Parcel (Zone 88 over 10% of its area): 10% x 7 afy/132 ac = 0.1 inches

"Note that these recharge rates represent, respectively, only approximately 4%, 8% and 1% of average annual precipitation.

"Therefore, for the pre-development case,

"[Estimated fraction of precipitation that contributes to groundwater recharge] ... = 0.9 afy (Pre-Development)." (AR 720.)

"The applicant proposes construction of a subterranean retention and percolation facility for the proposed development. During rain events, site runoff would be collected on-site in gutters, channeled to catch basins, and then sent into the subterranean facility. There it would be held and percolated into the soil. We believe that this will increase the amount of rainfall that ultimately can contribute to groundwater recharge because:

• The collected stormwater would not be available for evapotranspiration since it would be immediately directed underground and away from plant root zones. The Hydrogeologic Study estimates that ET consumes approximately 72 percent of rainfall. It also estimates that an additional 6 percent is consumed from shallow groundwater by phreatophytes (p. 62). Therefore, if stormwater can be collected and directed below the root zone, an increase in percolation of up to 78% may be estimated.
• Further, site runoff would be reduced (or, in the case of Development Option 2, eliminated). The Hydrogeologic Study estimates that streamflow in Canyon del Rey accounts for approximately 3.5% of rainfall. Runoff from the project site in the Pre-Development condition is estimated to be somewhat higher than this. For the purpose of the analyses presented in this report, average annual runoff is estimated at 5% of average annual rainfall for the Pre-Development condition.

"Two options are considered herein, and correspond to Options 1 and 2 described in *Supplement #2 to the Preliminary Drainage Report* (February 17, 2009)." (AR 720.) (Italics in original.)

"Option 2 - LEED Alternative Development Scenario

"In Option 2, the site retention and percolation facility would retain and percolate all runoff for storm events up to some large event, without an overflow to storm drain. This approach would maximize the site's groundwater recharge value.

"We estimate that the fraction of precipitation that would contribute to groundwater recharge could be increased to 80% for impervious areas on the project site and former service station, due to the complete capture and percolation of site runoff.

"In this option, runoff from the adjacent hillside would also be captured and percolated as an additional means of increasing the site groundwater recharge value. We estimate that retaining and percolating runoff from the hillside area would increase [estimated fraction of precipitation that contributes to groundwater recharge] from 8% to 13°/o (1.2" to 2.0") for the hillside area (based on an estimated runoff fraction of 5% for the hillside area).' (AR 721.) (Boldface in original.)

"Therefore, if Option 2 is implemented, the post-development groundwater recharge volume would be:

"[Estimated fraction of precipitation that contributes to groundwater recharge] ... = 10.8 afy (Post-Development, Option 2)

"Therefore, based upon the findings of the this analysis, the proposed increase in groundwater recharge for Development Option 1 would be approximately 9 acre-feet per year, and for Development Option 2 approximately 9.9 acre-feet per year." (AR 722.)

(E). Response to Tim Parker Letter to Michael Stamp, Corral de Tierra Shopping Village Project by Mr. Ballman

"As requested, Luhdorff & Scalmani, Consulting Engineers (LSCE) and Ed Ballman of Balance Hydrologies reviewed the technical memorandum dated July 8, 20 11 written by Tim Parker of Parker Groundwater entitled, ***Technical Review, Hydrology and Groundwater, Corral De Tierra Neighborhood Retail Village EIR***, and submitted to the Law Offices of Michael W. Stamp. This memorandum presents the results of our combined review. For the purposes of this memorandum, the Corral de Tierra Neighborhood Shopping Village is referred to as the 'Project,' the draft and final environmental impact reports for the Project are referred to as the 'EIR,' and the Parker Technical Memorandum is referred to as the 'TM.'

"**General Comments**

"The scope of the TM failed to include a review of all the supporting documents that have been produced in relation to the EIR . These documents include all the EIR Appendices that contain extensive information on the subsurface conditions at the Project site, Monterey County Planning Department staff reports, and information provided to Monterey County staff prior to and at the Planning Commission hearings on the Project. These documents and information would have provided Parker with a more thorough understanding of the hydrology and groundwater in the vicinity of the Project, and the nature of the recharge system proposed for the Project.

"Parker promised to present the results of a technical review, however, the TM contained little if any original technical work that was presented to support the statements and conclusions developed by Parker.

"**Specific Comments**

"Parker appears to have misunderstood the Project description. In the fourth paragraph on Page 1 and the first bullet on Page 3, Parker implies that the Project includes recovery of recharged groundwater when in fact there is not any component of groundwater pumping of recharged groundwater in the Project.

"In the last paragraph on Page 1, the TM asserts that there were no calculations or acknowledgments of uncertainties in the hydrologic analyses for the project's stormwater recharge system. This ignores the detailed calculations presented in the EIR and supported by testimony to the Planning Commission and Board of Supervisors that consistently used conservative assumptions in calculating the expected quantity of stormwater recharge. In fact, the conservative nature of the assumptions was specifically identified in the peer review of the analyses carried out by Balance Hydrologics in August 2010.

"At the top of Page 2, Parker states that the Project's recharged storm water is not new water but is 'part of the hydrologic cycle,' and therefore does not 'and cannot' balance new demand. The use of the hydrologic cycle definition in supporting Parker's conclusion that the recharged stormwater from the Project cannot be used to balance out the new demand from the

Project is not a correct basis to support that conclusion. By definition, the hydrologic cycle is the endless circulation of water between ocean, atmosphere, and land on a global scale (Freeze and Cherry, 1979). Under that scenario there is no such thing as 'new' water, it all essentially recycles with no beginning and no end. The Project description does not suggest that 'new' water will be created. Instead, the Project describes a system from which a larger proportion of storm water will be recharged on site to augment groundwater storage in the Corral De Tierra area. The contention in the TM that stormwater recharge cannot increase locally and regionally available groundwater supplies is difficult to understand in light of the numerous recharge enhancement projects in operation throughout the world, including those operated by the Orange County Water District that are actually cited by Parker on page 4 of the TM.

"In the first bullet in Page 2, Parker indicates that 'site-specific precipitation data is unavailable' and that the average annual precipitation that was selected by the Project proponent may be higher than what may actually fall at the Project site. While project site precipitation data is unavailable, site specific data from the Monterey to Salinas area from which the Corral De Tierra area is located is available. In fact, long-term data from several precipitation stations located between Monterey and Salinas are available and were used for precipitation analysis and extrapolated for the project site using conservative and professionally reliable interpretation.

"Parker also states in the first bullet that the EIR failed to consider how dry years or drought cycles would impact Project recharge. In reality, the use of average annual data by definition incorporates both dry/drought periods along with wet periods to establish a long term average, as was done in this case. In addition, supporting technical documents in the EIR and in Planning Commission hearing materials demonstrated how the Project's recharge facility would function to advantage in dry/drought periods.

"In the second bullet in Page 2, Parker states that the 'majority' of rainfall events are 'quite small' (i.e., less than 0.2 inches per event) and would not produce sufficient water to generate runoff for capture and recharge. Admitting that his review was 'cursory,' Parker indicates that only between 10 to 25 percent (hardly a 'majority') of the total annual precipitation compose these small events.

"The end of the second bullet indicates that the EIR analysis fails to answer how the amount of captured storm water will be measured. This issue was covered extensively in Planning Commission staff reports and deliberations, and as part of project mitigation measures. In addition, the assertion that the calculations presented in the recharge system analyses assume 100% recharge of rainfall is simply incorrect. Parker proposes a coefficient of 0.95 be used for runoff from impervious surfaces. In fact, the calculations prepared by Whitson Engineers used a runoff coefficient of 0.80 for those surfaces, a much more conservative basis than suggested by Parker.

"The first bullet on Page 3 discusses groundwater recharge. Parker questions the amount or credit the Project's proposed recharge system is taking for storm water recharge. The foundation of Parker's argument is based on a recharge and recovery system ('ASR') which is not representative of the recharge system being proposed for this Project site. Therefore, while the losses Parker suggests may be present in an ASR system, they are not relevant to this Project.

As previously mentioned above, the proposed Project will not utilize an ASR system in the way Parker describes in the TM.

"In the second bullet on Page 3, Parker states that 'there have been sufficient regional, state, and national studies to address the Project with the potential changes in precipitation amounts, frequency, and severity' with respect to global climate change. Parker fails to cite any such studies that have focused on or are applicable to the Project site. The California Department of Water Resources (DWR) climate change web-site page focuses on how climate change may impact snowpack and overall water supply and reservoir storage. But DWR has not provided any indication of how areas primarily influenced by rainfall (such as the Project site) would be impacted by climate change. DWR has primarily described climate change as resulting in a higher frequency of extreme wet and dry periods which, if it were to occur, would not substantially cause a variation in the long term annual average precipitation expected at the Project site.

"In the discussion at the bottom of page 3, the TM again contends that the calculations carried out for the project's recharge system are not sufficiently conservative. However, Parker presents a number of misstatements regarding the conclusions of the analyses. The value of 75-80% was not Whitson's estimate of overall recharge, but rather Whitson's estimate of the amount of runoff from impervious surfaces that would be available for recharge. In fact, the conclusion reached by Parker that recharge would be on the order of 50-52% of rainfall was precisely the conclusion reached in the Whitson analyses, and which the TM itself cites as reasonable.

"In the first full paragraph on Page 4, Parker addresses maintenance and long-term recharge efficiency as topics 'not adequately addressed.' Parker then attempts to support his conclusion by citing examples from Orange County's groundwater recharge operations as a case where maintenance is required to remove fine particles and biofouling. The use of Orange County to illustrate what may occur at the Project site is completely inappropriate. Orange County uses surface detention basins, which are particularly susceptible to accumulation or particulate matter and fouling, to recharge groundwater. The proposed recharge facility at the Project site does not use surface detention basins, but uses enclosed recharge chambers that have the ability to capture fine-grained sediments and are subject to a well-defined maintenance plan.

"In the last paragraph in Page 4 and beginning of Page 5, Parker uses a series or CPT [Cone Penetrometer Test] logs to question the long-term destination of Project storm water recharge and asserts that the CPT data is superior to the more regional data used by Geosyntec. The CPT logs in the vicinity of the recharge facility (CPT logs 8, 10, and 12) indicate that there are fine-grained beds located 15 to 50 feet below ground surface. What Parker fails to mention are the logs from borings drilled by Twining Laboratories, Inc. (and included in the EIR appendices) that reflect a different depiction of subsurface conditions at the recharge facility location. Unlike the CPT logs that only measure resistance in the advancement or a probe or the more regional data used by Geosyntec, Twining collected core samples to analyze the actual subsurface materials which represent a more accurate method of determining soil characteristics. CPT tests do not collect subsurface samples to analyze. Given the choice between CPT data and core samples from borings, description of materials from core samples is much more accurate than CPT data or more regional data used by Geosyntec.

"In the discussion of water quality impacts on page 5, Parker discusses the potential for pollutants to occur in the stormwater runoff and that the EIR fails to address that issue. In fact, the EIR does address that water quality issue in the form of mitigation measures 4.7.5 and 4.7.6. The TM fails to acknowledge that stormwater recharge is an integral component of low impact development design. In fact, recharge of storm water is now often a required best management practice unless it can be shown to be infeasible (e.g. Municipal Regional Stormwater Permit Region 2 Water Quality Control Board). Such regulations typically require 10 feet of separation from the recharge facility to the groundwater table to preclude impairment of groundwater quality. The TM fails to note this and also fails to note that the separation distance at the project site will be many times that value.

"The TM seems to imply that adjunct stormwater quality BMPs have not been considered for the project. This ignores the multiple references to oil/grease separators in the project documentation as a means to enhance the reliability of the recharge system. The suggestion that bioswales be used ignores the fact that they would increase storm water losses due to evapotranspiration, contravening the goal of maximizing storm water recharge at the site.

"In page 6, Parker addresses the potential for contamination from leaking underground storage tanks at the adjacent gas station to impact recharged stormwater. There is no history of MTBE in groundwater at the Project site, and recent tests of the water from the gas station well adjacent to the Project site, and from the Hargis well on the Project site reveal no evidence of MTBE or other pollutants." (AR 4780-4784.) (Footnotes omitted, boldface and italics in original.)

(F). June 21, 2011 Memorandum from Whitson Engineers – Water Balance for Hybrid LEED Alt. Plan with Reduced Building Area

"We are providing this Memorandum for the purpose of providing the water balance for the Revised Hybrid LEED Alternative Plan with Reduced Building Area of 99,970 square feet. The calculations presented on the following page are in the format utilized in the EIR, and follow the calculation methodology used in our previous calculations and in the EIR." (AR 4876.)

"Post-Project Water Balance – Pre-Project Water Balance [=] 2.76[afy.]" (AR 4877.)

(G). April 12, 2011 Board of Supervisors meeting, Exhibit A: Discussion

"*Cumulative impacts of existing and projected future demand for water from the source, and the ability to reverse trends contributing to an overdraft condition or otherwise affecting supply;*

"The staff recommended alternative would provide a water recharge system which would result in a net benefit to the groundwater basin. The interpretation which the Board of Supervisors must make in considering this project application is whether the proposed recharge system satisfies this criterion. The groundwater supply for the subject site is within the Corral de Tierra Sub basin, of the larger Salinas Valley Groundwater Basin (Bulletin 118, California's

Groundwater, and State of California Department of Water Resources). The Geosyntec Study looked not at this sub basin, but at five watershed based planning sub areas. Within the sub areas, the study defined the El Toro Primary Aquifer System which is composed primarily of the Aromas Formation and the Paso Robles Formation. As noted above, the finding of the Geosyntec report is that this study area is in overdraft. It is important to note that the approach of the Geosyntec study was not to determine whether this project has a long term water supply, but rather to determine whether the B-8 Zoning Overlay should be removed from the planning area. The Geosyntec study identified that there were areas within the El Toro Primary Aquifer System that had good potential for groundwater production and areas where the potential for ground water production is poor. The location of the Ambler Park wells is in an area where there is good potential for groundwater production because the saturated thickness of the water table is over 600 feet thick. The project, thus, has a good source of water, and with the use of the recharge system will not contribute to the overdraft condition, but instead will provide a slight benefit.

"To mitigate impacts to the groundwater basin, the reduced density staff alternative has been designed to provide a positive water balance in relation to groundwater use. The staff alternative would be conditioned to use a maximum of 9.0 acre-feet per year (AFY) of water, and the underground water recharge system for the project would return 9.98 AFY of surface runoff water to the groundwater basin which results in a net positive water balance. The ability of the reduced density staff alternative to maintain this water balance relies on the success of the infiltration system. The Board must be satisfied that there is evidence to support that the recharge system will work as proposed. The County has denied projects which relied on recharge systems in circumstances where there is doubt about the viability of the design and operation of recharge system to achieve the desired results. Most of these have been related to small residential subdivisions that have not demonstrated the technical, managerial, and/or financial resources to maintain the recharge system over time. In this case, the project is a commercial center which will have a property manager responsible for the maintenance and functioning of the property. Based upon the managerial presence, and the financial backing needed to operate a commercial center of this size, there is reason to find that an 112,000 square foot commercial center has the necessary technical, managerial and financial resources to maintain the recharge system.

"This water recharge proposal would collect the runoff from the site, the hillside behind the site, and the gas station site at the comer of Corral de Tierra and Highway 68, and divert this water into infiltration chambers. These infiltration chambers will allow the water to move more directly to the ground water that would occur from surface infiltration. According to William L. Halligan, Hydrogeologist with Luhdorff Scalmanini, the reason infiltration chambers have a higher percentage of water directed to the ground water than normal infiltration, is because the infiltration chambers place the water into the ground below the root zone of trees and plants, thus there is not the same loss of water through evapotranspiration.

"Under the proposal, 9.98 AFY would be directed to the groundwater above what is currently infiltrating back into the groundwater. This net infiltration is calculated from the following factors:

"Added infiltration from	
"Site	9.66 AFY
"Existing Service Station	.65 AFY
"Hillside	.60 AFY
"Total	10.92 AFY
"Subtract existing infiltration	.94 AFY
"Net Infiltration	9.98 AFY

"Staff recommends a condition be added to limit the total amount of water used on site to 9 AFY. The applicant does not want any limitation placed on the amount of water to be used. The findings to determine that there is a LTSWS are based upon the project's ability to direct more water into the groundwater than the project uses. The limitation on water use is important to insure that the factors considered in developing the water balance are maintained in the implementation of the project.

"Questions have been raised about the use of infiltration chambers to divert water into the groundwater, including whether this approach has been successfully implemented before and how much of the water will actually reach the water table. This type of storm water infiltration chamber has been used in many different settings, and from a water quality and storm water management standpoint, this is currently a best management practice. The input from hydrologists, geologists and engineers is that the proposal should work as the models show. Staff from the Water Resources Agency has reviewed the model and finds that it is accurately characterized.

"The storm water retention plan involves collecting storm water runoff from the hillside behind the site, and from the corner gas station parcel. These properties are not included within the project site. A number of people have questioned the use of these properties because they are off site and not included within the application. The gas station is under the ownership of the applicant and is currently paved. It has excellent potential to divert surface water run off to the ground. In evaluating this part of the request, staff determined that it is feasible to collect the storm water and thus could be included in the water balance for the site. It is desirable to collect the runoff from this site and direct it to the water table. Ideally the corner parcel and the remainder of the center would all be developed at once, but short of that it makes logical sense to connect the gas station parcel to the infiltration system now. The success of the infiltration system in achieving the water balance is not dependent upon water from the gas station site. As noted in the illustration above, if the gas station site were removed from the water balance calculation, it would reduce amount of water directed to ground water by 0.65 acre feet per year. This would still result in a positive water balance of 9.33 AFY. It is recommended that a condition be added requiring that an agreement be entered into and recorded on the property requiring that all runoff from the gas station site must be reserved for the shopping center, and that no development of the site will be allowed which alters the ability to collect this storm water runoff.

"Comments have also been received questioning whether the hillside behind the site is 3.6 acres in area as assumed in the water balance calculation. This was the information submitted by the applicant. In response to an inquiry from staff, the applicant has provided a map showing the area of the hillside and documenting that it is in fact 3.6 acres. The hillside area is located on two parcels. The Phelps parcel contains 1.5 acres and the Villas parcel contains 2.1 acres that drains toward this site. The Phelps parcel has a dedicated easement, and the hillside on the Villas parcel is in a scenic easement so it will not be modified. The amount of surface water diverted to ground water from the hillside is limited. The hillside would contribute a total of 0.60 AFY to the water balance, but of this 0.37 AFY already infiltrates into the groundwater, leaving the net additional water at 0.23 AFY. This small amount could be removed without significant impact to the water balance. This would result in a net infiltration of 9.75 AFY. If the existing service station were also removed from the calculation the net infiltration would be 9.1 AFY.

"There is a great deal of public controversy associated with the water balance provisions. Members of the public have commented that they do not believe that the system as proposed will work. The engineers, geologists, and hydro geologists that have been involved in developing the system have presented a model, and supporting information to demonstrate that it is feasible. These proposals have been reviewed by the Water Resources Agency which has found the proposal as designed to be acceptable. There has not been scientific evidence from a geologist, hydro geologist or engineer to indicate that this water balance proposal will not work.

"The Board must determine whether this water retention proposal, designed to achieve a water balance for the developed condition of the site, is consistent with General Plan Policy PS-3.2 (e) which requires consideration be given to *'impacts of existing and project future demand for water from the source and the ability to reverse trends contributing to an overdraft condition or otherwise affecting supply'*. If the Board finds that with the water retention plan the project meets the criteria under PS-3.2 for LTSWS then staff would include recommended conditions of approval to maintain the limit on water usage, and require adequate maintenance of the infiltration chambers." (AR 5615-5618.) (Italics in original.)

(H). April 12, 2011 Board of Supervisors meeting Exhibit C – January 12, 2011 Planning Commission Staff Report - Condition Changes Requested by Omni

"B. Conditions 30 and 84. - Limitation on Water Use. The applicant would like to have the conditions limiting the amount of water used on site removed from the conditions. Condition 30 correctly limits the amount of water consumed on site to 9 acre feet per year. There was a typo in Condition 84 which stated the limit as 6.5 acre feet per year. Condition 84 has been corrected in the current recommendation attached to this staff report to reflect a maximum water use of 9 acre feet per year. One of the primary issues associated with this project is the impact on the ground water basin. The DEIR determined that two of the alternatives analyzed did not result in a depletion of groundwater resources because there was a net positive water balance. Staff believes that placing a cap on water consumption for the Project is an effective approach for meeting the water balance projections. The 9 acre foot cap was developed in responding to comments on the DEIR. This is a number that based upon a reasonable range of water use projections would result in a net water balance, i.e. consumptions would be less than the amount of water to be recharged by the proposed project. The imposition of this measure is further

discussed in Master Response No. 2 (FEIR pgs. 14-15.)." (AR 6158.) (Underlineation in original.)

(I). Analysis

The Coalition's argument is centered on the Parker analysis of water recharge. Omni is correct that substantial evidence supports the decision and that it is not the Court's role to referee expert disagreements.

"Substantial evidence is defined as enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. The court indulges all reasonable inferences from the evidence that would support the agency's determinations. A court may not set aside an agency's [decision] on the ground that an opposite conclusion would have been equally or more reasonable. A court's task is not to weigh conflicting evidence and determine who has the better argument .... We have neither the resources nor scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so.

"Our review for substantial evidence applies a deferential standard that is satisfied if the record contains relevant information that a reasonable mind might accept as sufficient to support the conclusion reached. If more than one inference can be drawn from the evidence, the reviewing court is without power to substitute its deductions for those of the agency. In general, the court does not weigh the evidence adduced before the agency or substitute its judgment for that of the agency. The court will not concern itself with the wisdom underlying the agency's action." (*Sonoma County Water Coalition v. Sonoma County Water Agency* (2010) 189 Cal.App.4th 33, 41-42 (citations and internal quotation marks omitted).)

The expert opinions support the finding that water recharge will provide adequate water to avoid groundwater impacts and the County did not abuse its discretion.

(II). Water balance analysis

The Coalition argues that the water balance (1) approach was confusing and unclear; (2) the mean annual precipitation of 15.5 inches used in the EIR was from a 2002 Santa Clara Valley Water District map that does not apply to Monterey County; (3) the recharge calculations erroneously assumed that all precipitation will be captured, but this is not true because 10-25% of rainfall events do not produce sufficient water to produce runoff and the runoff coefficient for impervious surfaces is 95%, which reduces the estimate by 5%; and (4) the future owner of the gas station or the hillside parcels might prevent storm water drainage to the shopping center and the water balance will fall below the EIR 9.0 AFY figure.

Omni states that there is sufficient water to meet Project demand and the February 2001 "will serve" letter is substantial evidence of adequate water supplies. (*Twain Harte Homeowners Assn., Inc. v. County of Tuolumne* (1982) 138 Cal.App.3d 664, 675-677.) Omni points out that the water balance analysis prepared by Whitson shows the net amount of groundwater recharge with the proposed system, after adjusting for existing recharge and Project demand, and again, a disagreement among experts does not render an EIR legally insufficient. Omni notes that Balance Hydrologics explained why the system works better in areas with little rainfall and during periods of drought. Omni also points out that the average precipitation assumed in the Whitson report was from a Monterey County Water Resources Agency's analysis of long-term mean annual rainfall for Monterey County, and the 15.5 inch figure is a conservative number given that the Geosyntec Report assumed average annual rainfall of 16.7 inches per year.

(A). Finding Number 9

> "**WATER SUPPLY** - The project has an adequate long-term water supply and manages development in the area so as to minimize adverse effects on the aquifers and preserve them as viable sources of water for human consumption.

"**EVIDENCE**: (a) The existing groundwater basin in the El Toro area is in overdraft and this has resulted in the placement of the 'B-8' Zoning Overlay in an area of the Toro Area Plan including the project site. The project would use a maximum of 9.0 acre-feet per year (AFY) of water and the underground water recharge system approved for the 99,970 square foot project would return 9.66 AFY of water to the underground basin which results in a net positive water balance.
b) The project has been conditioned to ensure that the water use is limited and maintained at 9.0 AFY. The Planning Director and General Manager of the Water Resources Agency have been given the authority through the conditions of approval to monitor the use of water at the site in order to ensure that the positive water balance is achieved and maintained.
c) The 'B-8' District regulations allow the commercial development of the site provided that the development can be found to not adversely affect the constraints which caused the 'B-8' District to be applied to the property.
d) Water for the development would be provided by the Ambler Park Water System." (AR 9-10.) (Capitalization and boldface in original.)

(B). Condition Compliance and/or Mitigation monitoring Reporting Plan - #104 Underground Recharge System Treatment requirements in part:

"3. Sampling shall be performed at the first flush runoff event and runoff from no less than three (3) subsequent rain events each year. A rain event shall be a precipitation event resulting in no less than one-quarter of an inch of precipitation in a 24 hour period." (AR 69-70.)

(C). Master Response No. 2: Validity of Water Balance – A. Estimated Water Demand - Revised Table 6.B Water Balance Analysis for Alternative 2: LEED Silver Design

The Mean Annual Precipitation is 15.5 inches/year. (AR 98.) From the "Mean Annual Precipitation provided in the *Schaaf & Wheeler Preliminary Drainage Study* dated July 30, 2002." (AR 99.) (Italics in original.)

(D). Master Response No. 2: Validity of Water Balance – B. Rainfall

"The water balance analyses are based upon long term mean annual rainfall data for the County. Rainfall data and correction factors were derived from Monterey County Water Resource Agency data analysis. The average rainfall factor assumed by Whitson (October 14, 2009, 'Potential for Increased Groundwater Recharge') was 15.5". This information was derived from the Laguna Seca Subarea Phase III Hydrogeologic Update (November 2002, prepared for the Monterey Peninsula Water Management District by Eugene B. Yates, Martin B. Feeney, and Lewis I. Rosenberg). This is considered to be a conservative number given that the Geosyntec Report 2006 assumed an average annual rainfall of 16.70" per year.

"As for potential change in rainfall caused by climate change, at this time there is no way of knowing how climate change will affect rainfall in the project area. If climate change leads to increased temperatures and increased evaporation it may also lead to increased rainfall. Therefore the County has utilized rainfall data used to calculate the water balance that is an average of known data." (AR 101.)

(E). Balance Hydrologies, Inc., August 26, 2010 –Peer Review - Revised Evaluation of Potential for Increased Groundwater Recharge, Proposed Commercial Project, Corral de Tierra Road and Highway 68. (October 14, 2009, prepared by Whitson Engineers.)

[See I (C) *supra.*]

(F). Schaaf & Wheeler Consulting Civil Engineers July 30, 2002 letter to Mr. Whiston Re: Preliminary Drainage Study for Proposed Development.

"Site hydrological calculations were based on Soil Conservation Service (SCS) methodology contained in Nation Engineering Handbook, Section 4, *Hydrology* (NEH4). Rainfall depths were determined using the Intensity - Duration - Frequency (IDF) Curves developed by Schaaf & Wheeler for the *Stormwater Management and Improvement Plan San Felipe Lake – Santa Ana Creek Area* adjusted by a factor of 15. 5 divided by 13 to account for the difference in mean annual precipitation between the Santa Ana Creek study area and the proposed project site. The mean annual precipitation values are based on the Santa Clara Valley Water District 1988 map for San Francisco and Monterey Bay Region (see Figure 4). The following table compares 24- hour precipitation depths used for this study compared to those calculated using the IDF curve contained in Monterey County Standard Details based on a 2-year 1-hour intensity of 0.5 inch per hour." (AR 2136-2137.) (Italics in original.)

(G). June 21, 2011 Memorandum from Whitson Engineers – Water Balance for Hybrid LEED Alt. Plan with Reduced Building Area

"We are providing this Memorandum for the purpose of providing the water balance for the Revised Hybrid LEED Alternative Plan with Reduced Building Area of 99,970 square feet. The calculations presented on the following page are in the format utilized in the EIR, and follow the calculation methodology used in our previous calculations and in the EIR." (AR 4876, 4898.)

"Post-Project Water Balance – Pre-Project Water Balance [=] 2.76[afy.]" (AR 4877, 4899.)

(H). July 8, 2011 memorandum from Hydrogeologist Tim Parker to Molly Erickson: Subject – Technical Review, Hydrology and Groundwater for the Project.

"This Technical Memo presents the results of a technical review of the hydrologic and groundwater related elements of the proposed Corral de Tierra Neighborhood Retail Village Project (proposed project) Draft Environmental Impact Report (DEIR) and Final EIR. The purpose of the technical review was to identify potential omissions and assess

whether the EIR process failed to adequately consider project deficiencies and supporting evidence.

"[¶]

"The Toro Area of Monterey County is in overdraft; that is not disputable. The technical reports relied upon by the EIR agree that the area is in overdraft, the overdraft is worsening, and there is no new water supply in the foreseeable future. Because there is no long term sustainable groundwater supply for the proposed project, and in an overdrafted basin the new demand would cause significant impacts, the project proposes to mitigate the impacts by recharging stormwater into the groundwater basin.

"**The Amount of the Proposed Project's Recharge Is Uncertain.** [¶] There is a significant lack of scientific foundation and site-specific data with regard to the proposed 'recharge,' including the volume of stormwater to be captured, volume recharged into groundwater, and amount of groundwater that can be recovered. Additionally, the inherent nature of hydrologic uncertainty are not addressed regarding the amount of site-specific (1) precipitation, (2) stormwater capture, (3) groundwater recharge, and (4) the future effects of climate change on the average annual amount, frequency and severity of storm events.

"Considering that this proposed project requires a 'long-term sustainable supply of water' under the County General Plan, it is essential that the Environmental Impact Report provide not only its professional judgment of 'estimates of losses (evaporation, storm overflows, and soil moisture)', but must also show calculations and the uncertainties associated with the water recharge calculations. This was not done. The EIR's failure to do this means that the proposed project stormwater capture recharge approach is uncertain in the actual reliable volume of recharge water that may be sustained long-term. Additionally, in my professional experience, I have never before heard of onsite stormwater recharge being proposed as a 100% 'balance' to make up for a project's new demand on an overdrafted groundwater supply. 'Recharged' storm water is not new water. It is water that already is part of the hydrologic cycle. Therefore, 'recharge' water does not - and cannot - balance new demand. I believe it is a bad precedent to set, to use these sorts of stormwater capture and recharge 'tools' to justify new water demand in an area of groundwater overdraft.

"Some of the specific hydrologic issues and uncertainties that have not been adequately discussed or addressed in the DEIR and FEIR include:

"• Precipation Events - Site-specific precipitation data is unavailable, rainfall varies highly within the region in space and time, and the EIR relies on regional average annual data. The project proponent uses the lower value of two regional reports to select an average annual precipitation amount, however, the actual project site precipitation may be lower and this factor is not acknowledged as an uncertainty in the analysis. The significance of this is that the amount of stormwater captured and recharged may be overestimated, meaning the project's water demand would exceed the projected recharge.

Also, the EIR's failure to consider drought years or multi-year drought cycles makes the EIR analysis even less reliable. Drought years and cycles arc foreseeable in Central California, and could cause the project recharge to be far below the amount projected in the EJR. During those years, the project's water demand would significantly exceed the recharge.

"• Stormwatcr Capture -The majority of rainfall events in the proposed project area are quite small, and many of these small rainfall events may not even produce sufficient water to generate any runoff to capture and convey to the proposed detention/retention facility (CIMIS 2011). A cursory review of the daily rainfall data in the area suggest between 10 and 25 percent of the total precipitation on an average annual basis (1.5 to 3.9 of the 15.5 inches per year per Whitson, October 14, 2009) are less than 0.2 inches per event, meaning surface runoff might be generated for only 11.6 to 14 inches of the total average annual precipitation. However, the EIR assumes that the whole average annual precipitation is assumed to be captured. The uncertainty of how much stormwatcr can actually be captured considering surface roughness, evaporation and size of precipitation events should be discussed. Additionally, a runoff coefficient should be applied, which for impervious surface is 0.95 (Schueller, 1987). The EIR analysis also fails to answer the key question of how will the actual amount of stormwater captured be measured, and documented in the proposed project? Without that measurement and accountability, the project's stormwater recharge is ineffective as mitigation for the water demand on the overdrafted water supply.

"• Groundwater Recharge - The proposed project assumes that whatever storm water makes it into the detention/retention facility receives credit for groundwater recharge. *As* with any storm water management system reliant on infiltration, the effectiveness of the underground chamber vaults depends on the percolation capacity of the soil. It should be noted that most aquifer storage and recovery projects (ASR), which involve using wells to directly recharge and recover water with inline flow meters to measure with precision water volumes and with no potential losses as in surface conveyance, use 80 percent as a recovery efficiency (0.8 gallon is recovered for every 1 gallon recharged). It is not realistic to assume, as the EIR does, that every drop of water that makes it into the detention/retention facility will make it into the underlying aquifer and be able to be recovered and used in the future. The EIR fails to adequately address what kind of losses can reasonably be expected and what are the uncertainties in the movement of the recharge water into and through the unsaturated zone and finally into the saturated zone beneath the proposed project site.

"[¶]

"**The EIR's Projection of the Potential for Increased Groundwater Recharge for the Proposed Project is Overly Optimistic.** [¶] Typical industry approaches to stormwater capture projects use 'conservative' assumptions of zero losses to conveyance etc., where the focus is on designing adequately-sized infrastructure to handle projected storm events. 'Conservative' in this case means the maximum amount of water that could be expected. This project is different, in that it involves not only stormwater capture, but

also involves calculating and demonstrating with scientific and engineering principles a long-term recharge of an amount of water equal to or greater than the project's water demand. Therefore, the approach that is being taken in the EIR is not 'conservative' but instead is optimistic in the assumptions made by the project proponent and used in the EIR.

"According to Balance Hydrologies (2010) who reviewed Whilson's water budget (October 2007), evaporation of 10 percent is reasonable. Balance Hydrologies also indicated that its is [sic] reasonable to assume 50 percent and 52 percent total average annual precipitation can be captured and recharged, which is more realistic than Whitson's 75 and 80 percent. Neither Balance nor Whitson provided the scientific foundation or calculations for these estimates, and the EIR failed to reasonably investigate and question these assumptions." (AR 5092-5095.) (Boldface in original.)

(I). Response to Tim Parker Letter to Michael Stamp, Corral de Tierra Shopping Village Project

[See (I) (E) *supra.*]

(J). Court's analysis

The County did not abuse its discretion because there is substantial evidence to support the water balance analysis which is based on mean annual precipitation and the recharge calculations, which are supported by expert opinion.

(III). Water demand

The Coalition raises six (6) arguments about inaccurate water demand calculations, claiming that (1) the information was not in the Draft EIR, rather it was produced for the Final EIR and public input was precluded; (2) there is no foundation for landscape water demand; (3) the EIR should not have reduced water demand by 30% because of a double counting of water efficient fixtures; (4) public bathrooms were omitted from the calculation; (5) Omni arbitrarily used the water demand factor for retail uses from the Marina Coast Water District (MCWD)and the food service factor from the Monterey Peninsula Water Management District (MPWMD) without explanation; and (6) Omni used a factor for general retail to calculate AFY instead of the

MPWMD supermarket factor or the MCWD grocery and other markets factor because the grocery store will not have prepared foods, coffee bar etc., and this argument by Omni is unsupported. The Coalition argues that the County did not have the discretion to select inapplicable water factors or water credit reductions to get a specific result. (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 119-124.)

(A). Master Response No. 2: Validity of Water Balance

"Commenters have raised a number of issues with respect to the validity of the Water Balance analysis, including the following:

a) Methodology and demand assumptions utilized for calculating water consumption on the proposed site.
b) Rainfall assumptions
c) Ability to enforce assumptions regarding water limits
d) Reliance on information provided by the applicant.

"**A. Estimated Water Demand**

"Concerns were raised about the methodology used to calculate the water demand figures for the center. The water demand projections contained in the DEIR were prepared by the applicant based upon water demand factors from Monterey Peninsula Water Management District (MPWMD) and Marina Coast Water District (MCWD) estimates. The project is not located within the boundaries of either MPWMD or MCWD, so neither agency's factors are a requirement of this project, but these factors are considered representative of anticipated project water demands. The DEIR water demand factors were used in a recent Water Supply Assessment (WSA) prepared by Byron Buck & Associates and adopted by MCWD for the proposed Seaside Main Gate Project.

"Comments questioned why the MPWMD factors were not used. It is common practice to utilize factors that are the most reasonable for the application involved. In this case the water demand factor for Retail Uses was taken from the MCWD and the food service factor was taken from the MPWMD. This was the approach used in the Seaside Main Gate Project referenced above. The factors of both MCWD and MPWMD are included in the appendix to this document.

"In response to the comments on the Water Demand Analysis Denise Duffy (consultant to the applicant) prepared 'Corral de Tierra Commercial Project Water Demand Information' dated November 5, 2010 (See Appendix K). This information identified the water demand presented in the DEIR and compared it to three different scenarios of determining water demand. The three scenarios included a Fixture Based Water Demand, MPWMD Project Water Demand, and a Combination of MCWD and MPWMD Water Demand. The comparison of the four different methods is provided in the following table:

Factors Used	Water Usage (AFY)
Draft EIR	11.34
Fixture Based	9.86
MPWD	13.53
MCWD/MPWD	12.39

"The Fixture Based Water Demand is based upon a combination of retail for the Market and fixtures for the remainder of the center. It is premature to have a sufficient level of detail to determine if this approach is truly possible. In applying the MPWMD factors the Market was assigned a retail water demand factor. This factor is appropriate for 'Family Grocery'. Under the MPWMD approach, a supermarket would have a higher water demand factor. The Family Grocery is considered appropriate in this case because the market will not have any of the accessory uses commonly associated with a supermarket such as prepared foods, coffee bar, etc. Applying the MPWMD Water Demand Factors as described, the use water demand for the project would be 13.53 acre feet per year.

"In the Alternatives Analysis, the LEED alternative and staff reduced density alternative assume aggressive water conservation measures. It is assumed in the DEIR that a 30% reduction in water use inside the building can be achieved using LEED technology for water conservation. Estimates for reductions that can be achieved by fixtures that comply with LEED standards range from 15 percent- 50 percent reduction for irrigation systems (Paige Gimbal, LEED-AP, ASIC, CID, BPA WaterSense Partner).

"The landscape water conservation program is based on using Terrapin Bright Green assumptions. According to Terrapin Bright Green, LLC, water demand reductions can be realized in connection with project landscaping to reduce demands by approximately 90% through a combination of xeriscaping, drip irrigation, and automatic sensors. Terrapin has indicated that in some locations plant selection alone can reduce landscape demand by 50% or more.

"The result of these water savings measures showed the following water demands and positive water balances taken from Table 6B and Table 6.E of the DEIR:

Alternative	Water Usage (AFY)	Post Project Water Balance
LEED	6.46	3.5
Staff Reduced Density	6.10	3.6

"For purposes of comparison a new Water Balance Analysis was prepared for the LEED Alternative and the Reduced Density Alternative. These are shown in the tables on the following pages. These analyses assumed use of the MPWMD water demand assumptions identified above,

and assumed a more conservative 80% savings in irrigation. In the reduced density alternative the percentage of retail to food service remained consistent with that of the proposed project. The following table summarizes the water usage numbers and resulting water balance would be achieved:

Alternative	**Water Usage (AFY)**	**Post Project Water Balance**
LEED	8.24	1.7
Staff Reduced Density	6.10	2.3

"The result of using the MPWMD water use factors shows an increase in the water demand for the site, but consistent with the alternatives presented in the DEJR, a positive water balance can be still be achieved with use (AR 96-101.) (Footnotes and Tables 6.B and 6.E omitted, boldface and underlineation in original.)

(B). Brian Finegan, Denise Duffy, DD&A, Eric Phelps, Applicant, November 5, 2010 - Corral de Tierra Commercial Project Water Demand Information to Luis Osorio, Monterey County Senior Planner

"The following provides documentation and background on the water demand projections for the Corral de Tierra Commercial Project in response to comments raised during the public review period of the Environmental Im.pact Report (BIR).

"Background

"The proposed project as described in the EIR proposes a neighborhood commercial village of 126,523 square feet (sq. ft.), including ten retail buildings and a one-story market building (grocery) as the anchor. The retail component, consisting of the retail spaces and grocery/market, is 114,185 sq. ft. The market building is 40,093 sq. ft and the office building is 12,335 sq. ft. Within the market building, the grocery functions within a 28,000 sq. ft. area and the remainder of the building space (12,093 sq. ft.) is made up of office mezzanine/space and warehouse/storage area.

"EIR Demand Rates for Project

"The Draft EIR water demand factors and total projected water usage for the proposed project are presented below in **Table 1- Draft EIR Water Demand.**

Table 1-Draft EIR Water Demand

Proposed Use Category	**Square Feet**	**Demand Factor**	**Water Usage (AFY)**
General Retail	57,072	0.00005	2.85

General Office	12,335	0.00005	0.62
Grocery/Market	40,093	0.00005	2.00
Deli/Pizza/Bakery/Coffee	17,023	0.0002	3.40
Subtotal:	126,523		8.88
Landscaping:	1.69		2.46
Total:			**11.34**

"Notes: Demand table for proposed project using water demand factor for the Draft EIR, pg. 256; EIR shows Grocery/market of 40,093 as component of General Retail/Office and uses common demand facto of .00005. All water use is shown in acre/feet per year (AF/YR).

"EIR Demand Rate Discussion

"As shown on Table 4.7.B, page 256 of the EIR, the retail uses included the Grocery/Market as part of General Retail/Office and used a common demand factor of .00005 for the 109,500 sq. ft. of these uses.

"Certain comments were raised about using the rate of .00005 for the retail village center. The following discusses how water demand estimates contained in the Draft EIR are considered reasonable and reliable based on 1) project design elements that include common public restrooms/facilities and exclude interior plumbing for specified commercial, retail, and office uses; 2) review by Brezack & Associates, a water resource planning firm, regarding the appropriateness of the demand factors applied in the EIR; 3) the results of an alternative water demand analysis using fixture count data conducted by engineering firm Whitson Engineers; 4) unified operation and management of open spaces, landscaping and common areas, and 5) the results of a comparative water demand analysis using Monterey Peninsula Water Management District (MPWMD) factors. The discussion below and attached letters provide documentation that the factors used in the EIR are reasonable and that these water demand factors were appropriately used in the Draft EIR.

"As noted in the EIR, the source of the .00005 water demand factor was a Marina Coast Water District (MCWD) Water Supply Assessment for a shopping center use (see Draft EIR pg. 257, footnote 5). Neither the MPWMD nor the MCWD have jurisdiction over the project and neither have available data regarding actual historic rates from a typical shopping center. As is typical for demand forecasting, rates are estimated using conservative demand factors for planning purposes and system capacity charges. The .00005 general factor for retail was applied to this proposed center as it was considered to be applicable to a multi use retail center with a number of retail establishments with project design elements that include common public restrooms/facilities and where there are no interior plumbing fixtures for many of the individual commercial, retail, and office uses. The general retail factor takes into account the nature of a combined use retail center, where the proposed center is assumed to have a common water demand for the whole as opposed to applying demand to each free-standing individual commercial uses. Additionally, the nature of a retail center is that it is regulated by CC&Rs, and unified operation, management and maintenance of common areas assure greater opportunity for water management and conservation.

"Brezack & Associates, an environmental and land use consulting firm specializing in water resources planning and experienced in the preparation of Water Supply Assessments (WSAs), was consulted regarding the appropriateness of the demand factors used in the Draft EIR. Brezack & Associates reviewed the water demand analysis to determine whether the demand factors were considered reasonable. Their analysis included a review of water demands for similar land uses used by other water purveyors, including but not limited to the MCWD and MPWMD, as well as other jurisdictions throughout California. Based on their analysis and extensive experience preparing WSAs, Brezack & Associates concluded that 'the commercial/retail/office land use water demand factors used within the Project EIR are within the range used by other water purveyors throughout the state and represent a reasonable assessment of the projected water demands.' A copy of their analysis is attached.

"Certain comments were raised about using the rates from the MPWMD as opposed to another water district. In addition to the analysis completed by Brezack & Associates, an alternative water demand analysis was prepared by Whitson Engineers using a fixture based approach to estimate water usage which is a commonly accepted practice for applying water rates within the MPWMD. Whitson's analysis was prepared using development assumptions based upon the anticipated fixture units needed to support the project in lieu of applying a demand factor based on gross floor area for retail spaces. Their analysis was based on applying the requirements for plumbing fixtures for the common commercial areas within the commercial, retail, and office uses that would not have any interior plumbing for water use. This analysis identified the fixtures within the common exterior restrooms that would be provided and excluded food-oriented uses. MPWMD water demand factors were used to estimate project water usage. The water demand projections developed using this methodology identified similar water demand projections consistent with the estimates contained in the Draft EIR; see below,

Table 2 - Fixture Based Water Demand. A copy of Whitson Engineer's analysis is attached.

Table 2 - Fixture Based Water Demand

Use	Square Feet/Unit	Demand Factor	Water Usage (AFY)
Grocery/Market			
Grocery	28,000	0.00007	1.96
Office/Warehouse/Storage	12,093	0.00007	0.85
Deli/Pizza/Bakery/Coffee	17.023	0.0002	3.40
Public Toilet	16 toilets	0.058	0.93
Public Urinal	6	0.036	0.22
Drinking Fountain	7	0.056	0.04
Subtotal:	**126,523**		**7.40**
Landscaping:	1.69		2.46
Total:			**9.86**

"Notes: 1) Approximately 12,000 sq. ft. of grocery/market will be used as warehouse, storage, and office uses. Source: Whitson Engineers, Alternative Water Use Calculations, November 5, 2010.

"The project has been designed to include shared public facilities/restrooms for the commercial, retail, and office uses as opposed to providing interior plumbing and facilities for each use. The water use projections, accounting for shared facilities and using the fixture based methodology described above, are generally comparable with the demand estimates contained in the Draft EIR.

" MPWMD Water Demand Discussion

"Based on comments received on the Draft EIR, DD&A evaluated potential water use using MPWMD water demand factors for comparative purposes. **Table 3 –MPWMD Project Water Demand** presents projected demand using MPWMD factors only. The land use assumptions in Table 3 were refined to provide additional detail regarding the Grocery/Market use. Anticipated demand using MPWMD accepted water demand factors is slightly higher than the demand estimates identified in the Draft EIR.

Table 3- MPWMD Project Water Demand

Use	Square Feet	Demand Factor	Water Usage (AFY)
General Retail	57,072	0.00007	4.00
General Office	12,335	0.00007	0.86
Grocery/Market (see below)			
Grocery	28,000	0.00007	1.96
Office/Warehouse/Storage	12,093	0.00007	0.85
Deli/Pizza/Bakery/Coffee	17.023	0.0002	3.40
Subtotal:	**126,523**		**11.07**
Landscaping:	1.69		2.46
Total:			**13.53**

"Notes: MPWMD factors only

"1) Approximately 12,000 sq. ft. of grocery/market will be used as warehouse, storage, and office uses.

"Water demand projections can be estimated using a variety of different methodologies that are contingent upon the level of project detail. At this time, the project site is zoned for commercial uses and plans have been proposed for approval of a neighborhood retail center at the site. The exact and specific uses within each of the buildings will not be finally known until the project is approved, constructed and occupied. The approach used in the Draft EIR estimated water usage based on water demand factors for uses based upon the level of information known at this time and water factors as described. The alternative approaches identified in Tables 2 and 3 above, provide another approach for water demand using MPWMD factors or fixture units

applied. As a comparison to using MPMWD factors only, **Table 4** below identifies a combination of water factors using the .00005 water demand rate for all retail and the MPWMD rates for family grocery and deli/bakery, as shown below. This provides another example of an approach that is slightly higher but generally comparable to the water demand totals in the EIR.

Table 4- Combination Retail and MPWMD Grocery Factors

Use	Square Feet	Demand Factor	Water Usage (AFY)
General Retail	57,072	0.00005	2.85
General Office	12,335	0.00007	0.86
Grocery/Market Building			
Grocery Use	28,000	0.00007	1.96
Office/Storage	12,093	0.00007	0.85
Deli/Pizza/Bakery/Coffee	17.023	0.0002	3.40
Subtotal:	**126,523**		**9.93**
Landscaping:	**1.69**		**2.46**
Total:			**12.39**

"Notes: MPWMD Factors only used for Grocery and office; General Retail uses factor of .00005. Approximately 12,000 sq. ft. of grocery/market will be used as warehouse, storage, and office uses.

"The analysis contained in this memorandum and supporting technical analyses demonstrate that the water demand analysis in the Draft EIR is reasonable and appropriate; water demand estimates for the proposed project are within range of factors used by other water purveyors and adequately estimate projected water use based on project-specific information. The project's water demand was evaluated using several different methodologies and demand factors that accounted for project design features and types of uses; the additional analyses yielded projections that were lower, slightly higher and all generally comparable to the water demand projections in the Draft EIR. Technical subconsultants also determined that the water demand factors used in the Draft EIR were appropriate given the nature of the project and their experience with completing WSAs for similar projects." (AR 680-683.) (Boldface and under lineation in original, footnotes omitted.)

(C). Weber, Richard, P.E., L.S., Principal, Whitson Engineers. 2010. Letter to Eric Phelps, Omni Resources, regarding Corral de Tierra Commercial Development Alternative Water Use Calculations, dated November 5, 2010

"As per your request, in the table below we have estimated the potable water use for the proposed Corral de Tierra Commercial Development using alternative development assumptions based upon the anticipated fixture units needed to support the retail in lieu of applying a demand factor based upon gross floor area of retail spaces. These assumptions are 1) that the proposed commercial, retail, and office spaces will not have any interior water use, while still accounting for Grocery [footnote 1] and Deli/Pizza/Bakery/Coffee House use, and 2) that common, exterior-

accessed restrooms will instead be provided. We have estimated the water use of these restrooms based on the demand factor for Public Restrooms. All factors are as provided by the Monterey Peninsula Water management District (MPWMD) in their published *NonResidential Water Use Factors.* The fixture count for the public restrooms was provided by the project architect, based on the currently proposed building floor areas and 2007 California Plumbing Code requirements for minimum fixture count.

Table 1. Alternative water use analysis, assuming market is classified as a Group 1 Use

Proposed Use	Measure	Unit	Multiplier	Water Use (ac-ft/ yr)
Family Grocery	28,000	sq. ft	0.00007	1.96
Administrative and storage areas	12,335	sq. ft	0.00007	0.86
Deli/Pizza/Bakery/Coffee	17,023	sq. ft	0.00020	3.40
Public Toilet	16	toilets	0.05800	0.89
Public Urinal	6	urinals	0.03600	0.22
Drinking Fountain	7	each	0.00560	0.04
Total				**7.37**

"Notes on Table 1:
1. Assumes that Commercial, Retail and Office spaces will not have water service.
2. Family Grocery (Group 1 under attached chart) *was* used since Deli/Coffee and Bakery uses are planned for other buildings within the center.

[Footnote 1.] "The .00007 factor (Family Grocery) was used for the Grocery square footage factor as noted above as Deli/Coffee and Bakery uses are planned for other building within the center. If the Supermarket/Convenience Store factor is applied, the factor of .0002 would be used, for a total interior demand of 5.6 AFY and total demand of 11.01 AFY." (AR 685.) (Boldface and italics in original, some footnotes omitted.)

(D). Brezack, James, President, Brezack & Associates Planning. 2010. Letter to Eric Phelps, Omni Resources, regarding Corral de Tierra Neighborhood Retail Village Water Demand Review dated November 3, 2010

"Estimated water demands were presented in the proposed Project's Draft Environmental Impact Report (DEIR) (Table 4.7.A). The unit water demand factor referenced in the DEIR for the 'Commercial/ Retail/Office' category uses a demand factor for a similar shopping center project within the Marina Coast Water District (MCWD) from a Water Supply Assessment report; this factor is also the MCWD water use factor for general retail uses. The proposed Project is not located within MCWD's service area, however, MCWD demand factors are

considered to be representative of anticipated project demands. Table 1 presents the proposed water use estimates from the DEIR.

TABLE 1
Proposed Post-Project Water Demand
as presented in Table 4.7.A of the DEIR

Land Use	Area	Demand Factor	Water Demand
Commercial/Retail/ Office	109,500 sq ft	0.00005 AFY/sq ft	5.475 AFY
Restaurant/Deli/ Food Services	17,023 sq ft	0.0002 AFY/sq ft	3.4046 AFY
Landscaping	1.69 acres	1.46 AFY/acre	2.46 AFY
Total			11.34 AFY

"The DEIR describes a Project Alternative for LEED Silver Design, pursuant to the U.S. Green Building Council (USGBC). Alternative 2 would incorporate the use of LEED silver equivalent water fixtures for both interior and exterior water uses. LEED Water Demand has been reduced 30% for water efficient fixtures and equipment for interior demands. The proposed Project is consistent with the LEED Rating System v2.2 for New Construction, Water Efficiency Credit 2, with the exception of the recommendation for composting toilets (USGBC, 2006).

"Landscaping water demand has been reduced in the DEIR by 90% in accordance with estimates provided by Terrapin Bright Green, LLC. Recommendations by Terrapin are for construction of a combination of xeriscaping, drip irrigation, and automatic sensors to meet the estimated 90% landscape demand reduction. This is consistent with LEED's Water Efficiency Credit 1.2.

"A water use reduction of 30% can be achieved consistent with LEED Silver Design and would ensure high efficiency toilets, urinals, showers, and sinks and occupant sensors are installed to reduce the potable water demand.

"Water use estimates for the LEED Silver Design, Alternative 2, are presented in Table 6.8 of the DEIR. Table 2 presents the proposed water use estimates for the LEED Silver Design.

TABLE 2
Post-Project Water Demand for LEED Silver Design
Alternative 2 as Presented in Table 6.B of the DEIR

Land Use	Area	Demand Factor	Normal Water Demand	LEED Water Demand (-30% of Normal & -90% for Landscaping
Commercial/Retail/ Office	109,500 sq ft	0.00005 AFY/sq ft	5.475 AFY	3.833 AFY
Restaurant/Deli/ Food Services	17,023 sq ft	0.0002 AFY/sq ft	3.4046 AFY	2.382 AFY
Landscaping	1.69 acres	1.46 AFY/acre	2.46 AFY	0.246 AFY
Total			11.34 AFY	6.461 AFY

"The water purveyor to the proposed Project is the California-American Water (Cal-Am). Although water supplied to this project area is outside the water supplies of Cal-Am that are managed by the Monterey Peninsula Water Management Agency (MPWMD), water use factors under MPWMD Rule 24 for the Calculation of Water Use Capacity and Connection Charges were reviewed. Table 3 presents MPWMD Non-Residential Water Use Factors, in accordance with Rule 24.

TABLE 3
MPWMD Non-Residential Water Use Factors Interior Uses

Group	Description	Demand Factor
Group I – Low to Moderate Use	Retail/Auto/Warehouse/Office/School Bank/Church	0.00007 AFY/sq ft
Group II – High Use	Sandwich Shop/Deli/Baker/Coffee House	0.0002 AFY/sq ft

"MPWMD Non-Residential Water Use Factors are slightly higher than those used in the Project DEIR for Commercial/Retail/Office land uses. MPWMD unit water demand factors for similar Restaurant/ Deli/Food Service and are the same as those used in the Project DEIR. Table 4.

TABLE 4
Proposed Interior Project Water Demands Based on MPWMD Unit Water Factors

Land Use	Area	MPWMD Demand Factor	Proposed Project Water Demand	LEED Water Demand (1)

			Under MPWMD Factors	
Commercial/Retail/ Office	109,500 sq ft	0.00007 AFY/sq ft	7.665 AFY	5.3655 AFY
Restaurant/Deli/ Food Services	17,023 sq ft	0.0002 AFY/sq ft	3.4046 AFY	2.382 AFY

(1) LEED Water Demand has been reduced 30% for water efficient fixtures and equipment.

"CONCLUSIONS:

"1. The demand factors used within the Project EIR for the Proposed Project and the LEED Silver Design Alternative are acceptable water demand factors. A review of water demands for similar land uses used by other water purveyors was completed as a part of this analysis. The commercial/retail/ office land use water demand factors used within the Project EIR are within the range used by other water purveyors throughout the state and represent a reasonable assessment of the projected water demands for the proposed Project.

"2. A water use reduction of 30% is achievable and consistent with LEED Silver Design and would ensure high efficiency toilets, urinals, showers, and sinks and occupant sensors are installed to reduce the potable water demand." (AR 6989-691.) (Boldface in original.)

(E).TERRAPIN, November 8, 2010 – Detailed Irrigation References at Corral de Tierra Project

"As you know we have been working with your engineering team over the last year to reduce the water consumption at the Corral de Tierra project. We are a multi-disciplinary consulting firm specializing in sustainable design consulting with a particular focus on energy and water issues. We have been working in the sustainable development field for over 20 years and have a deep knowledge of the opportunities of integrated sustainable design to improve our environment while creating healthy and economically vibrant communities. We have worked on a multitude of projects from the LEED-platinum Bank of America tower in New York City to the California Academy of Sciences in San Francisco. To respond to concerns regarding claims against the water efficiency potential of the project we have provided additional research with this letter.

"Based upon the research attached, we can show that utilizing xeriscaping can achieve a wide range of irrigation reduction, but at a minimum should achieve at least a 50% reduction utilizing these techniques. In addition, by installing a drip irrigation system with weather-based irrigation controls an additional reduction in irrigation demand between 50-92% can be achieved. The control system limits irrigation to periods when the soil moisture level drops below a predetermined level. The attached case study located in Santa Barbara, California achieved a 50% reduction using weather-based controls. More importantly, Dickson & Associates conceptual landscape design has demonstrated that utilizing drought-tolerant plants, xeriscaping

strategies, and weather-based irrigation controls integrated with a drip irrigation system for this site will achieve an 80% reduction in irrigation demand." (AR 693.)

(F).DICKSON & ASSOCIATES, INC., November 4, 2010 - Corral de Tierra, Monterey, California

"I have reviewed your proposed landscape design concepts for the Corral de Tierra project which include 100% low-water use plant material as defined in the publication 'Drought Resistant Plants for Monterey County.' Highly efficient irrigation components, irrigation design, and a weather based 'smart' irrigation controller, coordinated with the low-water planting design, will produce a successful landscape that can be sustained with very little water.

"It is possible to sustain this type on landscape on 20% of the water required for a typical, nonconserving landscape. Therefore, an 80% reduction of landscape water consumption is attainable." (AR 694.)

(G). Whitson Engineers, November 12, 2010 - Corral de Tierra Commercial Development – Storm Drainage Improvements on the Former Service Station Parcel as Required to Satisfy Water balance Assumptions

"We understand that the County is requesting clarification regarding how the former service station parcel (APN 161-571-002) will be connected to the proposed underground stormwater detention/retention system on the Corral de Tierra Commercial Development site (APNs 161-571-003 and 161-581-001). We are providing you with this letter in order to answer this request.

"The parcel in question is a developed 0.7-ac parcel located at the south east corner of the intersection of Highway 68 and Corral de Tierra Road. The majority of the site drains to the public right of way via surface flow at the driveways located on Highway 68 and Corral de Tierra. Smaller areas within the parcel drain to the Commercial Development site (APN 161-571-003).

"Some minor drainage improvements on the former service station parcel will be required in order to capture the site runoff. We anticipate that these improvements will include constructing trench drains, valley gutter or other improvements at the driveway entrances to capture the sheet flow that currently leaves the site on the north and west. These would drain into the proposed detention/retention system on the Corral de Tierra Commercial Development site." (AR 695.)

(H). Marina Coast Water District- Marina Coast Water District Assigned Water use Factors for Determining Water Capacity Charges

"The district, through the general manager, assigns water use factors from this Appendix C for new and modified, non-residential uses. Each new or modified non-residential service connection that involves two or more uses shall be subject to a use calculation for each proposed

use. Where a proposed use may be designated as more than one type of use, the type of use which most accurately depicts the proposed non-residential use shall be selected. Where doubt exists, the higher intensity use type shall be chosen. Water use rates are assigned for various uses per unit - square footage, number of rooms, seats, etc. The assigned water use rates are determined considering estimated water use availability and fire flow availability for various commercial uses. The type of use and assigned water use rates are listed below.

Type of Use	Basis	"Assigned Water Use Rates Assigned	Total Water Use Per Annum (Acre-Ft)
Auto repair shops	sq. ft.	x 0.00007 =	
Bar	seats	x 0.024 =	
Beauty shop/barber shop	stations	x 0.059 =	
Car wash w/recycle	sq. ft ..	x * =	
Child care, schools	sq. ft.	x 0.0072 =	
Commercial laundry	washers	x 0.1735 =	
Delicatessen (w/o seating)	sq. ft.	x 0.00027 =	
Dental offices	sq. ft.	x 0.00029 =	
Dry Cleaners (no washer machines)	sq. ft.	x 0.00040 =	
Gas station	pumps	x 0.1051	
General retail	sq.ft.	x 0.00005 =	
General office	sq. ft ..	x 0.00012 =	
Grocery and other Markets	sq.ft.	x 0.00039 =	
Hotet/motel/bed & breakfast	units	x 0.170 =	
Laundromat (self-serve)	washers	x 0.202 =	
Medical offices	sq.ft	x 0.00018 =	
Meeting halls, churches	sq.ft.	x 0.0001 =	
Nursing home	rooms	x 0.142 =	
Landscape (non-turf)	acres	x 2.1 =	
Landscape (turf)	acres	x 2.5 =	
Photographic lab	sq. ft.	x 0.003 =	
Plant nursery	sq. ft. land	x 0.00009 =	
Public restroom	toilets	x 0.0676 =	
Restaurant (incl. fast food, deli, sandwich shop)	seats	x.0.29 =	
Retail photo w/processing	sq. ft.	x. 0.00020 =	
Swimming pool (per 100 sq. ft. pool surface area).		x 0.020 =	
Theater	seat	x. 0.0014 =	
Veterinary	sq. ft.	x. 0.00026 =	
Warehouse, distribution, self-storage	sq. ft.	x 0.00009 =	

"The assigned water use rate is then multiplied by the appropriate square footage, room, or seat number for each use and the capacity charge per acre-foot of water." (AR 712-713.)

(I). Monterey Peninsula Water Management District Commercial Water release Form and Water Permit Application [in part]

"GROUP I – Low to moderate Use
"Multiply square-footage by 0.00007 to estimate water needs for the following uses:

"Auto Uses	Chiropractic	Family Grocery	Office	Storage
"Retail	Bank	Church	General Retail	General Medical
"Fast Photo	Gym	Warehouse	Florist	Manicure/Pedicure

"GROUP II – High Use
"Multiply square-footage by 0.0002 to estimate water needs for the following uses:

"Bakery	Deli	Photographic	Coffee House
"Intensive Medical	Sandwich Shop	Convenience Store	Dry Cleaner
"Pizza	Supermarket	Candy Store	Veterinary." (AR 715.)

(J). Draft EIR Corral De Tierra neighborhood Retail Village County of Monterey May 2010

"Hydrology and Water Quality. The LEED Silver Alternative would be designed to include an engineered stormwater retention/percolation system that would capture runoff from the Site, the surface area of the adjacent former service station site, and the area of adjacent hillside. This Alternative is designed to fully retain runoff for the 100-year storm event. As indicated in the Whitson Engineers November 6, 2009 site plan (refer to Figure 6.1), the retention system would include a series of underground facilities comprised of storm tech chambers with a footprint area of 0.9 acre, 1.8 afy of storage volume and the capability to retain stormwater runoff from a 100-year storm event. The facilities would be located on the northern edge of the Site adjacent to SR-68 and near the west border of the Site (refer to figure 6.1). The estimated annual recharge rate for the LEED Silver Alternative is 10.92 afy. The calculations provided by Whitson Engineers (February 17, 2009, August 24, 2009 and October 14, 2009, refer to Appendix I of Volume II of this EIR) utilize average annual precipitation and recharge assumptions. The retention facilities associated with the LEED Silver Alternative would cover a total area of 0.9 acre (Moore Twining, November 23, 2009).

"In comparison, the Project storm tech chamber would have a 0.5 acre footprint area, 0.8 afy of storage volume and overflow would be directed via a new 24-inch storm drain to an existing box culvert under SR-68. The Project would recharge 10.04 afy of runoff. As with the Project, the commercial center operators would also be responsible for ongoing maintenance and repair of the facilities.

"The LEED Silver Alternative would incorporate the use of LEED Silver equivalent water fixtures for both interior and exterior uses. Water consumption for this Alternative is estimated at 6.46 afy, compared to the estimated 11.34 afy consumption rate for the Project

(Terrapin, September 28, 2009; December 11, 2008, refer to Appendix I of Volume II of this EIR). The reduction in consumption would be attributed to the installation of LEED Silver equivalent fixtures for the commercial center and LEED fixtures consistent with LEED-NC 2.2 Reference Guide for exterior/landscaping fixtures and plants. The LEED Silver Alternative assumes that landscape potable water demand would be reduced by 90 percent through the use of xeriscape plants, drip irrigation, and automatic irrigation sensors. This Alternative also assumes utilization of higher efficiency interior water fixtures.

"Reduced water consumption and increased groundwater recharge associated with the LEED Silver Alternative design would result in an estimated net positive water balance of 4.46 afy compared to the Project's negative net water balance of 1.34 afy, a difference of 3.5 afy. Therefore, the LEED Silver Alternative would not result in a depletion of groundwater resources. Accordingly, the impact to groundwater resources would be less than significant (a net benefit). Table 6.A below provides a comparison of the water balance of the Project with that of the LEED Silver Alternative. The LEED Silver Alternative's water balance analysis is provided in Table 6.B.

Table 6.A: Water Balance Comparison of Project and LEED Silver Alternative

	Pre Project Demand (afy)	Pre Project Recharge (afy)	Pre Project Water Balance (afy)	Post Project Demand (afy)	Post Project Recharge (afty)	Post Project Water Balance (afy)	Net Change (afy)
Project	0	0.94	0.94	11.34	10.04	-1.30	-2.2
LEED Silver Alternative	0	0.94	0.94	6.46	10.92	+4.46	3.5

Table 6.B: Water Balance Analysis for Alternative 2: LEED Silver Design

Pre-Project					
Water Use					**Water Use (afy)**
Project Site					0.00
Existing Service Station					0.00
Hillside					0.00
Total Water Use					0.00

Recharge	Total Area (ac)	Undeveloped Area(1) (ac)	Mean Annual Precipitation(2) (in/yr)	Recharge Rate(3) (in/yr)	Recharge (afy)
Project Site	11.0	11.0	15.5	0.04	0.57
Existing Service Station	0.7	0.07	15.5	0.01	0.00
Hillside	3.6	3.6	15.5	0.08	0.37
Total Recharge					0.94
Water Balance = Recharge – Water Use					**0.94**

Post-Project					
Water Use	**Area(4) (square Feet)**	**Multiplier(5)**		**Demand (afy)**	**LEED(6)**
Commercial/Retail/Office	109,500	0.00005		5.475	3.383
Restaurant/Deli/Food Services	17,023	0.0002		3.4046	2.383
Landscaping	1.69 ac x 1.46 afy/ac per Denise Duffy and Associates				0.246
Total Water Use					6.46

Recharge	Total Area (ac)	Developed Area(7) (ac)	Mean Annual Precipitation	Recharge Rate(8) (in/yr)	Recharge (afy)
Project Site	11.0	9.35	15.5	0.80	9.66
Existing Service Station	0.7	0.63	15.5	0.80	0.65
Hillside	3.6	0	15.5	0.13	0.60
Total Recharge					10.92
Water Balance = Recharge – Water Use					4.46

Net Change	
Post Project Water Balance – Pre-Project Water Balance	**3.5**

"Notes:

1. The *Revised Evaluation of Potential for Increased Groundwater Recharge* dated October 14, 2009, states that 90% of the service station parcel is impervious surface and the remaining 10% of its area is available for recharge.
2. Mean Annual Precipitation provided in the *Schaaf & Wheeler Preliminary Drainafle Studv* dated July 30, 2002.
3. The recharge rates are based on results presented in the *Laguna Seca Subarea Phase I Hydrogeologic Update* (November 2002 prepared by Eugene B. Yates, Martin B. Feeney, and Lewis I. Rosenberg). These recharge rates represent 4%, 8%, and 1 % of mean annual precipitation.
4. Estimates based on conceptual drawings.

5. Based on water demand factors from a Water Supply Assessment from the Marina Coast Water District for a shopping center for commercial retail uses and demand factors typically applied to individual deli and restaurant uses from Monterey Peninsula Water Management District.
6. LEED water demand has been reduced 30% for water efficient fixtures and equipment. Landscaping demand was reduced by 90% in accordance with estimates provided by Terrapin Bright Green, LLC.
7. The *Revised Evaluation of Potential for Increased Groundwater Recharge* prepared by Whitson Engineers dated October 14, 2009, estimated the project site would be 85% impervious surface and the service station parcel is 90% impervious.
8. The *Revised Evaluation of Potential Groundwater Recharge,* prepared by Whitson Engineers dated October 14, 2009, estimated the fraction of precipitation that would contribute to groundwater recharge could be increased to 80% for the impervious areas within the project site and former service station site due to the complete capture and percolation of runoff. According to the report, the recharge rate for adjacent hillside could be increased from 8% to 13%. The contribution to groundwater recharge from the proposed landscaped areas within the project site and service station parcel is taken as zero as a conservative assumption.

"As contrasted with the Project, by reducing consumption and increasing groundwater recharge, the LEED Silver Alternative would not contribute further to the existing groundwater deficit. Since the LEED Silver Alternative would result in a net benefit to the groundwater basin, it would not contribute to a cumulative impact to water supply and is therefore, preferable to the Project with respect to hydrologic impacts." (Boldface and italics in original.) (AR 1303-1305.)

(K). Draft EIR Corral De Tierra neighborhood Retail Village County of Monterey May 2010

"**Hydrology and Water Quality.** Similar to Alternative 2: the LEED Silver Alternative, the Reduced Density/Redesigned Project Alternative would incorporate a storm water retention/percolation system which would capture runoff from the Site, the surface area of the adjacent service station site, and the adjacent hillside. The Reduced Density/Redesigned Project Alternative would be designed to fully retain runoff for a 100-year storm event. This is in contrast to the Project system which does not capture and retain water from the adjacent hillside and is designed as a combination retention/detention system.

"The reduction in building square footage (8,600 sf) would result in a reduction in water consumption for the Project. Additionally, the installation of LEED Silver equivalent fixtures for the commercial center and LEED fixtures consistent with LEED-NC 2.2 Reference Guide for exterior/landscaping fixtures and plants would contribute to the reduction in water consumption. This Alternative is estimated to consume 5.32 afy of water per year. Based upon variables provided by Whitson Engineers (February 19, 2009 and October 16, 2009) and the reduced site coverage in the Reduced Density/Redesigned Project Alternative, estimated site recharge would be 10.66 afy for the 'full retention system'. Therefore, the Reduced Density/Redesigned Project Alternative would result in a net positive water balance of 4.4 afy. This represents a 6.6 afy increase in recharge as compared to the Project; it also represents a 0.9 afy additional net benefit to the groundwater basin compared to the LEED Silver Alternative. As such, implementation of this Alternative would not result in potentially significant impacts to groundwater resources. Table 6.D below provides a comparison of the water balance of the Project with that of Alternative 3: Reduced Density/Redesigned Project Alternative. A detailed water balance analysis for this alternative is provided in Table 6.E.

Table 6.D: Water Balance Comparison of Project and Reduced Density/Redesigned Project Alternative

	Pre Project Demand (afy)	Pre Project Recharge (afy)	Pre Project Water Balance (afy)	Post Project Demand (afy)	Post Project Recharge (afy)	Post Project Water Balance (afy)	Net Change (afy)
Project	0	0.94	0.94	11.34	10.04	-1.30	-2.2
Reduced Density/Redesigned Project Alternative	0	0.94	0.94	5.32	10.66	+5.34	4.4

Table 6.E: Water Balance Analysis for Reduced Density/Redesigned Project Alternative

Pre-Project					
Water Use					**Water Use (afy)**
Project Site					0.00
Existing Service Station					0.00
Hillside					0.00
Total Water Use					0.00
Recharge	**Total Area (ac)**	**Undeveloped Area(1) (ac)**	**Mean Annual Precipitation(2) (in/yr)**	**Recharge Rate(3) (in/yr)**	**Recharge (afy)**
Project Site	11.0	11.0	15.5	0.04	0.57
Existing Service Station	0.7	0.07	15.5	0.01	0.00
Hillside	3.6	3.6	15.5	0.08	0.37
Total Recharge					0.94
Water Balance = Recharge – Water Use					**0.94**
Post-Project					
Water Use	**Area(4) (square Feet)**	**Multiplier(5)**		**Demand (afy)**	**LEED(6)**
Commercial/Retail/Office	108,900	0.00005		5.445	3.812
Restaurant/Deli/Food Services	9,023	0.0002		1.8046	1.263
Landscaping	1.69 ac x 1.46 afy/ac per Denise Duffy and Associates				0.246
Total Water Use					5.32

Recharge	Total Area (ac)	Developed Area(7) (ac)	Mean Annual Precipitation	Recharge Rate(8) (in/yr)	Recharge (afy)
Project Site	11.0	9.10	15.5	0.80	9.40
Existing Service Station	0.7	0.63	15.5	0.80	0.65
Hillside	3.6	0	15.5	0.13	0.60
Total Recharge					10.66
Water Balance = Recharge – Water Use					5.34
Net Change					
Post Project Water Balance – Pre-Project Water Balance					**4.4**

"Notes:
1. The *Revised Evaluation of Potential for Increased Groundwater Recharge* dated October 14, 2009, states that 90% of the service station parcel is impervious surface and the remaining 10% of its area is available for recharge.
2. Mean Annual Precipitation provided in the *Schaaf & Wheeler Preliminary Drainage Study* dated July 30, 2002.
3. The recharge rates are based on results presented in the *Laguna Seca Subarea Phase I Hydrogeologic Update* (November 2002 prepared by Eugene B. Yates, Martin B. Feeney, and Leweis I. Rosenberg). These recharge rates represent 4%, 8%, and 1 % of mean annual precipitation.
4. Estimates based on conceptual drawings.
5. Based on water demand factors from a Water Supply Assessment from the Marina Coast Water District for a shopping center for commercial retail uses and demand factors typically applied to individual deli and restaurant uses from Monterey Peninsula Water Management District. LEED water demand has been reduced 30% for water efficient fixtures and equipment. Landscaping demand was reduced by 90% in accordance with estimates provided by Terrapin Bright Green, LLC. ¶7. The *Revised Evaluation of Potential for Increased Groundwater Recharge* prepared by Whitson Engineers dated October 14, 2009, estimated the project site would be 85% impervious surface and the service station parcel is 90% impervious. ¶8. The *Revised Evaluation of Potential Groundwater Recharge,* prepared by Whitson Engineers dated October 14, 2009, estimated the fraction of precipitation that would contribute to groundwater recharge could be increased to 80% for the impervious areas within the project site and former service station site due to the complete capture and percolation of runoff. According to the report, the recharge rate for adjacent hillside could be increased from 8% to 13%. The contribution to groundwater recharge from the proposed landscaped areas within the project site and service station parcel is taken as zero as a conservative assumption." (AR 1320-1322.) (Boldface and italics in original.)

(L). Exhibit C June 21, 2011 Submittal from Applicant Omni Enterprises, Inc., for Board of Supervisors July 12, 2011 hearing – Revised plan for Project from Whitson Engineers

"We are providing this Memorandum for the purpose of providing the water balance for the Revised Hybrid LEED Alternative Plan with Reduced Building Area of 99,970 square feet. The calculations presented on the following page are in the format utilized in the EIR, and follow the calculation methodology used in our previous calculations and in the EIR." (AR 4876.)

"Table a: Water Balance Analysis for Revised Hybrid LEED Alternative

Pre-Project

Water Use					Water Use AFY
Project Site					0.00
Existing Service Station					0.00
Hillside					0.00
Total Water Use					**0.00**

Recharge	Total Area acres	Undeveloped Area(1) acres	Mean Annual Precipitation(2) inches/year	Recharge Rate(3)	Recharge AFY
Project Site	11.0	11.0	15.5	0.04	0.57
Existing Service Station	0.7	0.07	15.5	0.01	0.00
Hillside	3.6	3.6	15.5	0.08	0.37
Total Recharge					**0.94**

Water Balance = Recharge – Water Use	**0.94**

Post-Project

Water Use	**Area(4) sq. ft**	**Multiplier(5)**		**Demand AFY**	**LEED(6) AFY**
General Retail	82,947	0.00005		4.15	2.90
Deli/Pizza/Bakery/Coffee	17,023	0.0002		3.40	2.38
Landscaping(9)	1.69 ac x 1.46 afy/ac per Denise Duffy and Associates			2.73	0.55
Total Water Use					5.83

Recharge	**Total Area acres**	**Developed Area(7) acres**	**Mean Annual Precipitation in/yr**	**Recharge Rate(8)**	**Recharge AFY**
Project Site	11.0	8.01	15.5	0.80	8.28
Existing Service Station	0.7	0.63	15.5	0.80	0.65
Hillside	3.6	0.00	15.5	0.13	0.60
Total Recharge					**9.53**

Water Balance = Recharge – Water Use	**3.70**

Net Change

Post Project Water Balance – Pre-Project Water Balance	2.76

"Notes:
1. The *Revised Evaluation of Potential for Increased Groundwater Recharge* prepared by Whitson Engineers, dated October 14, 2009, states that 90% of the service station parcel is impervious surface and the remaining 10% of its area is available for recharge.
2. Mean Annual Precipitation rates are based on results presented in the *Schaaf & Wheeler Preliminary Drainage Study* dated July 30, 2002.
3. The recharge rates are based on results presented in the *Laguna Seca Subarea Phase I Hydrogeologic Update* (November 2002, prepared by Eugene B. Yates, Martin B. Feeney, and Lewis I. Rosenberg). These recharge rates represent 43, 83, and 13 of mean annual precipitation.
4. Estimates based on conceptual drawings.
5. Based on Marina Coast Water District demand factor of 0.00005 for retail/office per Draft EIR Table 2.7.B; see pg. 256. Monterey Peninsula Water Management District NonResidential Water Use Factor of 0.0002 applied to grocery deli/pizza/bakery/coffee.
6. LEED water demand has been reduced by 30% due to the use of water efficient fixtures and equipment. The landscaping demand was reduced by 80% in accordance with estimates provided by Dickson & Associates, Inc.
7. The *Hybrid LEED Alt. Plan Lot Adj.* prepared by Hart Howerton, dated June 13, 2011, provides 348,868 s.f. (8.01 ac) of hardscape and building area, and 129,690 s.f. (2.98 ac) of undeveloped or landscaped area.
8. The *Revised Evaluation for Potential for Increased Groundwater Recharge,* prepared by Whitson Engineers, dated October 14, 2009, estimated the fraction of precipitation that would contribute to groundwater recharge could be increased to 80% for the impervious areas within the project site and former service station site due to the complete capture and percolation of runoff. According to the report, the recharge rate for the hillside could be increased from 8% to 14%. The contribution to groundwater recharge from the proposed landscaped areas within the project site and service station parcel is taken as zero as a conservative assumption.
9. Irrigated landscaping associated with the *Hybrid LEED Alt. Plan Lot Adj.* site plan prepared by Hart Howerton, dated June 13, 2011, is 1.87 acres per calculations prepared by Hart Howerton." (AR 4877-4878.) (Boldface and italics in original.)

(M). Exhibit R - Board Order to Continue Hearing Omni Enterprises, LL - Board of Supervisors April 12, 2011

"Water Balance Summary

	County's Reduced Density Alt.	Proposed Hybrid Alternative
Pre-Dev Recharge	0.9	0.9
Post-Dev Recharge	10.9	10.9
Water Demand	7.7	7.5*
Net Post-Dev Recharge	3.2	3.4
Net Water Benefit?	Yes	Yes

"*Based on MPWMD water demand factors, and a site design utilizing common/public restrooms for the commercial buildings." (AR 7518.)

(N). Court analysis

The Coalition has raised a number of criticisms regarding the methodology used for the calculation of water demand for the Project, but there is substantial evidence as set forth above to support the County's determination of water demand, and there is no abuse of discretion.

(IV). Water cap

The Coalition argues that Condition 68 is misleading because if the 9 AFY water cap is exceeded, only a fine need be paid and the ERI did not analyze impacts of unlimited water demand on the aquifer, the cap was presented for the first time in the Final EIR and it should have been in the Draft EIR, and the payment of fees is not mitigation where there is no program to collect fees and use them to address the overdraft. (*Save Our Peninsula Committee v. Monterey County* (2001) 87 Cal.App.4th 99, 140.)

Omni contends that the 9 AFY cap is more than 3 AFY greater than demonstrated Project demand and the monetary penalty provides a substantial deterrent, particularly considering the escalation clause, and Condition 86 is not the exclusive remedy. The County may modify and/or revoke Project approval if a violation occurs. (Monterey County Code, §§ 21.74.060, 21.76.060; Ordinance 5122, Exhibits 4 and 5 respectively, Omni request for judicial notice.) And an "agency's commitment to monitor the effects of its activities may be considered as evidence of mitigation." (*Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 412.)

(A). Board of Supervisors Resolution No. 12-040 – February 9, 2012

(1). Finding #2

"B-8 ZONING REGULATIONS - The approved project would be consistent with the B-8 zoning on the subject property.

"**EVIDENCE a)** On September 7, 1993 the Board of Supervisors adopted Ordinance No. 3704 amending the original B-8 provisions relative to development of commercial uses. These provisions are found in Zoning Ordinance (Title 21 of the Monterey County Code) Section 21.42.030 H (1) which states that the 'B-8' District does not affect the *'construction or expansion of commercial uses where such construction or expansion can be found to not adversely affect the constraints which caused the 'B-8' district to be applied to the property.'* The approved project would collect storm water and direct it to a groundwater recharge system that will result in a positive water balance. The project will not use more water than is directed to the groundwater basin. To insure that the water balance is maintained, limitations have been placed on the project to restrict the amount of water used. Therefore, the project would not adversely affect the constraints which caused the 'B-8' district to be applied to the property.

b) The subject site's B-8 Zoning overlay includes the following language in section 21.42.030.H.2: '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.' 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, constraints, additional development and/or intensification of land use would be detrimental to the health, safety, and welfare of the residents of the area, or the County as a whole. '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.1)

The County interprets these provisions to mean that no new parcels may be created in the B-8 zoning district, but does not interpret these provisions 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." (AR 5-6.) (Boldface and italics in original.)

(2). Finding # 9

"**WATER SUPPLY** - The project has an adequate long-term water supply and manages development in the area so as to minimize adverse effects on the aquifers and preserve them as viable sources of water for human consumption.

EVIDENCE: a) The existing groundwater basin in the El Toro area is in overdraft and this has resulted in the placement of the 'B-8' Zoning Overlay District in an area of the Toro Area Plan including the project site. The project would use a maximum of 9.0 acre-feet per year (AFY) of water and the underground water recharge system approved for the 99,970 square foot project would return 9.66 AFY of water to the underground basin which results in a net positive water balance.

b) The project has been conditioned to ensure that the water use is limited and maintained at 9.0 AFY. The Planning Director and General Manager of the Water Resources Agency have been given the authority through the conditions of approval to monitor the use of water at the site in order to ensure that the positive water balance is achieved and maintained.

c) The 'B-8' District regulations allow the commercial development of the site provided that the development can be found to not adversely affect the constraints which caused the 'B-8' District to be applied to the property.

d) Water for the development would be provided by the Ambler Park Water System." (AR 9-10.) (Bolding in original.)

(3). Condition 86

"86.	MM20 (FEIR) 4.7.8)	WATER USE LIMITATION 1. Reporting The 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.	Annual reports due by January 31 of the succeeding year required.	Owner/ applicant	Annually.	

		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 resource within the El Toro Primary Aquifer system.	Shown in Annual Reports	Owner/ applicant	Prior to Issuance of Building 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 the annual reports.	Metering shown on Landscape Plans Owner/ Prior to approval as part of permit issuance. applicant Issuance of Annual reporting.	Owner/ applicant	Prior to Issuance of Building Permits/On going	
		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	Prior to issuance of any permits the Owner/ Prior to Deed Restriction be recorded.	Owner/ applicant	Prior to Issuance of Building Permits."	

		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 Planning Director."				

(AR 61-62.)

(B). Final EIR – November 23, 2010 – Master Response to comments number 2 – Validity of Water Balance

"C. Enforcement

"Commenters have raised concerns about the County's ability to insure that the development does not exceed the water usage evaluated in the DEJIR. The County has enforced conditions and mitigation measures in the past with respect to water conservation measures. In 2002, as part of mitigation monitoring and compliance activity, the County required a homeowners association to remove all landscaping at its entryway and replace this with drought tolerant landscaping as per the conditions of approval. Similar enforcement was taken with respect to individual lots whose landscaping was not in compliance. Similar action was taken in the same subdivision in 2006 with respect to denial of building plans whose fixtures exceeded the estimated demand that had been assumed for total subdivision consumption. Last, the County has filed code enforcement actions against development that is not in compliance with conditions pertaining to drainage system operation. Recent adoption of a code enforcement ordinance (Ordinance 5122, January 2009) provides additional tools for the County to enforce conditions and mitigation measures in a more timely fashion and to obtain compliance.

In the event that the County approves the project or one of the alternatives, the County would propose a Mitigation Measure (Mitigation Measure 4.7.8) that would limit the amount of water used by the project on an annual basis. This would include the requirement to provide quarterly reports for the first two years and yearly after that, as well as measures to limit the use of the shopping center to ensure that the water cap is not exceeded. The measures would be imposed as a condition of the General Development Plan and will be implemented though CC&Rs to account for the multiple parcels within the center. A critical decision is deciding upon an appropriate water use cap. The net recharge rate is approximately 9.7 AFY and therefore the cap should be under that number. A cap of 9.0 AFY is proposed in the mitigation measure to stay conservatively under the recharge rate. Mitigation Measure 4.7.8 would read as follows:

Water Cap

The total amount of water which can be used on the site on an annual basis is 9.0 acre feet per year. The owner/shopping center developer shall be responsible for developing a refined water use plan demonstrating that the 9.0 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.

Reporting

The applicant or shopping center owner shall provide reports to the General Manager of the Water Resources Agency of water consumption on the site. For the first two years after occupancy, the reports shall be submitted quarterly, and annually thereafter. If any report suggests that annual consumption of the site will exceed the cap for the year, then the General Manger [sic] 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. The General Manager of the Water Resources Agency shall have the authority to return to quarterly reporting in the event of a repeated exceedence of the cap.

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 reports." (AR 101-102.)

(C). 3.B. Revised and Additional Conditions of Approval and/or Mitigation Measures

"The County proposes a new Mitigation Measure/Condition of Approval that would limit the amount of water used by the project on an annual basis. This would include the requirement to provide quarterly reports, and measures to limit the use of the shopping center to ensure that the water cap is not exceeded. The measures would be imposed as a condition of the General Development Plan and will be implemented through CC&Rs to account for the multiple parcels within the center. The Mitigation Measures are as follows:

"New Mitigation Measure 4.7.8: Water Use Limitation.

1. Water Cap

The total amount of water which can be used on the site on an annual basis is 9.0 acre feet per year. The owner/shopping center developer shall be responsible for developing a refined water use plan demonstrating that the 9.0 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.

2. Reporting

The applicant or shopping center owner shall provide reports to the General Manager of the Water Resources Agency of water consumption on the site. For the first two years after occupancy, the reports shall be submitted quarterly, and annually thereafter. If any report suggests that annual consumption of the site will exceed the cap for the year, then the General Manger [sic] 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. The General Manager of the Water Resources Agency shall have the authority to return to quarterly reporting in the event of a repeated exceedence of the cap.

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.

"The County will also include the following condition of approval that will prohibit the service station site from receiving any credit for stormwater runoff from the site being applied/counted in a water balance analysis for development on that site. This condition will be enforced in part through recordation of a deed restriction on the service station site.

New Standard Condition 4.7.9: The applicant shall record a Notice stating that 'Any development plans that may be approved in the future for the service station site (APN 161-571- 002-000) adjacent to the Project Site, also owned by the applicant, shall not receive any credit for stormwater runoff from the site being applied to or counted in a water balance analysis for development of that site.'

"Mitigation Measure 4.12.2 on page 391 is hereby revised to add the following item to the list of modifications of the Site Plan required under the mitigation; this change is also reflected in the revised Mitigation Monitoring and Reporting Plan: [sic]." (AR 567-568.) (Boldface and underlineation in original.)

(D). Courts analysis

Although the Coalition argues that the water cap is illusory, the Court finds that the water cap is neither arbitrary nor capricious, and the water cap can be enforced by the County by way of the County Code and Ordinances.

(V). Water rights

The Coalition contends that the EIR did not address California American's water rights to supply the Project. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 421, 431, 434.)

Omni counters that California American has water rights and has provided a "will service" letter. (*Twain Harte Homeowners Assn., Inc. v. Board of Supervisors Of Orange County* (1982) 138 Cal.App.3d 664, 675-677.)

(A). Draft EIR May 2010

> "**Threshold 4.7.2**[.] Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)

"For the purpose of this hydrologic analysis, the project area includes 11.7 acres includes the Site (approximately 11 acres) and the former service station parcel (0.7 acre), which is owned by the applicant. Additional groundwater recharge from the adjacent hillside, which currently drains onto the Site, is not taken into account for this water balance analysis, because the Project is not proposing to retain stormwater runoff from this hillside in the engineered retention/detention system.

"The retention/detention system would be located on the northeastern edge of the Site adjacent to SR 68 (refer to Figure 4.7.13). It would include a subterranean facility comprised of modular "stormtech chambers" sized to accommodate 0.8 acre ft of runoff; the facility would be either 6 or 8 ft below finished grade and set back 30-50 ft from the buildings. The system is designed to retain 10.04 afy based on mean annual precipitation as described in the Revised Evaluation of Potential for Increased Groundwater Recharge Report (Whitson, October, 2009). The system would also be designed as a stormwater detention facility, capable of limiting the 100-year post-development rate (7 .8 cfs) to less than the 100-year pre-development rate (10.5 cfs). Overflow would be directed via a new 24 inch stormdrain to an existing box culvert under SR-68." (AR 1093.) (Boldface in original.)

"The Project would be supplied by the California American Water Company through the use of the Ambler Park water supply wells, which are within the Corral de Tierra subarea, approximately 500 ft southeast of the Site.

Groundwater Supplies. In its El Toro Groundwater Study, Geosyntec (2007) concluded the following regarding the condition of the Toro Planning Area Primary Aquifer System:

'Water level data compiled and reviewed for this study indicates that the primary aquifer system in the Toro Planning Area is in overdraft. However, current and increasing rates of pumping could be sustained for decades in areas with large saturated thickness of the El Toro Primary Aquifer System because of the large volume of groundwater in storage. The most evident problem would be lowering of the water table below the screened intervals of existing wells completed in shallower portions of the aquifer system. This has already occurred in portions of the Corral de Tierra subarea. In addition, with continued overdraft conditions, groundwater production potential would likely decrease relatively quickly in hydrogeologically contiguous areas of less saturated thickness'.

"Geosyntec based its assertion that the El Toro Primary Aquifer System is in overdraft based on groundwater level trends observed in wells within the Toro Planning Area, which were monitored by the Monterey County Water Resources Agency (MCWRA). Declining groundwater level trends were observed in 80 percent of the long-term hydrographs (data collected since the 1960's) and 90 percent of the short-term hydrographs (data collected since 1999). The long-term groundwater level rate of change is approximately -0.7 ft/yr and the short-term groundwater level rate of change is approximately -1.6 ft/yr, based on water level trends observed in a well installed at the Site. In the vicinity of the Site, the long-term rate of groundwater level change ranges from -0.5 to -1 ft/yr and the short-term rate of groundwater level change ranges from -0.5 to -2.5 ft/yr. At build-out a deficit of approximately 244 and 224 AFY for the Toro Planning Area and the Corral de Tierra subarea, respectively, was estimated using the lower recharge value (Fugro West, Inc., 1996). As such, the El Toro Primary Aquifer System is in a state of overdraft at the present time, and this condition is expected to worsen in the future.

"Currently, there is close to zero consumption of water on the Site. Pre-development natural recharge for the 15.3-acre watershed area is 0.9 afy. Accordingly, there is a net benefit to the groundwater basin of 0 .9 afy (baseline conditions).

"The Project has been estimated to consume 11.34 afy. Estimated groundwater recharge, based upon the calculations provided by Whitson (2009) would be 10.04 afy. This calculation is based upon the proposed retention/detention system that would be engineered on the Site to capture the impervious surface runoff from Site and adjacent gas station parcel. Therefore, the Project would result in a net deficit of 1.30 afy. Thus, it can be concluded that the Project would result in a depletion of groundwater resources in an already overdrafted groundwater basin. This impact is significant and unavoidable. (AR 1097.) (Boldface and italics in original, footnote omitted.)

"**Supply, Treatment, and Distribution of Water.** The Site is currently undeveloped and is within the Ambler Park Water System service area. The Ambler Park Water System is a public water system owned and operated by the California American Water Company (Cal-Am) (Geosyntec, 2007). Cal-Am is responsible for ensuring that water supplies meet water demand and that State and federal water quality standards are achieved within the Ambler Park Water System service area.

"The Ambler Park Water System serves Ambler Park, Paseo Pravado, Harper Canyon, and Rimrock subdivisions in the northern Corral de Tierra and northwestern San Benancio Subarea (Geosyntec, 2007). The water supply is distributed for residential and commercial use. The Ambler Park Water System includes approximately 250,000 gallons of aboveground tank storage and a water treatment plant that was constructed in 1974 to remove iron and manganese, and has recently been modified to remove arsenic (Jordan, 2008). The water treatment plant also conducts chlorination and Ph adjustments. The maximum flow-through capacity of this treatment system is approximately 967 afy.

"Water supply for the Ambler Park Water System is provided from three water supply wells (Ambler Park Wells #4, #5, and #6) located approximately 500 feet southeast of the Site. Figure 4.13.1 illustrates the location and construction details for the Ambler Park water supply wells. Ambler Park Well #4 is completed to a depth of approximately 440 feet below ground surface (bgs); Ambler Park Well #5 is completed to approximately 480 feet bgs, and Ambler Park Well #6 is completed to approximately 580 feet bgs (Geosyntec, 2007). The Ambler Park water supply wells are located within the Corral de Tierra subarea, which is one of five subareas in the water shed-based El Toro Planning Area located in the north-central portion of the County of Monterey in the Salinas Valley Groundwater Basin. WorleyParsons Komex projected the Ambler Park Wells on cross section D-D' prepared by Geosyntec (2007) and cross section A-A' prepared by Kleinfelder (2004). The Geosyntec (2007) and the Kleinfelder (2004) cross sections are shown in Figures 4.13 .2 and 4.13 .3, respectively. According to these cross sections, the Ambler Park water supply wells are screened or perforated intervals are entirely within the continental deposits (commonly called the "Aromas-Paso Robles"), which is one of the units that comprises the El Toro Primary Aquifer System as defined by Geosyntec (2007). Refer to Chapter 4.7 Hydrology and Water Quality for a detailed discussion of the hydrostratigraphy near the Site. The amount of water obtained from this source varies from year to year and is primarily dependent on weather conditions and demand.

"The pumping capacities of Ambler Park Wells #5 and #6 are approximately 400 and 600 gallons per minute (gpm), respectively; and the capacity of Ambler Park Well #4 is less than 50 gpm (Geosyntec, 2007). Based on these reported pumping capacities, the theoretical maximum production capacity of the Ambler Park Water System is approximately 1,500 gpm or 2,418 AF/Y. However, the current maximum treatment system capacity is approximately 967 AF/Y, so this quantity is likely the maximum annual production capacity for the Amber Park Water System, assuming there is sufficient groundwater to supply this production rate. The maximum production capacity of the Ambler Park Water System was not reported in any of the sources reviewed for this analysis or provided by CalAm. Since 2000, production has been primarily from Well #5 and annual production rates for the Ambler Park Water System have increased from 250 AF/Y in 2001 to nearly 300 AF/Y in 2005 (Geosyntec, 2007). Production rates for the Ambler Park Water System have steadily increased at a rate of approximately 10 AF/Y since 2001 as illustrated on Figure 4.13.4 and Geosyntec (2007) projected this increase in production rate through 2010. Based on this analysis, the annual production rate in 2010 would reach approximately 325 AF/Y (Geosyntec, 2007). Annual production for the Ambler Park Water System in 2006 and 2007 was not reported in the sources reviewed for this evaluation or provided by Cal-Am." (AR 1235- 1236 (Boldface in original.)

"All infrastructure, including wells, tanks, treatment plants and access easements associated with the Ambler Park Water System, is located off-site. According to Finegan (2007), 'there are three fire hydrants on the property and an 8" water line is stubbed to the Site as shown on the Vesting Tentative Map.' These hydrants are regularly tested by the Salinas Rural Fire District (Finegan, 2007). In addition to the public water supply currently available to the Site, the property has one existing well (Finegan, 2007). This well (State Well ID 16S/02E-03A01) is a small water system well (presumably used for irrigation), and was installed between 1950 and 1959 to a depth of less than 200 ft bgs (Geosyntec, 2007). This well is located in the center portion of the Site and is shown as well 115 on Figure 4.13.5. According to Geosyntec (2007) the well has a historical pumping rate ranging between 10 and 24 gpm. The well is not currently being used, and use of the well as a water supply is not proposed for this Project. Build-out demand for the Corral de Tierra subarea is 582 AF/Y and 781 AF/Y respectively (Fugro, 1996). No current updates on population or dwelling units were available for the study conducted by Geosyntec in 2007; therefore, the most recent estimates of water demand are from the Fugro (1996) report." (AR 1245.)

(B). Ambler Park Water Utility September 20, 1992 letter to Mr. Phelps

"This letter is to let you know that the property you own on Corral de Tierra Road & highway 68 is in the service area of the Ambler Park Water Utility, and we will be happy to furnish the water for any development that you may put there.

"This area has been in our service area since July of 1975." (AR 6796.)

(C). Executive Summary of Project-Specific Hydrogeologic Investigation, Omni Enterprises Property, (PLN 010252) Corral De Tierra Area, Monterey County, California – February 19, 2004 Kleinfelder letter to Monterey County Health Department

"The proposed Corral de Tierra Neighborhood Retail Village project will be supplied with potable water by California-American Water Company (Cal-Am) in Monterey, California. In a letter dated February 14, 2001 (Appendix B), Lesley Silva of Cal-Am states that the subject property is located within the Cal-Am service area and that Cal-Am will serve water to the site. Discussions with Mr. Fred Feizollahi, Senior Operations Engineer with Cal-Am indicates that water delivered to the Omni Enterprises development will be sourced from the wells of Ambler Park." (AR 10705.)

(D). Court analysis

There is substantial evidence of Cal-Am water rights and there is no abuse of discretion.

(VI). Groundwater and soil contamination and stormwater ordinance

Coalition states that the EIR was deficient because it did not establish a baseline for the contamination from the gas stations (*Communities for a Better Environment v. City of Richmond*

(2010) 184 Cal.App.4th 70, 89), and Condition 67 fails to address the impacts of the Project on groundwater and soil in violation of public disclosure and review. *(Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 331-332.) In conjunction with the contamination argument, the Coalition argues that County Stormwater Ordinance section 5154 applies and the EIR was not revised and recirculated, considering the impacts of the parking lot runoff to the groundwater.

Omni counters that the (1) pre-existing contamination was included as part of the baseline and neither the Project or the alternatives would generate significant impacts; (2) expert investigations were conducted to confirm that the water recharge system would not adversely affect or spread groundwater contamination; and (3) the County adopted Condition 67 even though the recharge system would not impact groundwater and recirculation of the EIR was not required.

The County argues that the Project was not subject to the Stormwater Ordinance, but if it was, the Project was consistent with the Ordinance.

(A). Baseline

(1). Draft EIR

"Currently, the Site is designated as Commercial by both the County Toro Area Land Use Plan, and is designated as 'Light Commercial' in the County Zoning Ordinance. Developments near the Project include the Cypress Community Church at the northeast quadrant of SR-68 and Corral de Tierra Road; the Corral de Tierra Country Club and single-family residences to the south and east; and an existing gasoline service station currently being utilized as a real estate office immediately to the west of the Site. An active gasoline station (Corral de Tierra Services) and vacant buildings occur west of the Site on the other side of Corral de Tierra Road (LSA, 2007). A non-operational gasoline service station was located adjacent to the northwest corner of the Site and was the subject of a leaking underground storage tank investigation in the early 1990s. The tank was removed and the site was closed in 1993 (this issue is addressed in more detail in Section 4.6.5 Project Impacts)." (AR 189.)

"Threshold 4.6.4[.] Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would create a significant hazard to the public or the environment

"Based on the regulatory database search, one site of environmental concern (the adjacent, currently non-operational gasoline service station) was listed within 0.5 mile of the Site. According to information contained in the State's on-line Geotracker database of Leaking Underground Fuel Tank (LUFT) sites, and Spills, Leak, Investigation and Cleanup (SLIC) sites (State Water Resources Control Board [SWRCB], 2007), a leak from a waste oil/used oil underground storage tank, caused by structural failure, was discovered at the currently non-operational gasoline service station located adjacent to the northwest comer of the Site on May 3, 1991, and was reported on July 7, 1991. The Central Coast Regional Water Quality Control Board assigned Case# T0605300038 to this release. The date the release began is unknown. The Finegan (2007) letter indicated that the tanks were removed, and according to the Geotracker Database (SWRCB, 2007), the case was closed on March 26, 1993. The following information was taken directly from the Brian Finegan Letter (Finegan, 2007):

> *'Permits for the removal of the tanks were obtained and the tanks were removed and subsequently transferred to a licensed disposal facility. Additionally, soil samples were collected as required by the Health Department. These tanks were located offsite and due to the successful removal of the potential hazards, the site was listed "closed" according to the Central Coast Regional Water Quality Control Board (Case# T0605300038).'*

"In addition, the database search identified a site (Markham Ranch Subdivision) in the vicinity where the pesticide toxaphene was detected in the soil. Toxaphene is a persistent organochlorine pesticide and is relatively immobile in the soil environment. Markham Ranch Subdivision is located approximately 1.25 miles south of the Site. According to the information listed on the Geotracker database (Case# S74), the case was opened on July 23, 1992 and subsequently closed on November 8, 2004. The database entry states that contaminated soil was excavated and removed from this site and the case was closed.

"A visual survey of the Site and its vicinity was conducted by LSA on April 6, 2007, for the Hazardous Waste Initial Site Assessment Report for the improvement (separate project) of the intersection of SR-68 and Corral de Tierra Road (LSA, 2007), which is immediately northwest of the Site. During this survey, properties near the Site were observed. In addition, historical aerial photographs of the Site vicinity covering the period from 1956 to 1998 were reviewed, and a regulatory records search was conducted for all properties located within a radius of 0.25 mile from the intersection improvement area. These activities were conducted to identify evidence or records that indicate a potential for chemical releases, hazardous materials use or hazardous waste impact in the vicinity of the intersection improvement project. The results of these activities are relevant for this EIR given the northwestern corner of the Site is defined by the intersection slated for improvement.

"A summary of the results of these activities is as follows (LSA, 2007):

• Review of historical aerial photographs (1956, 1971, and 1998) indicates that the historical use of the Site and the surrounding area was primarily rural with pastureland until approximately 1971, when construction of the Corral de Tierra Country Club occurred on the pastureland (LSA, 2007). The review did not reveal any industrial site use, staining, or other features indicative of chemical releases.

• Fort Ord is located approximately 0.07 mile northwest of the Site (north of SR-68) and has reportedly had releases of multiple hazardous substances. In 1986, elevated levels of carbon tetrachloride, tetrachloroethylene, 1, 1, I-trichloroethane, and trans-1,2-dichloroethylene were detected in off-base groundwater. These contaminants are currently emanating from the base and may be impacting the drinking water supplies of the City of Marina, California; however, the exact location of the source has not yet been identified. In addition, soil and groundwater contamination have been observed at the Fire Drill Area, and approximately 600 gallons of petroleum products have reportedly been released in this area. Fort Ord has at least 18 other identified contamination areas. According to the EPA, there are three active groundwater contamination plumes sourced from the military base, and pump and treat systems are currently in place in the northern portion of the military base to remediate the groundwater. However, there is no known soil or groundwater contamination associated with Fort Ord in the vicinity of the Site; and the contamination plumes are not located or expected to migrate near the Site.

• As noted in the SR-68 and Corral de Tierra Road Intersection Improvements Project Initial Site Assessment (LSA, 2007), based on information provided by the EPA Fort Ord Site Manager in 2002, some ordnance may have been mistakenly fired away from the base. However, based on the available data, the risk of encountering ordnance at the Site is considered very remote.

The base is also an active RCRA facility that generates and stores hazardous waste, stores and uses reportable quantities of hazardous materials, and has permits for wastewater discharges to the sewer and to surface water.

"In addition to the activities described above, an investigation for aerially deposited lead, including collection and analysis of 64 soil samples, was conducted by Geocon, Inc. (2007) in the Site vicinity along SR-68. The investigation was conducted to evaluate shallow soils for elevated lead concentrations that could be associated with the historical use of leaded gasoline by cars traveling this route. The investigation reportedly determined that lead concentrations in soil did not exceed federal and State regulations in the soil samples that were collected (LSA, 2007). According to LSA, some of these samples were collected near the Corral de Tierra and SR-68 roadways in the vicinity of the Site.

"Based on findings from the regulatory database search and the documents reviewed above, no groundwater contamination has been reported or was suspected to be associated with this Site. No known hazardous material sites are reported to occur at an up-gradient location from the Site with respect to groundwater flow, where contamination might migrate beneath the Project. In addition, routine analysis of water samples from the nearby Ambler Park water supply wells has not detected any groundwater contaminants (SWRCB, 2008). Thus, contamination of

groundwater beneath the Site from off-site sources is unlikely. Finally, the Site is not included on a list of hazardous materials sites compiled pursuant to Government Code 65962.5. Therefore, development of the Project would not create significant hazards to the public or the environment from the presence of hazardous materials sites.' (AR 1038-1040.) (Boldface and italics in original.)

> "**Standard Condition 4.6.2: Storm Water Pollution Prevention Plan.** Prior to issuance of a grading permit, the applicant shall prepare a Stormwater Pollution Prevention Plan, to be reviewed and approved by the County of Monterey RMA - Planning Department, that would specify Best Management Practices (BMPs) for the safe management of hazardous materials to prevent potential spills and stormwater contamination. The applicant shall file a notice of intent with the Regional Water Quality Control Board (RWQCB) to comply with the requirements of the General Construction Stormwater National Pollution Discharge Elimination System (NPDES) Permit. In addition, if fuel storage at the Site exceeds threshold planning quantities specified in 40 CFR Part 112 (1,320 gallons), a Spill Prevention, Control and Countermeasures (SPCC) Plan shall be prepared for the Site, which would be reviewed and approved by the County of Monterey. The SPCC must contain an assessment of the Site's spill hazard, methods of spill and overfill prevention, spill containment and spill response, and site responsibilities and training requirements." (AR 1043.) (Boldface in original.)

(2). Transcript of February 7, 2012 Board of Supervisors hearing - John Ramirez (Director of County Environmental Health)

"Prior to July 2011, concerns about the soil contamination in the old Phelps Exxon were brought to our attention regarding the proposed project and the public hearings were initially continued to address all the soil and possible groundwater contamination. Since June 2011 Environmental Health in conjunction with Mr. John Goni of the Regional Water Quality Control Board, has reviewed work plans and soil and water samples results that Mr. Phelps has submitted through a consultant. I would like to point out that whether the project is approved or not, the Environmental Health Bureau will follow through with continuing assessment of soil contamination and the remediation with the Regional Board as they will follow through with the assessment and determination of whether or not there is groundwater contamination, delineation of that contamination and assessing the appropriate remediation protocol. Mr. Goni of the Regional Board is in the audience today and can speak to his agency's regulatory responsibilities should the Board desire.

"If the Board chooses to approve the project, Condition 67 addresses three different and typical scenarios regulating soil contamination and the possibility of groundwater contamination related to underground storage tank removals. The same scenarios are valid in all underground storage tank removals in Monterey County and they follow the state Health and Safety Code under Title 23, specifically Article 11 of that code.

"In response to recent queries about, public regarding recharge system and the efficacy of treating pollutants of concern and impacts to groundwater quality, the applicant has provided more specific information clarifying the treatment train of the storm water recharge system. Also

Mr. Phelps pointed the Environmental Health Bureau to a ten-year study in the Los Angeles Basin. This study, the LA Basin and San Gabriel Rivers Watershed Council Study examined the effects of storm water infiltration on groundwater in regards to pollutants of concern using the appropriate management, best management technologies available. The study included parking lots and similar developments to proposed project. Overall the study found that the groundwater quality improving in most areas and that the concentrations of pollutants of concern was less in the groundwater monitoring samples than in the concentrations of the storm water sampling.

"Based on the clarifying information that has been recently submitted regarding the treatment train using best management practices technology combined with the results of a ten-year study in the Los Angeles area demonstrating the efficacy of removing the pollutants of concern, its Environmental Health's opinion that the storm water recharge system conceptually proposed will protect groundwater quality. Environmental Health has submitted two conditions requiring design of this system to address pollutants of concerns and monitoring the treated storm water and monitoring the groundwater pollutants of concern. What I'd also like to do is address some of the questions in general that have come through. There have been many but I've tried to group them into some of the concerns that are received.

"Regarding the treatment system for the remediation of the groundwater if that was needed. The concern is about the one month period. I'd like to clarify that that one month period is after the design of the treatment system that specifically designed to handle the contaminants of concern. That one month period refers to the startup of the system, the making sure it works as properly designed. It doesn't mean that after that one month period, the monitoring is ceased. It means that we're looking at that one month period to make sure that the system as designed will operate that way and then the remediation will continue from that point forward.

"The effectiveness, questions about the effectiveness of the remediative system was also asked of us. The level of the effectiveness and what that system will be treated for is directed by the Regional Water Quality Control Board, that's, they use laws, regulations and action levels through their Board to look at these potential contaminants of concern.

"There's questions about our, the investigation not including the adjacent site. To let you know that the flowers and gas site, the Regional Board and Monterey County Health Department has sent letters to that property instructing them to move forward with investigation of that property as far as contamination and affecting any groundwater issues if they are found to exist.

"The, I wanted to point out also that there's questions regarding whether the water recharge system will come in to, will be constructed during the remediation process of the underground storage tanks site. Part of the underground storage tank requirements or for that remediation, will require a risk assessment. During that risk assessment, part of that risk assessment will involve evaluating the recharge system being put into place. If during that risk assessment, it is determined that the levels of contamination found through the investigation will be, move the contaminants and potentially affect public health concerns regarding water wells or any water systems in the area, then that remediation would continue until those safe levels are attained through the risk assessment evaluation and no construction will occur for that retention

system until that remediation is complete or it meets the criteria where there is no risk to public health.

"There was also some concerns about the underground storage tank process itself. There was a request about looking at and presenting the fact that there are different phases in groundwater remediation and at each phase there'd be some type of evaluation and concern depending on the analyses received. That is true but at the same time that when you complete one phase, you may reach this level where the contamination is remediated or no further action is needed to move forward.

"There was a concern also that the investigation would not have to come, continue and it was up to applicant's discretion whether that would continue or not. That is not the case. The case is that both the Regional Board as a regulatory authority would oversee the cleanup activities and the remediation in place and they would be the ones to determine whether or not continuing evaluation of contamination and remediation would continue or not.

"And I just wanted to point out that there was concerns about there's no study regarding the risk in transported contamination underground. That's what the risk assessment looks at. It looks at the levels of contamination found in the soil or groundwater and it also looks at the transport of that contamination through the groundwater that risks the transport and the risk assessments related to that.

"One of the options, there's really three options for the remediation of the underground storage tank. It's removing all the soil, contaminated soil which essentially removes the source of contamination that could be affecting groundwater; removing it to the maximum extent possible which may leave some residual amounts in the soil and may have groundwater; or a combination of both, where there is soil contamination that requires remediation and groundwater contamination.

"Again, all of these scenarios are typically what the Environmental Health Bureau works with the Regional Water Quality Control Board and we will continue in this manner regarding this site but that no, the retention system will not be put into place until the remediation has been completed and from the information that we found regarding on-site contamination, there was three monitoring wells found around the perimeter of the underground storage tank site and there were three drinking water wells in that area. All three of those wells and the monitoring wells on-site were tested for MTBE and were found that none detect. So the only MTBE (Methyl Tertiary Butyl Ether) was found on site as part of the initial investigation for the underground storage tank removal. That was in soil and one grabbed water groundwater sample. Thank you." (AR 2260-2264.)

(3). February 7, 2012 Board of Supervisors hearing – Exhibit G: Soil and Groundwater Investigation Report by CapRock Geology, Inc. (August 30, 2011)

"**5.0 RESULTS/DISCUSSION** [¶] Only the soil and groundwater analyzed in boring B3 was found over the MCEHD action level for MTBE at a depth of 16.5 feet bgs, 21.5 feet bgs, as well as in the grab groundwater sample (results were 79.5 ug/kg,.550 ug/kg, and 2550 ug/kg

respectively). No other analysis concern were found over the MCEHD action levels for soil. The groundwater samples from the monitoring and drinking water wells were found to be nondetectable for all chemicals of concern analyzed on August 19, 2011.

"No MTBE was found on the site when the USTs were removed in 2002. There is a. gasoline service station across Corral de Tierra to the west which is a potential source of MTBE. An investigation of this site was performed in February 1999 by Dockter Environmental Consulting (report included in Appendix D). Total Petroleum Hydrocarbons as gasoline and diesel, BTEX and MTBE were found in the soilat the site. MTBE was found at 450 ug/L.:in the water as well. In letters dated November 19, 2004; July 16, 2009; Aprill 9,2010; and July 12, 2011 the MCEHD asked the Corral de Tierra Flower and Gas station to take corrective action to remediate the contamination (letter dated July 12, 2011 included in Appendix D).

"Analytical results of this investigation are tabulated in Table 1. Historical results are tabulated in Table 2.

"**6.0 RECOMMENDATIONS** [¶] MCEHD requires that all soil found above county action levels be remediated. The impacted soils at the site are approximately between 16 feet bgs and 26.5 feet bgs in the southern portion of the tank pit area. CapRock recommends that the impacted soils on the site be remediated to below County and State action levels. Excavation of impacted soils may be the most timely method to remediate the site. Oilier clean up methods should also be considered including extraction and injection clean up technologies." (AR 2490-2491.) (Boldface and all capitalization in original.)

(4). California Regional Water Quality Control Board December 8, 2011 letter to Omni commenting on the Draft Workplan for Soil Mitigation

"Central Coast Regional Water Quality Control Board (Central Coast Water Board) staff reviewed your October 15. 2011 Workplan, Soil Mitigation (Workplan) prepared by CapRock Geology, Incorporated. The workplan is for excavation of all impacted soil and collection of confirmation soil and grab groundwater samples. Analysis of previous soil samples from boring 83 showed concentrations of methyl tertiary butyl ether (MTBE) at a depth of 16.5 feet below ground surface (bgs) and 21.5 feet bgs. at concentrations of 79.5 microgram per kilogram (ug/kg) and 550 ug/kg, respectively. No contaminants were found in soil at 26.5 feet bgs. MTBE was found in groundwater from boring B3 at a concentration of 2550 microgram per liter (ug/L). No other contaminants of concern were found abouve the Water Board's action levels for groundwater. There were no detections of contaminants of concern in groundwater samples from the existing on-site groundwater monitoring and drinking water wells.

"CapRock has concluded the groundwater encountered at boring B3 is a perched zone of limited extent within the contaminated soil, which will be completely removed during excavation of the contaminated soil. The proposed remedial action is to remove all contaminated soil and the perched groundwater, followed by confirmation soil samples from the excavation bottom and side walls. A confirmation groundwater sample will be taken from any groundwater in the bottom of the resulting excavation. Due to the relatively high concentration of MTBE found in groundwater at boring 83, and the detection of MTBE in a nearby water supply well, Central

Coast Water Board staff believes additional groundwater sampling will be needed to confirm MTBE is not present in the deeper underlying groundwater. Additional groundwater sampling may also be needed if the perched groundwater zone is not completely removed by the soil excavation. The workplan is approved. subject to the following conditions:

1. Upon completion of the soil excavation a confirmation groundwater sample must be taken of the first encountered groundwater below the excavation, and analyzed for MTB

2. If the soil excavation does not remove all of the perched groundwater zone, the full extent of any remaining contaminants in the perched zone must be delineated." (AR 2648-2649.)

(5). November 10, 2011 email from Mr. Felkert (Monterey County Environmental Health Department) to Mr. Weldon and Mr. Ramirez

"I wanted to send an e-mail recapping the Corral De Tierra Omni Project meetings we had on Tuesday November 8th, 2011 before and after the Board of Supervisors meeting.

"It was discussed that the storm water underground water infiltration basin could cause further contamination of MTBE that exists on the Former Exxon (Eric Phelps) and Coral de Tierra Flowers and Gas (John Church). CapRock Environmental has provided a workplan that indicates that they will excavate contaminated soil on the property. The Regional Water Quality Control Board has not commented on this workplan and at the earliest this workplan could be reviewed by John Goni November 21, 2011 when he returns. The current workplan does not address what actions will be taken in regards to groundwater delineation samples after excavation of soil is complete. I expressed my concern for the unknown contamination of MTBE on the Flowers and Gas property across the street at the morning and afternoon meetings. In the morning meeting Tom Moss from the Monterey County Water Resources Agency could not provide any confirmation that the additional storm water would NOT impact soils at Corral De Tierra Flowers and Gas. Without any data or confirmation on what the water could transport it is hard to determine the severity of health and safety to drinking water wells in the area. There were several options mentioned for conditions to be placed on the project and these are the ones I think would work best:

1. No storm water retention basin

2. The storm water retention basin has a valve installed that would divert water to surface (creek) until the groundwater contamination is cleaned up to the satisfaction of the Regional Water Quality Control Board and Monterey County Environmental Health Department. This valve would need to be inspected each year to verify its correct position; I would assume this would be completed by MCWRA.

3. The soil is excavated on Mr. Phelps property and a Risk Assessment is performed to determine if the storm water infiltration basin on the proposed development property will infiltrate the neighbor's contamination and move it further south. This option involves a property that Mr. Phelps has no authority for cleanup, but as part of the CEQA this issue

should have been addressed and therefore I do not think it is unreasonable." (AR 2569.) (All capitalization in original.)

(6). January 9, 2012 email from Mr. LeWarne (Assistant Director, Environmental Health) to Mr. Novo et al. about public comments on the effect on the proposed storm water recharge system on water quality of water wells in the area

"1. Condition 67 ensures site remediation to the satisfaction of the RWQCB and EHB.

"2. R.O. is the only treatment that produces significant wastewater. The other treatments are flow through filters with minimal wastewater being produced.

"3. Weaver's December 29, 2011

III. 'Risk Analysis does not identify County of Monterey's liability'
Answer: This is a public health risk analysis does not address legal issues such as liability.
"IV. 1. 'How does one tell if a groundwater remediation scheme is working?'
Answer: (a) Groundwater is pumped and treated to a level as directed by the responsible authority per laws, regulations, and or ordinances. (b) Operating a groundwater remediation system for 1 month must show that it is *effectively treating the water and meeting the required treatment levels.*

"2. The need for water quality and quantity monitoring and who will do it is expressed in this question.
Answer: WRA is *requiring yearly monitoring for the storm water as far as the physical functioning of the recharge system. (Not trying to speak for Tom but trying to draw a distinction between WRA requirements and EHB's. EHB* is *adding new conditions that address water quality treatment and monitoring.*

"3. 'Is there contaminated groundwater and/ soil at John Church's gas station .... 2 Corral de Tierra road ... '
Answer: Preliminary data indicate that this is *a possibility. RWQCB and EHB are awaiting a final report to make a determination as to whether there is groundwater and or soil contamination.*

"4. Can potential contaminant plumes from either gas station reach the 10 AFY runoff plume?
Answer: It is *possible that the potential plumes may intermingle but we do not have sufficient information at this time to make a definitive statement.*

"5. Existing storm water recharge system does not address treatment of VOCs [Volatile Organic Compounds].
Answer: New conditions have been added that address the removal of VOCs from the storm water and require monitoring." (AR 3681.) (Boldface and italics in original.)

(7.) September 29, 2011 memorandum from Mr. Weldern (Supervisor, Hazardous Materials Management Services, County of Monterey Heath Department) to Mr. Ford et al. regarding the chronology of Corral De Tierra Exxon

"6. In a February 7, 2000 Memo to Walter Wong, Director of Environmental Health, from John Ramirez Supervisor of Hazardous Materials it indicated that an investigation of the Former Exxon and the Corral de Tierra Flowers and Gas Station was conducted by Mr. Ramirez and Mamerto Jorvina (Hazardous Materials Specialist) for evidence of a fuel release. Based on their review it was determined that a fuel release had not occurred at the former Exxon and at that time the tanks were in compliance with the law. The Corral de Tierra Flowers and Gas Station had an investigation for soil and possible groundwater contamination from a report dated 1999. The memo indicated that this case was referred to the Regional Water Quality Control Board (RWQCB).

"7. In March 2000 the owner of the property, Mr. Phelps, applied for a UST removal permit, but the permit expired before the tanks were removed.

"8. In September 2000 the owner applied for a Temporary Closure Permit for the USTs.

"9. In March or April 2001 the owner was granted an extension from Environmental Health for the Temporary Closure Permit for the USTs.

"10. On July 11, 2001 a memo was sent from John Ramirez to Director of Health Walter Wong regarding violations at the Exxon gas station. These included an overdue UST lining inspection, overdue cathodic protection testing, and standing liquid in the turbine sumps. The memo indicated that if the facility did not correct violations their permit to operate would be removed.

"11. In September 2001 the closure of USTs was permitted to be postponed with increased monitoring of the USTs for 6 months. This included daily checks of the tanks.

"12. On September 9, 2002 Environmental Health Specialist Cory Welch wrote a letter to Eric Phelps indicating that he had an improperly abandoned tank on his property that needed to be removed.

"13. An Underground Storage Tank removal permit was issued on October 23, 2002 for removal of 4 USTs (three gasoline tanks and one waste oil tank).

"14. The USTs were removed on October 31 and November 1, 2002 by Murphy Equipment Company. Soil sample results revealed no contamination around the dispensers and piping, but Total Petroleum Hydrocarbon (TPH) as gasoline at 160 parts per million (ppm) and 110 ppm in the gasoline tank excavation pit. Environmental Health clean up levels for TPH gas was (and still is) 100 ppm. The soil samples were also tested for Benzene, Toluene, Ethyl-Benzene, and Xylenes (BTEX), and Methyl-Tert-Butyl-Ether (MTBE). All the soil sample results from the tank removal revealed no MTBE concentrations and BTEX concentrations were under EHB cleanup levels.

"15. A letter dated November 2, 2002 from Environmental Health Specialist Aiko Lawson to Sturdy Oil (Operator of Tanks) indicated that soil sample results from tank removal revealed soil contamination over Environmental Health clean up goals and corrective action was required. An outline of corrective action requirements was provided as a attachment to the letter.

"16. A member of the public requested a file review in June 2011 and it revealed the November 2, 2002 letter requiring Sturdy Oil to conduct additional work at the property because of the contamination discovered during tank removal. A letter was sent to Omni Resources and Mr. Phelps on July 6, 2011, indicating corrective action of contaminated soil was required based on the UST tank removal sample results in 2002 and the letter that was sent in November 2002. The deadline for work plan submittal was August 8, 2011.

"17. At the beginning of July, 2011 Bronwyn Feikert was contacted by Mike Weaver, a resident on Corral de Tierra Road and the operator of two drinking water wells permitted through Environmental Health. According to Mr. Weaver he collected samples from his wells and had them tested for MTBE. His results revealed MTBE at 2.5 parts per billion or micrograms per liter (ppb or ug/L) in well Corral 28 and no detection of MTBE in Corral Well 23. Bronwyn spoke with the Supervisor of Drinking Water Protection Cheryl Sandoval who indicated that a confirmation sample was required. The health based standard for MTBE is 13 parts per billion (ppb) or micrograms per liter (ug/L) for drinking water. The Regional Water Quality Control Board (RWQCB) uses 5 ppb or ug/L which is considered the secondary standard (this is the point someone can taste or smell it). 18. On July 11, 2011 Mr. Phelps had an employee collect a sample from the drinking water well on the Former Exxon property. The sample was analyzed for Volatile Organic Compounds (VOCs). The results indicated no VOCs (including MTBE) were present in the drinking water well.

"19. On July 14, 2011, under the supervision of Mike Weaver, Roger Van Horn and Bronwyn Feikert collected confirmation groundwater samples from Corral Well 23. The sample results for Corral Well 23 revealed 2.0 ppb of MTBE. Roger and Bronwyn were unable to collect a sample from Corral Well 28 because a sample port was not installed. On August 2, 2011 after a sample port was installed Roger and Bronwyn collected a water sample at Corral Well 28. The sample results revealed 0.94 ppb of MTBE.

"20. Cap Rock Geology Inc. was contracted by Mr. Eric Phelps to conduct the soil and groundwater investigation at the Former Exxon. Cap Rock submitted a work plan and soil boring permit application on August 1, 2011. The work plan was verbally approved by Bronwyn Feikert. On August 17, 2011 Cap Rock performed soil and groundwater sampling. During Bronwyn's inspection of sampling she observed 3 groundwater monitoring wells on the property. Mr. Phelps did not know when or why these wells were installed. Bronwyn conducted an extensive file review and could not find any records concerning these monitoring wells. During her inspection of August 17, 2011 Bronwyn informed Mr. Phelps verbally and in an e-mail later that day that the monitoring wells were required to be sampled for MTBE, BTEX, and TPH as gas and groundwater direction needed to be determined. In addition, their consultant would need to take a confirmation water sample from their drinking water well located on the property (previous sample collected by employee on 7-11-2011).

"21. On August 19, 2011 Roger Van Horn collected water samples from Drinking Water wells Corral 4 (located south of the Former Exxon in a grassy meadow) and The Villas irrigation well for their golf course (located to the east of the Former Exxon). The samples were submitted for VOC screening and results revealed no detection of any VOCs.

"22. Cap Rock submitted the soil and groundwater investigation report on September 7, 2011. The report included 4 soil Boring locations with soil samples collected at varying depths, one grab groundwater sample from soil boring B3, groundwater samples from the 3 monitoring wells on the property, and a water sample from the drinking water well located on the property. The soil analytical results revealed MTBE concentrations over Environmental Health clean up levels. MTBE was discovered in boring B3 at 79.5 micrograms per kilogram (ug/kg) at 16.5 feet below ground surface (bgs) and 550 ug/kg at 21.5 feet bgs. Environmental Health cleanup levels for soil are 50 ug/kg. The grab groundwater sampled collected from soil boring B3 revealed MTBE concentration of 2550 ug/L. All of the groundwater samples collected from the monitoring wells and the water sample collected from the drinking water well revealed non-detection of any contaminants. The groundwater direction was calculated to flow in the southerly direction. Cap Rock recommended removing all contaminated soil from the property as the timeliest option for site remediation.

"23. Bronwyn Feikert issued a letter dated September 15, 2011 to Mr. Phelps regarding the review of the soil and groundwater investigation report from Cap Rock dated September 7, 2011. She indicated that Environmental Health concurs with the Cap Rock proposal to remove all contaminated soil as the timeliest remediation option for the Omni Planning Project to move forward. Confirmation soil samples will be required at the bottom of the excavation and side walls. In addition, Mr. Phelps has to comply with any Regional Water Quality Control Board (RWQCB) requirements. If Mr. Phelps wants to leave soil contamination in place below Environmental Health cleanup levels (but above detection levels) then a risk assessment would be required showing groundwater impacts from the contamination and the proposed storm water recharge basin. A work plan is required to be submitted 30 days after date the letter was issued.

"24. The RWQCB (John Gani) issued a letter dated September 21, 2011 to Mr. Phelps regarding the review of the soil and groundwater investigation report from Cap Rock. The RWQCB indicated that the groundwater sample collected from boring 83 revealed MTBE contamination exceeding their clean up goals and that the full extent of groundwater contamination must be delineated. RWQCB provided several options and indicated that a work plan needed to be submitted by November 20, 2011.

"Synopsis of comments from Molly Erickson during September 28, 2011 9:30 am conference call:

"As the representative of individuals who are against the development Molly raised several concerns regarding the Omni project: First, she is very concerned about the MTBE and other contamination in the ground, and groundwater, at the old Exxon station, and the possibility that the proposed groundwater recharge system may act to mobilize these contaminants and perhaps move them into public drinking water wells in the area. Second, she is therefore against

allowing the permit to be issued before existing contamination is removed because the County will then lose its leverage over the applicants to impel them to complete the cleanup. Finally, she believes that there is a legal basis (a requirement and/or obligation) for the County not to award the permit because, according to her interpretation of the law, the County must not award new entitlements until existing code violations are corrected. Since the gas station parcel is part of the entire project, failure to clean it up would therefore constitute a code violation, and thus grounds for denying approval of the permit." (AR 4776-4779.) (Boldface in original.)

(8). Response to Tim Parker Letter to Michael Stamp, Corral de Tierra Shopping Village Project by Mr. Ballman

"In the discussion of water quality impacts on page 5, Parker discusses the potential for pollutants to occur in the stormwater runoff and that the EIR fails to address that issue. In fact, the EIR does address that water quality issue in the form of mitigation measures 4.7.5 and 4.7.6. The TM fails to acknowledge that stormwater recharge is an integral component of low impact development design. In fact, recharge of storm water is now often a required best management practice unless it can be shown to be infeasible (e.g. Municipal Regional Stormwater Permit Region 2 Water Quality Control Board). Such regulations typically require 10 feet of separation from the recharge facility to the groundwater table to preclude impairment of groundwater quality. The TM fails to note this and also fails to note that the separation distance at the project site will be many times that value.

"The TM seems to imply that adjunct stormwater quality BMPs have not been considered for the project. This ignores the multiple references to oil/grease separators in the project documentation as a means to enhance the reliability of the recharge system. The suggestion that bioswales be used ignores the fact that they would increase storm water losses due to evapotranspiration, contravening the goal of maximizing storm water recharge at the site.

"In page 6, Parker addresses the potential for contamination from leaking underground storage tanks at the adjacent gas station to impact recharged stormwater. There is no history of MTBE in groundwater at the Project site, and recent tests of the water from the gas station well adjacent to the Project site, and from the Hargis well on the Project site reveal no evidence of MTBE or other pollutants." (AR 4784.)

(9). Courts analysis

The draft EIR noted and discussed potential contamination as it pertained to the Project, i.e., the baseline, as it was known and understood at that time. There is no abuse of discretion.

(B). Condition 67 – Soil Remediation

(1). Condition 67

"Prior to issuance of any permits for the shopping center, other than permits required for site remediation, site soil and groundwater contamination on the adjacent gas station site [] shall

be addressed through one of the following options: [¶] A. Complete Soil Remediation and No Existing or Detectable Groundwater Contamination. [¶] All contaminated soils shall be removed from the Gas Station Site. The soils shall be removed to the satisfaction of the Monterey County Environmental Health Bureau ('EHB'). If the California Regional Water Quality Control Board ('Regional Board') determines that no groundwater contamination exists or is not detectable on the Gas Station Site, a risk assessment shall not be required; [¶] Or [¶] B. Complete Soil Remediation but Existing or Detectable Groundwater Contamination. [¶] All contaminated soils shall be removed from the Gas Station Site. The soils shall be removed to the satisfaction of the EHB. If the Regional Board determines that any groundwater contamination exists or is detectable on the Gas Station Site, remediation of any such groundwater contamination shall be in accordance with the directions and to the satisfaction of the Regional Board. Any groundwater remediation measures that may be required by the Regional Board shall be implemented and successfully functioning for one month if the remediation is an ongoing process. A risk assessment shall be performed by a licensed professional experienced in groundwater contamination transport and modeling demonstrating to the satisfaction of the EHB that any such groundwater contamination on the Gas Station Site will not pose a hazard to public health and safety particularly as a result of the operation of the proposed groundwater recharge system; [¶] Or [¶] C. Residual Soil Contamination and Existing or Detectable Groundwater Contamination. [¶] Contaminated soil on the Gas Station Site shall be remediated below Monterey County Action Levels for all contaminants. The soil remediation shall be completed to the satisfaction of the BHB. If the Regional Board determines that any groundwater contamination exists or is detectable on the Gas Station Site, remediation of any such groundwater contamination shall be in accordance with the directions and to the satisfaction of the Regional Board. Any groundwater remediation measures that may be required by the Regional Board shall be implemented and successfully functioning for one month if the remediation is an ongoing process. A risk assessment shall be performed by a licensed professional experienced in groundwater contamination transport and modeling demonstrating to the satisfaction of the EHB that any residual contaminants in the soil on the Gas Station Site, or any groundwater contamination on the Gas Station Site, will not pose a hazard to public health and safety particularly as a result of the operation of the proposed groundwater recharge system." (AR 40-41.)

"(For Option A) All contaminated soils shall be removed from the Gas Station Site and no groundwater contamination exists or is detected. No risk assessment is required. [¶] (For Option B) All contaminated soils shall be removed from the Gas Station Site, and any required groundwater remediation measures shall be successfully functioning for a month prior to issuance of permits. A risk assessment shall also be prepared and submitted to the EHB that demonstrates to the satisfaction of EHB that any groundwater contamination, if detected to exist or is detected, will not pose a hazard to public health and safety. [¶] (For option C) Remediation of soil on the Gas Station Site shall be completed consistent with Title 23 California Code of Regulations Chapter 16 Article 11 and any required groundwater remediation measures shall be successfully functioning for a month prior to issuance of permits. A risk assessment shall also be prepared and submitted to the EHB that demonstrates to the satisfaction of EHB that neither any groundwater contamination, if determined to exist or is detected, nor residual soil contamination will pose a hazard to public health and safety." (AR 40-41.)

(2). Board of Supervisors January 10, 2012 meeting

(a). Discussion

"The applicant has completed additional studies to determine the level of contamination on the gas station site. Additional remediation work is required. The most conservative approach would be to require all remediation to be completed prior to acting on this project, which would result in a continuance to a distant future date. Staff has recommended moving forward with the action because the contamination is limited in area and remediation satisfactory to the Environmental Health Bureau and Regional Water Quality Control Board will need to occur regardless of what happens with this application. Staff has added a condition that all remediation work be completed prior to issuance of any permits for the subject site." (AR 3381.)

(b). Exhibit A

"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 comer 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." (AR 3384.)

"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 comer 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 H) 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." (AR 3390-3391.) (Interlineation in original.)

"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." (AR 3392.)

(3). Email from Mr. Ramirez (Director Environmental Health Bureau) to Mr. Girard et al. dated December 5, 2011

"Clean up of groundwater to the satisfaction of the RWQCB does not mean that the site will be free of contamination. Contamination below the RWQCB 'Action levels' (or Maximum Contaminant Levels [MCLs]) is frequently left in place and/or monitored over time. If any contamination is left in place below the MCLs, it may potentially pose a risk to drinking water (by movement towards a drinking water well) if the contamination moves under the influence of the recharge system.

"A risk assessment will evaluate the remaining contamination levels and assess the threat to any drinking water wells in the vicinity. This information will assist the RWQCB and the Health Department in answering public health and safety. Requesting a Risk Assessment is not new for evaluation for site closure for the EH Division." (AR 3585.)

(4). Courts analysis

The potential and actual contamination was thoroughly and fully investigated, and

Condition 67 provides for remediation as required under the law.

(C). Stormwater Ordinance section 5154 and recirculation

(1). Board of Supervisors Resolution No. 12-040 (February 9, 2012) – Attachment 1

Condition 104: "EHSP03 UNDERGROUND RECHARGE SYSTEM TREATMENT REQUIREMENTS[.] The storm water recharge system design shall incorporate Best Management Practices (BMP) and technology that will minimize, to the maximum extent practicable, the introduction of pollutants of concern (e.g. petroleum hydrocarbons, lead, copper), generated from site runoff of directly connected impervious areas to the storm water recharge system." (AR 69.) (Boldface and all capitulation in original.)

"Submit engineered plans from a licensed professional engineer for the issuance of collection, treatment, (with the ability of the treatment section to be expanded if needed) and recharge chambers of the storm water recharge system to the Director of Environmental Health Bureau (EHB) for review and approval. Also, submit a monitoring plan that shall include: [¶] 1. A minimum of three collection sites located upstream of treatment BMPs, [¶] 2. A minimum of one collection site located downstream of treatment BMPs and upstream of the proposed underground recharge system. [¶] 3. Sampling shall be performed at the first flush runoff event and runoff from no less than three (3) subsequent rain events each year. A rain event shall be a precipitation event resulting in no less than one-quarter of an inch of precipitation in a 24 hour

period. [¶] 4. A water sampler approved by Environmental Health shall perform the required sampling and a state certified laboratory shall perform the analysis.
Results of the sampling program shall be submitted to EHB to confirm that the BMPs are working as intended. A yearly fee shall be charged by EHB to the owner of the property for the review of the monitoring reports." (AR 69-70.)

Condition 105: "EHSP02 MONITORING WELL[.] Monitoring wells shall be constructed that will monitor water quality in the first aquifer up gradient of the recharge chambers, directly under the chambers and down gradient of the chambers. These monitoring wells shall be used to monitor groundwater for total petroleum hydrocarbons, nitrate, lead and copper." (AR 71.)

"Submit engineered plans from a Prior to licensed professional issuance of engineer/geologist experienced in building hydrogeology for the placement and permit depth of the monitoring wells to the Director of Environmental Health Bureau for review and approval. Also, submit a monitoring plan for the review and approval of the Director of Environmental Health that shall include: [¶] 1. Schedule of monitoring. [¶] 2. Sampling collection and chain of custody procedures. [¶] 3. Analytical methods and associated detection limits. [¶] A water sampler approved by Environmental Health shall perform the required sampling and a state certified laboratory shall perform the analysis. [¶] Results of the sampling program shall be submitted to EHB to confirm that the water recharged from the system does not pose a significant threat to the quality of area drinking water wells." (AR 71.)

(2). Draft EIR – May 2010

(a). 4.6.1 - Existing Environmental Setting

"Currently, the Site is designated as Commercial by both the County Toro Area Land Use Plan, and is designated as "Light Commercial" in the County Zoning Ordinance. Developments near the Project include the Cypress Community Church at the northeast quadrant of SR-68 and Corral de Tierra Road; the Corral de Tierra Country Club and single-family residences to the south and east; and an existing gasoline service station currently being utilized as a real estate office immediately to the west of the Site. An active gasoline station (Corral de Tierra Services) and vacant buildings occur west of the Site on the other side of Corral de Tierra Road (LSA, 2007). A non-operational gasoline service station was located adjacent to the northwest corner of the Site and was the subject of a leaking underground storage tank investigation in the early 1990s. The tank was removed and the site was closed in 1993 (this issue is addressed in more detail in Section 4.6.5 Project Impacts). North of the Site, across SR-68, are public lands of the former Fort Ord military base now owned by the Bureau of Land Management. The closest commercial airport is located approximately five miles from the Site in Monterey (Monterey Peninsula Airport)." (AR 1031.)

(b). 4.6.5 – Project Imparts. Threshold 4.6.4 - Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would create a significant hazard to the public or the environment

"Based on the regulatory database search, one site of environmental concern (the adjacent, currently non-operational gasoline service station) was listed within 0.5 mile of the Site. According to information contained in the State's on-line Geotracker database of Leaking Underground Fuel Tank (LUFT) sites, and Spills, Leak, Investigation and Cleanup (SLIC) sites (State Water Resources Control Board [SWRCB], 2007), a leak from a waste oil/used oil underground storage tank, caused by structural failure, was discovered at the currently non-operational gasoline service station located adjacent to the northwest comer of the Site on May 3, 1991, and was reported on July 7, 1991. The Central Coast Regional Water Quality Control Board assigned Case# T0605300038 to this release. The date the release began is unknown. The Finegan (2007) letter indicated that the tanks were removed, and according to the Geotracker Database (SWRCB, 2007), the case was closed on March 26, 1993. The following information was taken directly from the Brian Finegan Letter (Finegan, 2007):

> *"Permits for the removal of the tanks were obtained and the tanks were removed and subsequently transferred to a licensed disposal facility. Additionally, soil samples were collected as required by the Health Department. These tanks were located offsite and due to the successful removal of the potential hazards, the site was listed "closed" according to the Central Coast Regional Water Quality Control Board (Case# T0605300038)."* (AR 1038.) (Italics in original.)

"A visual survey of the Site and its vicinity was conducted by LSA on April 6, 2007, for the Hazardous Waste Initial Site Assessment Report for the improvement (separate project) of the intersection of SR-68 and Corral de Tierra Road (LSA, 2007), which is immediately northwest of the Site. During this survey, properties near the Site were observed. In addition, historical aerial photographs of the Site vicinity covering the period from 1956 to 1998 were reviewed, and a regulatory records search was conducted for all properties located within a radius of 0.25 mile from the intersection improvement area. These activities were conducted to identify evidence or records that indicate a potential for chemical releases, hazardous materials use or hazardous waste impact in the vicinity of the intersection improvement project. The results of these activities are relevant for this EIR given the northwestern corner of the Site is defined by the intersection slated for improvement." (AR 1038-1039.)

"Based on findings from the regulatory database search and the documents reviewed above, no groundwater contamination has been reported or was suspected to be associated with this Site. No known hazardous material sites are reported to occur at an up-gradient location from the Site with respect to groundwater flow, where contamination might migrate beneath the Project. In addition, routine analysis of water samples from the nearby Ambler Park water supply wells has not detected any groundwater contaminants (SWRCB, 2008). Thus, contamination of groundwater beneath the Site from off-site sources is unlikely. Finally, the Site is not included on a list of hazardous materials sites compiled pursuant to Government Code 65962.5. Therefore, development of the Project would not create significant hazards to the public or the environment from the presence of hazardous materials sites." (AR 1039-1040.)

(c). Threshold 4.7.6 - Otherwise substantially degrade water quality

"Potential impacts to water quality from siltation are discussed above under Thresholds 4. 7 .1 and 4.7.5. These sections also indicate that given compliance with a construction SWPPP and NPDES guidelines, and compliance with the County's MS4 Storm water NPDES permit, including implementation of BMPs, the Project is not expected to degrade surface water quality due to storm water pollutants. Potential impacts from hazardous materials spills, leaks and discharges are discussed in Section 4.6 and were determined to be less than significant after mitigation. No other potential impacts to surface water quality have been identified or are anticipated; therefore, the potential for the Project to otherwise degrade water quality is determined to be less than significant. As discussed in the Hazards and Hazardous Materials Chapter 4.6, the potential for releases of hazardous materials into the environment, including groundwater, is considered less than significant after mitigation. As discussed in the Chapter 4.13 Utilities, wastewater would be disposed of off-site and not in on-site septic systems. Therefore, there would be no foreseeable source of groundwater contamination or nitrate loading related to the Project that could substantially degrade the groundwater quality in the vicinity of the Site. Therefore, potential impacts under this threshold are considered less than significant." (AR 1102.)

(d). Alternatives to the Project – Alternative 2: LEED SILVER: Reduced Water Consumption/Full Recharge Alternative

"**Hazards and Hazardous Materials.** The LEED Silver Alternative would not result in a notable difference in impacts from hazards and hazardous materials. This alternative would not involve the transport, use and/or disposal of significant amounts of hazardous materials, the potential for significant accidental or chemical spills or releases from handling hazardous materials, the potential for hazardous emissions, the presence of hazardous material sites, and wildfire risks.

"The Site is not located within an airport land use plan area or within the vicinity of a private airstrip and therefore, similar to the Project, this alternative would not impact airport operations or create airport related safety hazards.

"Similar to the Project, the LEED Silver Alternative would generate the same forecast increase in the volume of traffic on the regional and local roadway networks, which could impair implementation or physically interfere with adopted emergency response or evacuation plans. With proposed standard conditions, however, potentially there would be no significant impacts.

"As with the Project, cumulative impacts associated with hazards and hazardous materials generated from the LEED Silver Alternative would be less than significant.

"**Hydrology and Water Quality**. The LEED Silver Alternative would be designed to include an engineered stormwater retention/percolation system that would capture runoff from the Site, the surface area of the adjacent former service station site, and the area of adjacent hillside. This Alternative is designed to fully retain runoff for the 100-year storm event. As indicated in the Whitson Engineers November 6, 2009 site plan (refer to Figure 6.1), the

retention system would include a series of underground facilities comprised of storm tech chambers with a footprint area of 0.9 acre, 1.8 afy of storage volume and the capability to retain stormwater runoff from a 100 year storm event. The facilities would be located on the northern edge of the Site adjacent to SR 68 and near the west border of the Site (refer to figure 6.1). The estimated annual recharge rate for the LEED Silver Alternative is 10.92 afy. The calculations provided by Whitson Engineers (February 17, 2009, August 24, 2009 and October 14, 2009, refer to Appendix I of Volume II of this EIR) utilize average annual precipitation and recharge assumptions. The retention facilities associated with the LEED Silver Alternative would cover a total area of 0.9 acre (Moore Twining, November 23, 2009).

"In comparison, the Project storm tech chamber would have a 0.5 acre footprint area, 0.8 afy of storage volume and overflow would be directed via a new 24-inch storm drain to an existing box culvert under SR-68. The Project would recharge 10.04 afy of runoff. As with the Project, the commercial center operators would also be responsible for ongoing maintenance and repair of the facilities. (AR 1302-1303.) (Boldface in original.)

(e). Alternatives to the Project – Alternative 3: Reduced Density/Redesigned Project Alternative

"**Hazards and Hazardous Materials**. The Reduced Density/Redesigned Project Alternative would not result in a notable difference in impacts from hazards and hazardous materials. This alternative would not involve the transport, use and/or disposal of significant amounts of hazardous materials, the potential for significant accidental or chemical spills or releases from handling hazardous materials, the potential for hazardous emissions, the presence of hazardous material sites, and wildfire risks.

"The Site is not located within an airport land use plan area or within the vicinity of a private airstrip and therefore, similar to the Project, this alternative would not impact airport operations or create airport related safety hazards. Similar to the Project, the Reduced Density/Redesigned Project Alternative would generate an increase in the volume of traffic on the regional and local roadway networks, which could impair implementation or physically interfere with adopted emergency response or evacuation plans. With implementation of standard conditions, however, these impacts would not be significant. As with the Project, there would be no cumulative impacts associated with hazards and hazardous materials generated from the Reduced Density/Redesigned Project Alternative.

"**Hydrology and Water Quality**. Similar to Alternative 2: the LEED Silver Alternative, the Reduced Density/Redesigned Project Alternative would incorporate a storm water retention/percolation system which would capture runoff from the Site, the surface area of the adjacent service station site, and the adjacent hillside. The Reduced Density/Redesigned Project Alternative would be designed to fully retain runoff for a 100-year storm event. This is in contrast to the Project system which does not capture and retain water from the adjacent hillside and is designed as a combination retention/detention system.

"The reduction in building square footage (8,600 sf) would result in a reduction in water consumption for the Project. Additionally, the installation of LEED Silver equivalent fixtures for

the commercial center and LEED fixtures consistent with LEED-NC 2.2 Reference Guide for exterior/landscaping fixtures and plants would contribute to the reduction in water consumption. This Alternative is estimated to consume 5.32 afy of water per year. Based upon variables provided by Whitson Engineers (February 19, 2009 and October 16, 2009) and the reduced site coverage in the Reduced Density/Redesigned Project Alternative, estimated site recharge would be 10.66 afy for the 'full retention system'. Therefore, the Reduced Density/Redesigned Project Alternative would result in a net positive water balance of 4.4 afy. This represents a 6.6 afy increase in recharge as compared to the Project; it also represents a 0.9 afy additional net benefit to the groundwater basin compared to the LEED Silver Alternative. As such, implementation of this Alternative would not result in potentially significant impacts to groundwater resources. Table 6.D below provides a comparison of the water balance of the Project with that of Alternative 3: Reduced Density/Redesigned Project Alternative. A detailed water balance analysis for this alternative is provided in Table 6.E". (AR 1319.) (Boldface in original.)

(3). November 7, 2011 letter from the Coalition attorney to the Board of Supervisors – Contaminated Water and Soil

"The adjacent corner parcel has soils and groundwater that are contaminated at dangerous levels of MTBE and benzene. The corner parcel is owned by Omni. The site is part of the larger shopping center site, and is intended as part of the eventual shopping center development. The applicant has been on notice of the contamination since 2002, but has not performed the required remediation that the County required in 2002.

"On October 31, 2011, the applicant finally submitted a workplan to the County Environmental Health. The workplan was dated October 15, 2011. The workplan envisions that excavation and remediation would not even begin until October 2012, a full year away. Until the excavation is done, the amount and extent of contamination is unknown. The contamination may extend much farther than currently identified, and may extend past property boundaries into the shopping center site. The contamination may affect the area of the proposed stormwater recharge 'Stormtech' chambers or the area of the stormwater collection. Stormwater passing through contaminated soils or contaminated water can become contaminated and can act *to* move the contamination elsewhere in the soils or groundwater. The environmental documents under CEQA for this project have not included tests of the proposed recharge site that could reveal contamination of soil or groundwater at the project site. There is no discussion of the project's potential impacts that could be caused by the contamination. This information should be required before any approvals are given for the proposed recharge scheme.

"The very serious issues of poison in the soil and in the water - benzene and MTBE - have not been adequately considered in the environmental documentation, including in the project description. As part of its regulatory authority, the County, through its Environmental Health Department, is in charge of contaminated soils. The California Regional Water Quality Control Board (RWQCB), Central Coast division, is the regulatory agency in charge of contaminated water. The County Environmental Health Bureau is concerned about the impacts of the contaminated soils and groundwater on the proposed stormwater recharge system for the shopping center. (Telephone conversation with EHB Assistant Director Richard LeWarne, November 2, 2011, approx. 11 :30 a.m.) As explained by the County, it is for that reason that the

Environmental Health Bureau has urged the applicant, Omni Resources LLC, to remove all contaminated soil in order for the shopping center project to move forward. (E.g., Environmental Health Bureau letters to Omni Resources dated November 1, 2011 and September 15, 2011.)

"The contaminated soils and water raises significant public health and safety concerns. Benzene and MTBE are highly dangerous poisons. The project drawings do not include the distances of the project or the stormwater recharge site or the contaminated soils and water, on the one hand, to nearby offsite wells, or to the onsite Hargis well, or the nearby Cal Am Ambler wells, on the other hand. The EIR did not provide this information. Potential risks to those water sources have not been adequately evaluated and disclosed, the impacts have not been identified and mitigated, where possible. There are multiple wells within less than a quarter-mile radius of the proposed 1/2-acre site of the recharge chambers. In addition to the Hargis well at the site, and the well at the former gas station site on the corner parcel, there are two wells on the parcels at the southwest corner of Highway 68 and Corral de Tierra. These wells are all well under 1,000 feet, according to Michael Weaver, adjacent resident and owner of one of the wells, who used publicly available online mapping tools to determine the distances. Some of the wells are less than 850 feet from the proposed site of the stormtech chambers. There are also the multiple Ambler wells operated by California American Water Company, the public utility that provides water to hundreds of area residents. Those wells are less than 1500 feet from the recharge site, according to Mr. Weaver's research." (AR 3636-3637.)

(4). Technical memorandum from Parker Groundwater dated July 8, 2011

"Potential Water Quality Impacts from Parking Lot Pollutants is Not Specifically Addressed in the EIR.

"Parking lot runoff is a major contributor to non-point source pollution of our waterways. Conventional parking lots quickly move stormwater into receiving water bodies. As it flows across pavement, the water picks up pollutants from the surface. This results in large volumes of polluted runoff entering surface water and groundwater resources, negatively affecting water quality. (EPA 2008.) Further, parking lot sealants are a large source of non-point source pollution, specifically polycyclic aromatic hydrocarbons (PAHs), a known carcinogen that can be toxic to fish and wildlife. Automobiles are a major source of pollutants in parking lot runoff, including antifreeze, oil, hydrocarbons, metals from wearing brake linings, rubber particles from tires, nitrous oxide from car exhausts, and grease. Other polluting materials include pesticides, fertilizers, litter, pet waste, dirt, and sand. (EPA 2008.)

"The proposed storm water detention/retention facility addresses sediment removal and maintenance. There is no mention in the EIR of addressing water quality issues and identification of specific pollutants to treat as outlined in the preceding paragraph. Considering that there are private wells within a few hundred feet of the proposed project stormwater detention/retention facility, identifying specific pollutants of concern for removal and water quality treatment needs to be carefully addressed to avoid significant impacts on private well water quality, should these potential pollutants migrate through subsurface materials or down well casings and gravel packs into the water supply. The lack of EIR analysis means that there are potentially significant impacts on domestic water supply that have not been adequately addressed or mitigated.

"Pollutant removal is complex and affected by a large number of variables. A range of best management practices (DMPs) have been developed to address these issues, with varying pollutant removal efficiencies, dependent upon (1) BMP type, (2) quantity and flow rate of runoff treated, and (3) type of pollutant being removed. (EPA 2008)

"The website or StormTech, the project proponents' selected stormwater management chamber manufacturer, indicates that if local storm water regulations require additional contaminants be removed, there are dozens of other 'front end' systems that can be incorporated at the basin level, as independent water quality units, filter systems, and the most preferred are low impact development (LID) systems, particularly bio-swales.

"Bioswales are landscape elements designed to remove silt and pollution from surface runoff water. They consist of a swaled drainage course with gently sloped sides (less than six percent) and filled with vegetation, compost and/or riprap. The water's flow path, along with the wide and shallow ditch, is designed to maximize the time water spends in the swale, which aids the trapping of pollutants and silt. Depending upon the geometry of land available, a bioswale may have a meandering or almost straight channel alignment. Biological factors also contribute to the breakdown or certain pollutants, making them a preferred LID element. There are no bioswales proposed as part of the project.

"In many areas, the approach to developing these sort of 'green', 'LID' or 'LEED' projects is to first identify the potential pollutants of concern, and then identify best management practices to address the potential pollutants. The EIR should have addressed the use of bioswales as a potential mitigation for water quality issues, because bioswales are more environmentally sound and safer regarding potential risk of exposure to identify all potential pollutants of concern on the proposed project. Further, the EIR should have incorporated BMPs to address these pollutants, and how the water quality facilities will be maintained and monitored long-term. Without that information, the potentially significant water quality impacts have not been adequately investigated or mitigated." (AR 5096-5097.) (Boldface in original.)

(5). Court's analysis

(a). Stormwater Ordinance 5154 Design Standards Applicable to All Categories in relevant part:

"c. Minimize Storm Water Pollutants of Concern. The development must be designed so as to minimize, to the maximum extent practicable, the introduction of pollutants of concern that may result in significant impacts, generated from site runoff of directly connected impervious areas (DCIA), to the storm water conveyance system as approved by the building official. Pollutants of concern consist of any pollutants that exhibit one or more of the following characteristics: current loadings or historic deposits of the pollutant are impacting the beneficial uses of a receiving water, elevated levels of the pollutant are found in sediments of a receiving water and/or have the potential to bioaccumulate in organisms therein, or the detectable inputs of the pollutant are at concentrations or loads considered potentially toxic to humans and/or flora and fauna. In meeting this specific requirement, 'minimization of the pollutants of concern' will

require the incorporation of a BMP or combination of BMPs best suited to maximize the reduction of pollutant loadings in that runoff to the Maximum Extent Practicable." (AR 2800.) (Underlineation in original.)

(b). CEQA Guidelines 15088.5 (in part)

"Recirculation of an EIR Prior to Certification

(a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term 'information' can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. 'Significant new information' requiring recirculation include, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043).

(b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

(c) If the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified.

(d) Recirculation of an EIR requires notice pursuant to Section 15087, and consultation pursuant to Section 15086.

(e) A decision not to recirculate an EIR must be supported by substantial evidence in, the administrative record."

Here, the decision to not recirculate the EIR is supported by substantial evidence. The contamination will be remediated, the public had ample opportunity to comment, and the public did actually influence the County to take action to ameliorate the contamination that was noted after the Draft EIR was circulated. To the extent Stormwater Ordinance 5154 is applicable, there is substantial evidence to support the County's conclusion that storm water pollution is minimized by the design of the Project.

(VII). Traffic

The Coalition contends that the EIR (1) did not provide accurate information and inform the decision makers about the consequences of traffic because it omitted traffic segmentation and the Level of Service (LOS) F information; (2) underestimated cumulative impacts; (3) the Vehicle Miles Traveled (VMT) analysis is confusing and not supported; and (4) the use in the Final EIR of a shopping center trip generation rate was not in good faith because Omni proposed a large supermarket/grocery for the shopping center.

Omni argues that (1) the intersection analysis was proper and is supported by substantial evidence; (2) the Ferrini Ranch project was included in the cumulative traffic analysis; (3) the County's conclusion that the Project will reduce the miles traveled is supported by substantial evidence; and (4) the Project is a shopping center.

(A). Traffic segmentation and Level of Service

(1). Draft EIR

(a.) Section 4.12 – Traffic and Transportation

"This section has been prepared to disclose the great variability in traffic data along the Highway 68 corridor while maintaining a consistent analytical baseline. The analytical baseline is based on the results of the Corral de Tierra Mixed-Use Development Final Traffic Report prepared by Hexagon Transportation Consultants, Inc. (September 1, 2009). The complete Traffic Report is contained in Appendix H. In an effort to disclose the variability in data along Highway 68, information from the Harper Canyon traffic analysis and EIR (Recirculated DEIR

for the Harper Canyon (Encina Hills Subdivision) December 2009) has also been included in this discussion. The proposed Harper Canyon project will contribute traffic along the SR-68 corridor and adds to the background information available for an analysis of the Omni Project. Specific issues addressed in this section include the following: (1) potentially significant impacts caused by vehicle trips generated by the Project on the surrounding roadway network; (2) potentially significant impacts caused by on-site circulation and access to the Project; and (3) consistency of the Project with existing and proposed alternative transportation facilities. The Traffic Impact Analysis addressed Project impacts at the following locations, which were determined in consultation with the County of Monterey, the Transportation Agency for Monterey County (TAMC) and Caltrans:

1. Olmsted Road/State Route 68 (SR-68)
2. Highway 218/SR-68
3. Ragsdale Drive/SR-68
4. York Road/SR-68
5. Pasadera Drive/SR-68
6. Laureles Grade Road/SR-68
7. Corral de Tierra Road/SR-68
8. San Benancio Road/SR-68." (AR 1209.)

"**Existing Traffic Counts.** Traffic volumes for the study intersections were counted on a typical Tuesday, Wednesday or Thursday between September and November 2004. The raw count data is provided in Appendix A of the Traffic Report, which is included as Appendix H in this EIR. An effort was made to determine if this traffic information was adequate and the County looked at data from Caltrans to determine if the traffic volumes along the SR-68 corridor needed to be adjusted. Caltrans collects traffic counts for segments along SR-68. These counts are collected in Average Daily Trips (ADT) and are summarized on an annual basis and shown in the date provided in annual average daily trip traffic counts for segments along SR-68 (refer to Appendix H, Volume II of this EIR). As shown in annual average daily trip traffic counts for segments along SR-68, the traffic volume on most segments of SR-68 has not been increasing since 2004 but has been in a slight downward trend. Therefore no updated traffic counts have been required. By contrast the traffic counts for the Harper Canyon EIR were taken in August of 2006. These do show higher numbers, but this has more to do with the time of year that the counts were taken than the year. The month of August sees a large number of regional and national events in Monterey County which would account for a higher traffic volume. These numbers represent the fact that traffic along SR-68 varies throughout the year.

"**Existing Traffic Conditions.** An analysis of the existing levels of service at study area intersections was conducted for the existing conditions. The methodology used to determine levels of service at study area intersections is discussed in section 4.12.3 below. Table 4.12.A summarizes the results of the intersection LOS analysis for existing conditions for the a.m. and p.m. peak hours." (AR 1213.) (Boldface in original.)

"As shown in the Table 4.12.A, above, all of the study intersections operate at LOS C or better in the existing condition. The detailed LOS calculations are contained in Appendix C of the Traffic Report, which is included as Appendix H in this EIR. The number of vehicles and flow of traffic on SR-68 can vary widely. This is experienced by drivers and reflected in the

traffic counts collected along SR-68. There are occasions when the traffic volume along SR-68 can be high, reflecting an unacceptable LOS in the existing condition, for either the AM or PM peak hour, while on other occasions the traffic counts show that SR-68 operates at an acceptable LOS. The traffic counts are the basis for any traffic study. A traffic study initially based upon lower traffic volumes will reflect a better LOS related to existing conditions, background conditions, Project impacts and cumulative conditions. Traffic studies can represent a higher or lower level of service depending upon the time frame in which the traffic counts were taken. Traffic counts can vary depending upon time of year, weather, economic conditions and drivers taking alternative routes. The County of Monterey recognizes this and looks at other comparable traffic studies to determine how different traffic studies characterize the level of service. For example, the traffic analysis for the Harper Canyon Subdivision proposed near the intersection of SR-68 and San Benancio Road reflects a lower LOS for six of the common intersections analyzed as shown in Table 4.12.B. In the Harper Canyon traffic analysis the LOS at five of the six intersections operate at an unacceptable LOS in the existing condition. The peer review of the traffic study prepared for this Project, found that the methodology used in the report for the Project to be in keeping with accepted professional practice. This traffic study reflects a snapshot of the traffic conditions based on counts taken at a specific point in time. In an effort to provide full disclosure of the variability along SR-68, summary tables for the subject traffic study and for the Harper Canyon traffic study will be provided for the Existing Condition, Background Condition, and Cumulative Condition summary tables. The variability between traffic studies can be seen when comparing these tables. For purposes of this Project, the variability between different reports does not result in different conclusions in terms of the mitigation measures being required or the Findings of Significance for the Project as a whole, or the need to make Findings of Overriding Consideration." (AR 1214.) (Tables 4.12.A and 4.12.B omitted.)

"**Background Setting.** The background environmental setting was determined by adding the traffic from the approved, but not yet fully constructed development, to the existing traffic volumes. The trip generation estimates and trip distribution patterns for cumulative projects are included in Appendix D of the Traffic Report, which is included in Appendix H. The approved and probable future developments included in the background condition are listed below.

- **The Pasadera development (formerly known as Bishop Ranch and Rancho Monterey).** This project is located north of SR-68 and west of Laguna Seca and proposes the construction of 253 single-family residential units. Approximately 100 units are constructed and occupied, while the remaining 153 units are approved but not yet constructed.

- **The Monterra Ranch development** is located south of SR-68 near Jacks Peak Park. The Monterra Ranch Development consists of 262 single-family detached homes. Since 61 of these homes do not have direct access to SR-68, only 201 homes were included in the Monterra Ranch development in the Traffic Report. Approximately 13 homes are constructed and occupied, while the remaining 188 homes are approved but not yet constructed.

- **The Oaks Subdivision,** located on San Benancio Road south of SR-68 consists of 9 single-family detached residential units. None of these units have been constructed.

• **The Harper Canyon development** is located on San Benancio Road south of SR-68 and consists of 14 single-family detached residential units. None of these units have been constructed.

• **The Ryan Ranch Business Park** is located north of SR-68 and east of Highway 218. This is an existing development which proposes to expand to include development of the Community Hospital of Monterey Peninsula (CHOMP) (i.e., 182,000 sf) and further development of the business park (i.e., 226,000 sf).

• **The Laguna Seca Business Park** is located north of SR-68 near York Road and consists of 104 apartment/condominium units.

"In addition to adding traffic volumes from approved projects to the existing traffic volumes, planned and funded geometric improvements, and one unfunded improvement identified by the SR-68 Advisory Committee, were also accounted for in the Background condition lane configurations at study intersections. The following improvements were included in the Background conditions:

"***SR-68/Corral de Tierra Road*** - Relocate the Cypress Community Church driveway to form a fourth (north) leg to the intersection at SR-68/Corral de Tierra Road with one left through and right tum lane; and an eastbound left-tum lane.

"***SR-68/Laureles Grade*** -Addition of a second westbound left-turn lane and extension of the existing eastbound right-turn lane.

"***SR-68/San Benancio Road*** - Addition of a second westbound left-turn lane.

"With this information, the Background condition LOS was determined for the study area intersections and is shown in Table 4.12.C.

"As shown in Table 4.12.C, six of the eight study intersections operate at LOS D or worse for the background condition. The detailed LOS calculations are contained in Appendix C of the Traffic Report, which is included as Appendix H in this EIR.

"Table 4.12.D identifies that five of the six common intersections identified in the Harper Canyon traffic analysis operate at LOS D or worse. Comparing the tables shows that there is variation in the performance of the intersections. The Highway 218/SR-68 intersection performs at a higher LOS in the Harper study, while the Laureles Grade/SR-68 and Corral de Tierra intersections operate at a lower LOS.

"A separate project for 'Intersection Improvements at SR-68 and Corral de Tierra' (Monterey County Project No. 06-114065) will add a second westbound left turn lane and a second southbound receiving lane on Corral de Tierra. It is still uncertain as to when this project will proceed and is therefore not included in the background conditions." (AR 1215-1217.) (Tables 4.12.C and 4.12.D omitted, boldface and italics in original.)

"**4.12.3 Methodology**

"Traffic conditions at the study intersections were evaluated in the Traffic Report using level of service (LOS). LOS is a qualitative description of operating conditions ranging from LOS A, or free-flow conditions with little or no delay, to LOS F, or jammed conditions with excessive delays. LOS for study intersections were calculated using the methodology for signalized intersections described in the 2000 *Highway Capacity Manual (HCM).* Level of service for signalized intersections is based on average control delay per vehicle (for the entire intersection), where control delay includes initial deceleration delay, running queue delay, stopped delay, and start-up acceleration delay." (AR 1217-1218.) (Boldface and italics in original.)

"**Monterey County Public Works Significant Impact Criteria**. The objective set for optimum driving conditions in the 1982 Monterey County General Plan is LOS C.

"Based on Monterey County Public Works guidance and professional standards, a proposed project is considered to have a significant effect on the environment if it meets the following criteria:

> • **Signalized Intersections:** A significant impact would occur if an intersection operating at LOS A, B, or C degrades to D, E, or F. For intersections already operating at unacceptable LOS D and E, a significant impact would occur if a project adds 0.01 or more to the critical movement's volume-to-capacity (v/c) ratio. If the intersection is already operating at LOS F, any increase (i.e., one vehicle) in the critical movement's v/c ratio is considered significant.
>
> • **Caltrans Significant Impact Criteria**. Caltrans endeavors to maintain a target LOS at the transition between LOS 'C' and LOS 'D' on State highway facilities; however Caltrans acknowledges that this may not always be feasible and recommends that the lead agency consult with Caltrans to determine the appropriate target LOS. If an existing State highway facility is operating at less than the appropriate target LOS, the existing measure of effectiveness (MOE) should be maintained. Caltrans considers a trip to a facility that has reached capacity to be significantly impacted by that single trip. The significance of a single trip is dependent on, but not limited to, the operating, safety, and project conditions of a particular development project.' (AR 1218-1219.) (Boldface in original.)

"**4.12.9 Level of Significance After Mitigation**

"Implementation of Mitigation Measure 4.12.1 would ensure that the Project applicant contributes his fair share to the planned 'State Route 68 Commuter Improvements'. Once the 'State Route 68 Commuter Improvements' are constructed, these improvements would shorten the travel time on SR- 68 in both directions, improve intersection operations, improve intersection operations at SR-68/San Benancio Road from unacceptable to an acceptable level and improve safety along SR-68.

"Implementation of the 'State Route 68 Improvements' project, a component of the TAMC RDIF, would effectively mitigate Project impacts at SR-68/San Benancio Road. Therefore, the Project level impacts would be mitigated to a level that is **less than significant**.

"The intersection at SR-68/Corral de Tierra Road is currently in the RDIF. However, because of the proposed increase in traffic that would result from the Project at this intersection and the nature of the proposed channelization improvements, it is likely that the level of service at this intersection would remain significant. Therefore the Project level impacts at this intersection would remain a significant **unavoidable impact** of the Project.

"The intersection at SR-68/Laureles Grade is currently not included in the RDIF and this would remain impacted. Therefore the Project level impacts at this intersection would remain **a significant unavoidable impact** of the Project.

"With implementation of Mitigation Measure 4.12.2 and Mitigation Measure 4.12.3 all significant adverse impacts related to adopted policies, plans, or programs supporting alternative transportation would be mitigated to a **less than significant level**.

"Through payment of the regional traffic impact fees through either of the options identified in Mitigation Measure 4.12.4, the Project would directly contribute to future improvements, which would help off-set any cumulative traffic impacts on regional roadways caused by increased trip volumes associated with the Project. Payment of the TAMC RDIF will reduce the Project's cumulative traffic impacts to the regional roadway network to a less than significant level. Therefore, with implementation of Mitigation Measure 4.12.4, the Project's cumulative impact on traffic operations under Cumulative conditions would be reduced to a less than significant level."(AR 1234.) (Boldface in original.)

(2).Corral de Tierra Final Traffic Report – Hexagon Transportation Consultants, Inc. September 1, 2009

"**Scope of Study**

"This study was conducted for the purpose of identifying the potential traffic impacts related to the proposed development. The scope of the study was determined by Monterey County, in consultation with the Transportation Agency for Monterey County (TAMC) and Caltrans, pursuant to Section 15 I 30(b)(3) of the CEQA guidelines which provides that the scope of the area affected by a project shall be defined by the local agency.

"The impacts of the project were evaluated following the standards and methodologies set forth in the *Guide for the Preparation of Traffic Impact Studies* published by Monterey County. The traffic analysis is based on an evaluation of peak hour levels of service for eight intersections located on Highway 68 in the vicinity of the site.

"**Project Trip Generation**

"Application of standard trip generation rates to the proposed development showed that the project would draw 188 AM peak-hour and 701 PM peak-hour trips to the site. However, since most of these trips would already be on the roadways, the project would generate only 95 net new AM peak-hour trips and 235 net new PM peak-hour trips on the street system as a whole.

"Direct Project Traffic Impacts and Mitigation Measures

"This project is not required to remedy existing deficiencies. Any measures that are proposed to mitigate project impacts must (a) be reasonably proportional to the impacts of the project, and (b) prevent a worsening of the existing or 'background' condition.

"Without mitigation, the project would cause a significant impact on traffic conditions at three study intersections, as described below.

> "***Impact:*** *The PM peak-hour level of service at the intersection of Highway 68 and Laureles Grade would be an acceptable LOS C under background conditions and the addition of project trips would cause intersection operations to degrade to an unacceptable LOS D. This constitutes a significant impact by Monterey County standards.*

"**Mitigation Measure:** TAMC has adopted a regional development impact fee program and an associated improvement project (described below). Payment of the TAMC fee would constitute fair-share mitigation of the project impact. The project would be subject to these fees.

> "*Impact: The PM peak-hour level of service at the intersection of Highway 68 and Corral de Tierra Road would be an unacceptable LOS D under background conditions and the addition of project trips would cause intersection operations to degrade to an unacceptable LOS D. This constitutes a significant impact by Monterey County standards.*

"**Mitigation Measure:** TAMC has adopted a regional development impact fee program and an associated improvement project (described below). Payment of the TAMC fee would constitute fair-share mitigation of the project impact. The project would be subject to these fees.

> "***Impact:*** *The PM peak-hour level of service at the intersection of Highway 68 and San Benancio Road would be an unacceptable LOS D under background conditions and the addition of project trips would cause the critical-movement volume-to-capacity ratio (VIC) to increase by .01 or more. This constitutes a significant impact by Monterey County standards.*

"Mitigation Measure: T AMC has adopted a regional development impact fee program and an associated improvement project (described below). Payment of the TAMC fee would constitute fair-share mitigation of the project impact. The project would be subject to these fees." (AR 1718-1719.) (Boldface, italics and underliniation in original.)

(3). Court's analysis

The traffic report and analysis provides accurate information about the consequences of the Project on traffic on Highway 68 and at the impacted intersections. No more is required, and substantial evidence supports the County's findings.

(B). Cumulative traffic analysis

(1). Draft EIR

(a). Response to comments:

"AAA-52 The commenter refers to the cumulative project list (Table 4.A) and map (Figure 4) indicating that there is no mention of Ferrini Ranch, and asking for what efforts went in the identification of the projects that should be on the cumulative project list. Table 4.A was developed by staff from the Planning Department and provided to the EIR Consultant. Ferrini Ranch should have been included in Table 4.A, the cumulative project list. While Ferrini Ranch was omitted from the list it has not been omitted from the analysis of the cumulative impacts to traffic, and wastewater." (AR 373.)

"EEE-56: The commenter mentions two residential subdivision applications being processed along SR-68 (Ferrini Ranch and Harper Canyon) are not found in the DEIR. The commenter states that the DEIR did not account for these projects therefore the traffic analysis for the Proposed Project is skewed. The commenter asks how these projects will affect traffic in the vicinity of the Proposed Project. The commenter further states that recent improvements in traffic flow on SR-68 can be attributable to alternative traffic routes through the former Fort Ord and then questions whether as projects in the former Fort Ord area are developed will increased traffic along Imjin Parkway push traffic back to SR-68? The Ferrini Ranch Subdivision and the Harper Canyon Subdivision were included in the Traffic Study for the proposed project. They were omitted from the list of projects considered, and this was an error which has been corrected in the errata. The decrease in traffic can be attributed to alternative east-west routes. As Fort Ord continues to develop, additional improvements will continue to be made to the regional transportation network to address the increased traffic." (AR 525.)

(b). Changes to Text in the Draft EIR

"The following projects are added to Table 4.A, Cumulative Project List: [Ferrini Ranch Subdivision Pending Residential 212]...." (AR 551.)

(c). 4.12.6 Cumulative Impacts

"**Cumulative Setting**. The cumulative environmental] setting was determined by adding the traffic from the probable future developments to the background traffic volumes. The trip generation estimates and trip distribution patterns for cumulative projects are included in

Appendix D of the Traffic Report, which is included in Appendix H. The approved and probable future developments included in the Cumulative condition are listed below:

- The Wang Subdivision consists of 23 single-family detached residential units and 6 inclusionary housing units. This project is located on Boots Road across from the Pasadera development.

- The Miller Property is located near the Monterey Peninsula Airport and proposes a 32,500 square foot office park and 32,500 sf of light industrial development.

- Corral de Tierra Convenience Market and Service Station is located on the southeast comer of SR-68/Corral de Tierra Road, directly adjacent to the Project. This project proposes a 3,600 square foot convenience market and service station.

- Cypress Community Church, located north of SR-68, east of Corral de Tierra Road, proposes to expand the existing church facilities to add a preschool and cemetery on the church property.

"As discussed in section 4.12.5, background conditions were determined by adding traffic that will be generated by approved but not constructed and probably future projects to the existing traffic volumes. To determine the cumulative impact of the Project on the study area intersections, Project trips were added to the background conditions. The Cumulative and Cumulative plus Project LOS at study intersections is shown in Table 4.12.H.

"As shown in Table 4.12.H, seven of the eight study intersections are forecast to operate at LOS D or worse for the cumulative plus project conditions. Recommended mitigation measures for the significant impact at the three impacted locations are provided in Section 4.1.8 Mitigation Measures. The detailed LOS calculations are contained in Appendix C of the Traffic Study, which is included as Appendix H in this EIR.

"Table 4.12.I is the cumulative summary table from the Harper Canyon EIR. This shows all six common intersections operating at a less than acceptable LOS.

"**Cumulative Adverse Impact on Level of Service**

Implementation of the Project would contribute to a cumulative increase in traffic volumes that would result in or exacerbate unacceptable levels of service on the regional roadway network. This would be considered a **significant cumulative impact**.

"A number of other projects have been proposed within the geographic study area that have not yet been approved or even formally submitted for evaluation. This list of cumulative projects relevant to this traffic study was developed in consultation with County staff and is included in the Traffic Report in Appendix Hof Volume II of this EIR. The geographic reach of the Projects considered with the cumulative analysis encompasses a regional area, including growth from several Monterey County cities as well as the Project in the unincorporated area.

The Project, plus cumulative growth would impact several intersections on SR-68 as described below.

"**SR-68/San Benancio Road.** In the cumulative scenario, the intersection operates at unsatisfactory LOS during both peak hours. The addition of Project traffic would increase the v/c ratio by more than 0.01, which is considered a significant Project impact per County of Monterey Significance level of service guidelines.

"**SR-68/Corral de Tierra Road.** In the cumulative scenario, the intersection operates at unsatisfactory LOS during both peak hours. The addition of Project traffic would increase the v/c ratio by 0.01 or more and the intersection would degrade from LOS E to LOS F. Addition of Project traffic causes a significant Project impact per County of Monterey Significance level of service guidelines.

"**SR-68/Laureles Grade.** In the cumulative scenario, the intersection operates at unsatisfactory LOS during the p.m. peak hour. The addition of Project traffic would increase the v/c ratio by more than 0.01, which is considered a significant Project impact per County of Monterey Significance level of service guidelines." (AR 1227-1229.) (Boldface in original.)

(d). Corral de Tierra Final Traffic Report - Hexagon Transportation Consultants, Inc. September 1, 2009

"**Cumulative Conditions with Regional Projects**

"Various approved and proposed projects throughout the region, including the Cities of Marina, Seaside, San City, Monterey, Del Rey Oaks, Salinas, as well as Monterey County are anticipated to be developed, or at least partially developed, within the next 25 years. Trip generation estimates from these approved and proposed projects in the region were used along with traffic growth rates from the AMBAG traffic forecasting model to develop traffic estimates for the study intersections. The resulting cumulative with regional projects traffic estimates for the study intersections therefore include the cumulative with project traffic volumes plus all approved and proposed projects projected for the study area in the next 25 years. The study intersections were analyzed for level of service under cumulative conditions with regional projects *(Ferrini Ranch Subdivision Traffic Impact Analysis,* Higgins Associates, April 18, 2008). The results of the analysis show that six of the study intersections would operate at unacceptable levels of service under cumulative conditions with regional projects. According to the Higgins study, the recommended mitigation for these conditions is to widen Highway 68 to four lanes for its entire length. The project's payment of the TAMC impact fee would constitute a fair share contribution toward the cost of widening Highway 68. (AR 1720.) (Boldface and italics in original.)

"**Cumulative Traffic Volumes**

"Cumulative peak-hour traffic volumes without the project were estimated by adding to background traffic volumes the estimated traffic from the probable future developments identified above. The AM peak-hour trips associated with these probable future developments

were obtained and/or derived from the trip assignments shown in the *Cypress Community Church Preschool and Cemetery Traffic Report,* dated July 9, 2004. The PM peak-hour trips associated with the probable future developments were estimated using the trip generation applicable to the use of the probable future developments. The trip distributions were determined based on existing travel patterns and the locations of complementary land uses. The trip generation estimates and trip distribution patterns for the probable future developments are included in Appendix H. The cumulative peak-hour traffic volumes with the project were estimated by adding to cumulative traffic volumes the estimated net new project trips as identified in Chapter 4 of this report. The cumulative peak-hour intersection volumes are shown on Figure 14. Traffic volumes for all components of traffic are tabulated in Appendix E." (AR 1767.) (Boldface and italics in original.)

"Cumulative Conditions with Regional Projects

(2). Court's analysis

Guidelines 15130:

"(b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact. The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. Such plans may include: a general plan, regional transportation plan, or plans for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program. Any such document shall be referenced and made available to the public at a location specified by the lead agency.

(2) When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a

particular air pollutant or mode of traffic.

(3) Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

(4) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available, and

(5) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects."

Although the Ferrini development was not mentioned in the Draft EIR at Table ES 1 (AR 1721), Table 8 (AR 1769) or in the tables at AR 1909-1911, the County included an errata to correct this error, and the Hexagon Transportation Consultant's analysis took into consideration the Higgins 2008 Ferrini Ranch Traffic analysis, which provides substantial evidence to support the County's decision.

(C). Miles traveled

(1). Final EIR

"**5. FINDING: EIR-STATEMENT OF OVERRIDING CONSIDERATIONS**
In accordance with Section 15093 of the CEQA Guidelines, the County has evaluated the economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of the project against its unavoidable environmental risks in determining whether to approve the project, and has determined that the specific economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of the project outweigh its unavoidable, adverse environmental impacts so that the identified significant unavoidable impact(s) may be considered acceptable.

"**EVIDENCE:**

a) The proposed project will result in development that will provide benefits described herein to the surrounding community and the County as a whole.
b) The site is designated as commercial in the 2010 Monterey County General Plan. Policy LU-4.6 states: *Commercially designated areas may include provisions for professional offices as well as retail and neighborhood serving uses.* Development of the project at the site would achieve the intent of the General Plan.

c) Development of the project would result in a reduction of miles traveled due to the proximity of the site to a large number of residents and the distance which must currently be traveled by residents to obtain goods and services that would be provided by the project. Development of a commercial center at this location will allow local residents to shop locally rather than driving into Salinas or Monterey. The center is also placed to attract a good number of pass-by trips where people commuting between Salinas and Monterey can stop in route to purchase needed items without diverting from their normal commute path or making an additional trip.
d) The reduction in vehicle miles traveled would have a corresponding decrease in the production of greenhouse gases. Greenhouse gases are generated through the combustion of fossil fuels. A reduction in miles traveled will result in a reduction in fossil fuel consumption and in Greenhouse Gas emissions." (AR 83.)

Response to comments: "EEE-70.6 Commenter expresses concern with the calculations for vehicle miles traveled based upon the hand marked corrections in the DEIR The hand marked corrections in the DEIR are the result of the changes made to the trip generation rates as discussed above in comment 2." (AR 529.)

(2). Draft EIR

"Vehicle Miles Traveled Analysis

"The net daily vehicle miles traveled generated by the Project is a measure of the project's impact on regional travel. Vehicle miles traveled (VMT) is calculated by multiplying the number of trips generated by the Project by the trip lengths. The Project would provide employment and shopping to an area where it previously was unavailable. Trips can be classified into three types: customers specifically coming to the center (primary trips), customers shopping at the center while on the way to somewhere else (pass-by trips), and employees. To the extent that customers are local residents formerly shopping in Monterey, Seaside, or Salinas, the Project could reduce total traffic in the area.

"Local Project trips which include customer primary, employee, and office trips - that would have been made to Seaside, Monterey, or Salinas, with the Project, would be shorter by an average of approximately 10 miles. Pass-by trips would already be on the road in the vicinity of the Project, and so would not affect the net VMT change. Local Project trips (286 PM peak hour trips) that would have been made to Monterey, Seaside, or Salinas would, with the Project, result in an estimated reduction of 2,231 vehicle miles traveled, Regional trips from Seaside, Monterey, or Salinas to the Project (183 PM peak hour trips) would result in an estimated increase of 1,884 VMT during the PM peak hour. Therefore, the Project would result in a net reduction of 347 VMT during the PM peak hour. Using the standard industry practice multiplying peak hour trips by 10 to derive the total number of daily trips, this corresponds to an estimated savings of about 3,470 VMT daily. The net VMT savings would equate to a net time savings for motorists. This time savings would be further increased by the mitigation improvements to the intersections as noted in the preceding sections, under mitigated Project conditions, the study intersections would have reductions or very small increases in delay, resulting in an overall reduction in delay in the

SR-68 corridor. This reduced delay time would be time saved for motorists. The resulting reduction in Greenhouse Gas emissions associated with the reduction in VMT's constitutes a public benefit." (AR 1223-1224.) (Boldface in original.)

(3). Transcript of Board of Superiors meeting April 12, 2011

"**BRENT WALINSKI:** Thank you. The project applicant has asked that I address those two issues today. The first one is VMT which is an acronym for vehicle miles travelled. Calculating the net VMT for a project is a measure of overall regional traffic impact. Vehicle miles travelled is calculated by multiplying the number of trips generated by a project by the length of the trips generated by a project. VMT is a standard calculation that is done for new projects to quantify impacts on greenhouse gases. The project would provide retail services in an area where they're previously unavailable. As a result, many local residents that would previously drive to Monterey, Seaside or Salinas could shorten their trips by driving to the proposed center. Hexagon has compared the total vehicle miles travelled with and without the proposed shopping center. With the proposed project, it is estimated that the total miles travelled, total vehicle miles travelled would be reduced in the region by approximately 3,500 per day with the project. Thus the overall regional traffic impact of the project is to reduce the amount of time that drivers spend on the roadway network." (AR 5584.) (Boldface in original.)

(4). Transcript of Planning Commission meeting December 8, 2010

"**GARY BLACK:** Thank you, Brian. Gary Black with Hexagon Transportation Consultants. As Brian said, our firm prepared the traffic study that was one of the inputs into the EIR. I just have a couple points that I wanted to make. One that we've talked about a bit here, which is the fact that this project introduces some neighborhood retail uses into an area where there aren't a lot of those services available and what are the traffic implications of doing that and we've heard some discussion about the fact that there are trips being made to Salinas or Monterey that now could be made locally. There are over 8,000 people that live in the Toro area that are now making trips outsideof that area for these services and what that does, is it ends up with a reduction in what we call vehicle miles travelled, which, they'll still make the trip, they'll still go to the store but the trip to the store will be much shorter and this was actually addressed in the EIR. I just wanted to read you two sentences from the EIR that discusses this topic. It says the project would result in a net reduction of 347 vehicle miles travelled during the p.m. peak hour. That translates into 3,470 reduced vehicle miles per day and the concluding statement was, the resulting reduction in greenhouse gas emissions associated with the reduction in vehicle miles travelled constitutes a public benefit. So, we've seen that the project, the EIR identifies some localized traffic impacts, but on a regional scale, the reduced VMT is a benefit." (AR 8587-8588.) (Boldface in original.)

(5). Court's analysis

Although the Vehicle Miles Traveled analysis might be clearer, it is not so confusing to the extent that the public and the Board did not understand that there would be a reduction in miles traveled, and the analysis is supported by substantial evidence.

(D). Trip generation rate

(1). Final EIR

(a). Response to comments

"EEE-70.1 Commenter expresses that the supermarket/grocery is a potential occupant of the shopping center and has a higher trip generation rate than a shopping center; the same concern is expressed with restaurants. Traffic generated by the Project was calculated using rates contained in the Institute of Transportation Engineer's (ITE) *Trip Generation Manual,* 7th Edition, 2003. According to the ITE trip Generation Manual, 'a shopping center is an integrated group of commercial establishments that is planned, developed, owned and managed as a unit.' These rates were established through data and surveys of hundreds of existing shopping centers (i.e., 412 shopping centers were surveyed to establish weekday PM peak hour trips per 1000 square feet of area). Some of these centers that were surveyed 'contained nonmerchandising facilities, such as office buildings, movie theaters, restaurants, post offices, banks, health clubs and recreational facilities.' Moreover, because specific details of the individual uses within this project proposal are not available, use of a shopping center trip generation rate for a project comprised of several different uses found within a shopping center is commonly accepted as standard professional practice. Therefore, the use of the shopping center as the use for trip generation instead of the individual components of a shopping center is appropriate in this particular application.

"EEE-70.2 Commenter expresses concern that the maximum credit for pass by trips should be capped at 15%. The concern is that the reductions identified in the traffic report understate the net trip generation for the proposed project. The County largely agrees with this assessment. That is why the detailed discussion on pp. 377-378 of the Draft EIR addresses and adjusts the pass-by trip reductions proposed in the traffic report. Two different trip reductions are at issue: a passby trip reduction and a reduction based on a market area study. Pass-by trip reductions are considered standard industry practice and supported by data and research in the ITE *Trip Generation Handbook,* 2001. After review of the Final Traffic Report by Caltrans and County staff, it was concluded that there was insufficient additional engineering data supporting the trip reduction based on the market area study. Therefore, the market area reduction was not accepted and the final data in Table 4.12.E in the DEIR reflects the adjustments required by County staff." (AR 528.) (Italics in original.)

(b). Letter to Mr. Osoiro, Senior Planner, from Omni dated November 5, 2010

"The proposed project as described in the EIR proposes a neighborhood commercial village of 126,523 square feet (sq. ft.), including ten retail buildings and a one-story market

building (grocery) as the anchor. The retail component, consisting of the retail spaces and grocery/market, is 114,185 sq. ft. The market building is 40,093 sq. ft and the office building is 12,335 sq. ft. Within the market building, the grocery functions within a 28,000 sq. ft. area and the remainder of the building space (12,093 sq. ft.) is made up of office mezzanine/space and warehouse/storage area." (AR 680.)

(c). Draft EIR Summary of Project Description and Location

"The Project would subdivide two existing lots of record encompassing approximately 11 acres into seven (7) lots ranging from 0.72.acres to 2.67 acres. The proposed neighborhood retail village would include 10 retail buildings, a one-story market building (grocery store) with a mezzanine as the 'anchor', and a two-story office building totaling 126,523 square feet (sf), and a total of 508 surface parking spaces. The retail component, consisting of the grocery store and retail spaces, would occupy 114,185 sf. The grocery store would occupy 40,000 sf, while office building would occupy 12,338 sf. Establishments that may be developed as part of the retail component include a drug store, hardware store, sporting goods store, bank, florist, mail store, post office branch, video, barber/beauty salon, dry cleaner drop-off/pick-up facility, day care center, and various small restaurants." (AR 843.)

(d). 4.12.5 Direct Project Impacts – Trip Generation

"The proposed shopping center and office would generate approximately 188 new trips during the a.m. peak hour (120 in, 68 out) and 469 new trips during the p.m. peak hour (220 in, 249 out). Table 4.12.E shows the project trip generation detail for the Project. Detailed discussion of the methodology used to determine local primary trips, regional primary trips, and pass-by trips are explained in detail in the Traffic Report. It should be noted that the difference between the Total Trip Generation and the Net New Trip in the PM Peak Hour is the credit given for customer pass by trips." (AR 1220.)

(2). Court's analysis

The Project is a shopping center and substantial evidence supports the use of a shopping center trip generator for the Project and there is no abuse of discretion.

(VIII). Piecemealing

The Coalition argues that the EIR inaccurately stated that the adjacent Omni gas station and the adjacent hillside were not part of the Project.

Omni notes that the Exxon gas station was never proposed for development during the review of the Project, rather is was contemplated only as a stand-alone project in 2002, but no

application for development was ever submitted, and that the hillside is not part of the project, rather it is only part of the watershed.

(A). Gas Station

(1). Notice of determination

"**Project Description**: County File Numbers PLNl 10077 and PLN020344. Combined Development Permit consisting of 1) Use Permit 2) General. Development Plan; and 3) Design Approval for development of a 99,970 square foot retail center known as the Corral de Tierra Neighborhood Retail Village and 4) Lot Line Adjustment to modify the lot line between two existing parcels (5.6 acres and 5.38 acres in area) to create Parcel A (1.12 acres) and Parcel B (9.86 acres)." (AR 1.) (Boldface and underliniation in original.)

(2). Finding: Consistency with 2010 General Plan – Evidence

"b) **CONSISTENCY - 2010 MONTEREY COUNTY GENERAL PLAN POLICY T-3.1.** Policy T-3.1 states: *Within areas designated as "visually sensitive" on the Toro Scenic Highway Corridors and Visual Sensitivity Map (Figure I 6), landscaping or new development may be permitted if the development is located and designed (building design, exterior lighting, and siting) in such a manner that will enhance the scenic value of the area. Architectural design consistent with the rural nature of the Plan area shall be encouraged.* The Project's design has been reduced to 99,970 square feet and contains the following elements which are consistent with the Site's location in the critical viewshed: 1) A village component with strong internal pedestrian orientation; 2) parking around the perimeter on the eastern boundary to minimize parking and asphalt visible from the scenic corridors; and 3) architectural building design that is predominantly single story with variation in the pattern of building location providing visual interest. The revised design also includes increased perimeter landscaping along the scenic frontages using native plant material and berming. The combination of the site layout, architectural design of the center and a strong native landscape palate will enhance the scenic value of the area and be consistent with the rural character of this location. The applicant orally testified that he would remove the gas station; a condition of approval has been added to require that the gas station be removed prior to construction of the project." (AR 7.) (Boldface and italics in original.)

(3). Condition 25 – Notice of Water Credit – Stormwater Runoff

"The applicant shall record a Notice stating that 'Any development plans that may be approved in the future for the service station site (APN 161-571-002-000) adjacent to the Project Site, also owned by the applicant, shall not receive any credit for stormwater runoff from the site being applied to or counted in a water balance analysis for development of that site.'" (AR 28.)

(4). Condition 67 – Soil Remediation

"Prior to issuance of any permits for the shopping center, other than permits required for site remediation, site soil and groundwater contamination on the adjacent gas station site [] ('Gas Station Site') shall be addressed through one of the following options:

"A. Complete Soil Remediation and No Existing or Detectable Groundwater Contamination.

"All contaminated soils shall be removed from the Gas Station Site. The soils shall be removed to the satisfaction of the Monterey County Environmental Health Bureau ('EHB'). If the California Regional Water Quality Control Board ('Regional Board') determines that no groundwater contamination exists or is not detectable on the Gas Station Site, a risk assessment shall not be required;

"Or

"B. Complete Soil Remediation but Existing or Detectable Groundwater Contamination.

"All contaminated soils shall be removed from the Gas Station Site. The soils shall be removed to the satisfaction of the EHB. If the Regional Board determines that any groundwater contamination exists or is detectable on the Gas Station Site, remediation of any such groundwater contamination shall be in accordance with the directions and to the satisfaction of the Regional Board. Any groundwater remediation measures that may be required by the Regional Board shall be implemented and successfully functioning for one month if the remediation is an ongoing process. A risk assessment shall be performed by a licensed professional experienced in groundwater contamination transport and modeling demonstrating to the satisfaction of the EHB that any such groundwater contamination on the Gas Station Site will not pose a hazard to public health and safety particularly as a result of the operation of the proposed groundwater recharge system;

"Or

"C. Residual Soil Contamination and Existing or Detectable Groundwater Contamination.

"Contaminated soil on the Gas Station Site shall be remediated below Monterey County Action Levels for all contaminants. The soil remediation shall be completed to the satisfaction of the EHB. If the Regional Board determines that any groundwater contamination exists or is detectable on the Gas Station Site, remediation of any such groundwater contamination shall be in accordance with the directions and to the satisfaction of the Regional Board. Any groundwater remediation measures that may be required by the Regional Board shall be implemented and successfully functioning for one month if the remediation is an ongoing process. A risk assessment shall be performed by a licensed professional experienced in groundwater contamination transport and modeling demonstrating to the satisfaction of the EHB that any residual contaminants in the soil on the Gas Station Site, or any groundwater contamination on the Gas Station Site, will not pose a hazard to public health and safety particularly as a result of the operation of the proposed groundwater recharge system." (AR 40-41.)

(5). Condition 68 – Removal of Gas Station

"The Gas Station on the corner parcel shall be removed and the site shall be cleaned of all buildings, asphalt, and other structures or improvements not associated with a project approved subsequent to the date of approval for this project. Once the existing improvements and structures have been removed, storage of materials, vehicles or other items is not permitted. (AR 42.)

(6). Condition 90 – Street Frontage and Access Ways (in part)

"K. Eliminate the northernmost driveway on Corral de Tierra Road or modify the site plan to provide a driveway on the shopping center site which provides access to the corner (gas station) parcel that that the corner parcel would not have direct access onto Corral de Tierra. An easement or other instrument shall be recorded on the corner parcel to prevent future direct access to Corral de Tierra, to the satisfaction of the Public Works Director." (AR 64.)

(7). Final EIR Master Responses

"MASTER RESPONSE No. 1: PROJECT DESCRIPTION

"Commenters have raised a number of questions with respect to the Project Description including a) whether or not the adjacent gas station site (also owned by the Project proponent) are included in the Project; b) whether the adjacent hillside is included in the Project; and c) whether wells in the Project Area are included in the Project. The Project includes the Project Site as described below, but also relies upon runoff from the adjacent gas station site solely for the purpose of calculating water balance.

"**Project Site.** The Project Site consists of two lots of record occupying approximately 11 acres. The adjacent gas station site is not proposed for development as part of the proposed shopping center complex. Access to the gas station site is also separate from the access points to the Project.

"**Water Balance.** Commenters are referred to Table 4.7.B on page 256 and Tables 6B on page 462 and Table 6.E on page 479 for the water balance analysis for the Proposed Project and each alternative. The area used for calculating the Project's water balance (i.e. recharge that will be collected and directed to the underground water basin) included

- Project Site (11 acres)
- Gas Station Site (.7 acres)

"The Project design does not include collecting runoff from the adjacent hillside. The runoff from the adjacent hillside is assumed to be the same as for pre-project conditions.

"The area used for the calculation of the water balance for Alternatives 2 and 3 included

- Project Site (11 acres)
- Gas Station Site (.7 acres)

• Adjacent Hillside (3.6 acres)

"This totals 15.3 acres. The retention system for these alternatives is specifically designed to capture runoff from all three areas.

"**Wells on the Project Site.** There is currently a well on the Project Site that serves the Hargis subdivision (Well 115). Well 115 has 9 connections of which 7 are active. This well will not be used to serve the Proposed Project and has not been included in the water balance for the subject site. Well 94 which is located on the gas station site will not be used to serve the Proposed Project and has not been used as part of the water balance for the Proposed Project. As noted on page 67, water for the Proposed Project will be provided by the Ambler Park Water System owned by Cal Am through the use of water supply wells that are approximately 500 feet southeast of the Project Site.

"The County is proposing an errata to page 67 to clarify that runoff from the gas station site is included in the calculation of the amount of runoff that will be captured in the underground retention/detention facility for the Proposed Project as follows;

> 'Storm water runoff from the Project Site and adjacent gas station site would flow through a system of storm drains and catch basins to a proposed underground retention/detention system in the northeast comer of the Project Site adjacent to SR-68 (refer to Figure 3.8).'

"The County will also include a condition of approval that will prohibit the gas station site from receiving any credit for water runoff from the site being applied/counted in a water balance analysis for development on that site. This condition will be enforced in part through recordation of a deed restriction on the gas station site." (AR 95-96.) (Boldface and all capitalization in original.)

(8). Responses to comments – Final EIR

(a). "AAA-24 The commenter raises the following questions about the former service station site:

a) Is the size 0.63 or 0.7 acres?
b) The former service station site should not be considered in the recharge calculations because the site is not included in the project description.
c) Is the water well used in the analysis and calculations of the projects water recharge?
d) A proposed 24-hour mini mart and gas station is a known fact and should be considered in the DEIR.

"As shown in the water balance analyses, the total area of the former service station is 0.7 acres. The water balance calculations estimate impervious surfaces cover 90%, or 0.63 acres, of the site. That is the 0.63 acre reference in the DEIR. This is properly noted in the footnotes of the analyses. See Master Response 1 for project description.

"The owner/applicant for the proposed Project is also the owner of the former service station site. On March 22, 2002, the applicant submitted to the Planning Department an "Application Request Form" for a service station and convenience store to replace the previously existing service station and convenience store on that site. The actual application and application requirements, File No. PLN020152, were given to the applicant on May 5, 2002, more than eight years ago. However, the application for that project has never been submitted to the Planning .Department. Section 15130 of the CEQA Guidelines requires the analysis of a project's cumulative impacts. Section 15130 (b) (1) (a) allows the use in the analysis of a list of past, present and probable future projects producing related or cumulative impacts. Given that the application for the purported service station and convenience store has not been submitted, it is not a project to be considered in the Cumulative Projects List (Figure 4.A) of the DEIR. The traffic generation of the existing use on that site, however, was included in the traffic report prepared for the project and used in the DEIR." (AR 368-369.)

(b). "EEE-64: The commenter references the parcel on the corner of SR-68 and Corral de Tierra Road, and expresses that traffic impacts for the future use of the site (gas station) and present use (real estate office) parcel should be factored into the traffic analysis. The commenter correctly states that the adjacent 0.684 acre parcel is not a part of the Proposed Project. No current application to change the existing use of this parcel (real estate) office to a gas station has been submitted for consideration to the County of Monterey. The existing use of the site is evaluated in the traffic analysis because its traffic is included within the existing traffic counts. (AR 527.)

(c). "EEE-68: The commenter states that the cumulative impacts are understated in the DEIR. The commenter asks what the 'Corral de Tierra Convenience Market and Service Station' referenced on page 386 is and if it is proposed on the 0.684 acre parcel on the corner of SR-68/Corral de Tierra, and if so, why the impacts of this development were not addressed in this BIR. The traffic study in the cumulative condition included a 3,600 square foot convenience market and gas station on this comer parcel. This was not evaluated as part of the total DEIR because there is not presently an application for approval of such a development on the subject site. (AR 527.)

(9). Draft EIR – Cumulative Impacts (traffic)

"**Cumulative Setting.** The cumulative environmental setting was determined by adding the traffic from the probable future developments to the background traffic volumes. The trip generation estimates and trip distribution patterns for cumulative projects are included in Appendix D of the Traffic Report, which is included in Appendix H. The approved and probable future developments included in the Cumulative condition are listed below:

- The Wang Subdivision consists of 23 single-family detached residential units and 6 inclusionary housing units. This project is located on Boots Road across from the Pasadera development.
- The Miller Property is located near the Monterey Peninsula Airport and proposes a 32,500 square foot office park and 32,500 sf of light industrial development.

• Corral de Tierra Convenience Market and Service Station is located on the southeast comer of SR-68/Corral de Tierra Road, directly adjacent to the Project. This project proposes a 3,600 square foot convenience market and service station.
• Cypress Community Church, located north of SR-68, east of Corral de Tierra Road, proposes to expand the existing church facilities to add a preschool and cemetery on the church property.' (AR 1226-1227.) (Boldface in original.)

(10.) Corner Gas Station update November 3, 2011 CapRock Environmental & Engineering Geology. Email from Eric Phelps

"The Phelps family owns both the 11 acres where the new shopping village will go, and the corner gas station site. The family plans to demolish and rebuild the gas station in the next year. The county will need to approve the new design." (AR 3056.)

(11). Board of Supervisors meeting November 8, 2011

"This item was continued from the Board of Supervisors meeting of July 12, 2011. At that meeting the Board of Supervisors considered the latest proposal by the applicant (Omni Resources, LLC) to address the issues related to size and visual impacts on the Highway 68 and Corral de Tierra scenic corridors. The applicant's proposed design includes 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
• Utilize a Lot Line Adjustment to create a 9.86 acre parcel upon which the shopping center will be developed leaving a 1.12 acre vacant parcel at southern end of site.
• No change proposed for the corner former gas station parcel. The Board conducted a public hearing.

"During the hearing the applicant agreed to remove the gas station improvements on the corner parcel. A condition of approval has been added to remove the gas station 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 hearing, it was discovered that there may be residual contaminants in the soil on the gas station parcel from the removal of the underground tanks. The August 30 hearing was continued to October 4, 2011 to allow staff and the applicant to address this issue. The project was continued from October 4, 2011 to allow the entire Board to be present for consideration of this project." (AR 3733.)

(12). September 23, 2011 email from Kay Fernandez (CapRock Geology) to Mr. Feikert et al.

"It is looking more and more like excavation is the appropriate next phase to remediate the property at 1 (7) Corral de Tierra. It also seems to make sense to demo the old gas station

building on the site since that building must come down anyway as a part of the larger project that is being considered for that corner. Also, at this point it is not unreasonable to assume that we may find contamination under the building. I would like to visit with you about timing of the excavation. Getting the replacement building approved and a demolition permit issued is going to take some time. Your work plan deadline in Nov is more than reasonable, but I would like to have an understanding of when the work can actually be completed prior to submitting the work plan." (AR 4757.)

(13). May 17, 2011 meeting - Board of Supervisors

"In response to Board direction to show what is intended for the corner parcel, the applicant provided a sketch showing a schematic development plan for a gas station. As illustrated, the architecture would be consistent with the design of the center; however, staff has noted throughout this process that development should:

- Combine access on Highway 68 and Corral de Tierra with access to the center. The concept plan provides independent access on both roadways with only one connection to the shopping center.
- Landscaping should be included along the corner to soften the building mass at the corner and minimize pavement.

"This sketch is shown for schematic purposes only and is not a part of the application. However, staff recommends that the Board provide direction as it relates to how the corner parcel is designed with this criteria in mind. If the corner is to be a gas station, staff would recommend placing the building closer to the intersection of Highway 68 and Corral de Tierra as it is a smaller structure and would allow more landscaping around it. The much larger canopy and associated pavement could be placed at the rear of the lot away from the corner, minimizing visual impacts and improving circulation.

"If the Board of Supervisors finds that the proposed revisions address the Board's concerns, the project should be continued to allow staff to evaluate the revised plans for consistency with the General Plan and the assumptions contained in the Environmental Impact Report." (AR 5379-5380.).

(13). Concept Sketches for Gas Station on Corner Parcel. Board of Supervisors Meeting May 17, 2011. (AR 5402.)

(14). April 12, 2011 Board of Supervisors hearing – partial transcript, Mr. Ford addressing Board

"The project site is located at the intersection of Corral de Tierra and Highway 68. It includes two parcels. The parcel surrounded in red and the parcel surrounded in blue. The corner parcel which is where the gas station is, is not included within the site. You may hear during today's public testimony comments about the hillside. The hillside on the screen is this area that's right in here. It slopes down from a very high point down onto the project site. This is the proposed site plan going from the north. The site includes pedestrian retail village concept that's located in this area. It includes in-line shops. It includes a larger co-anchor store in this location

and a two story component back in this area. This is the location of where a market would be with associated inline shops and this is the location of a proposed two-story office." (AR 5570.)

(15). CapRock Geology, Inc. Work plan for Gas Station site, October 15, 2011

Background: "The site is an approximately 0. 7 acre irregularly shaped parcel in a rural area midway between Salinas and Monterey on Highway 68. The property consists of an old gas station building with awning and parking area. Portions of the building are currently being used for a real estate office.

The adjoining property to the west, across Corral de Tierra Road, is a gas station and mini-mart. Properties to the north, south, and east are mostly undeveloped bare ground. (AR 10275.)

(16). Questions and Answers - The Phelps Family Village, date unknown

"Q. What happens to the old gas station?
"A. It will be torn down and rebuilt to fit the village design. The tanks were safely removed years ago in compliance with the Central Coast Regional Water Quality Board regulations." (AR 10329.)

(17). Court analysis

Although there is some evidence in the record that there are plans for development of the Omni/Exxon gas station site, the gas station site is not part of the Project and there is no current application on file with the County to develop the parcel. The County's analysis of the Project as described is supported by substantial evidence.

(B). Hillside

(1). Final EIR Master Responses

"MASTER RESPONSE No. 1: PROJECT DESCRIPTION

"Commenters have raised a number of questions with respect to the Project Description including a) whether or not the adjacent gas station site (also owned by the Project proponent) are included in the Project; b) whether the adjacent hillside is included in the Project; and c) whether wells in the Project Area are included in the Project. The Project includes the Project Site as described below, but also relies upon runoff from the adjacent gas station site solely for the purpose of calculating water balance.

"**Project Site.** The Project Site consists of two lots of record occupying approximately 11 acres. The adjacent gas station site is not proposed for development as part of the proposed

shopping center complex. Access to the gas station site is also separate from the access points to the Project.

"**Water Balance.** Commenters are referred to Table 4.7.B on page 256 and Tables 6B on page 462 and Table 6.E on page 479 for the water balance analysis for the Proposed Project and each alternative. The area used for calculating the Project's water balance (i.e. recharge that will be collected and directed to the underground water basin) included

- Project Site (11 acres)
- Gas Station Site (.7 acres)

"The Project design does not include collecting runoff from the adjacent hillside. The runoff from the adjacent hillside is assumed to be the same as for pre-project conditions.

"The area used for the calculation of the water balance for Alternatives 2 and 3 included

- Project Site (11 acres)
- Gas Station Site (.7 acres)
- Adjacent Hillside (3.6 acres)

"This totals 15.3 acres. The retention system for these alternatives is specifically designed to capture runoff from all three areas.

"**Wells on the Project Site.** There is currently a well on the Project Site that serves the Hargis subdivision (Well 115). Well 115 has 9 connections of which 7 are active. This well will not be used to serve the Proposed Project and has not been included in the water balance for the subject site. Well 94 which is located on the gas station site will not be used to serve the Proposed Project and has not been used as part of the water balance for the Proposed Project. As noted on page 67, water for the Proposed Project will be provided by the Ambler Park Water System owned by Cal Am through the use of water supply wells that are approximately 500 feet southeast of the Project Site.

"The County is proposing an errata to page 67 to clarify that runoff from the gas station site is included in the calculation of the amount of runoff that will be captured in the underground retention/detention facility for the Proposed Project as follows;

> 'Storm water runoff from the Project Site and adjacent gas station site would flow through a system of storm drains and catch basins to a proposed underground retention/detention system in the northeast corner of the Project Site adjacent to SR-68 (refer to Figure 3.8).'

"The County will also include a condition of approval that will prohibit the gas station site from receiving any credit for water runoff from the site being applied/counted in a water balance analysis for development on that site. This condition will be enforced in part through recordation of a deed restriction on the gas station site." (AR 95-96.) (Boldface and all capitalization in original.)

(2). Response to comments – Final EIR

"AAA-19 The commenter questions why the analysis in the DEIR includes the area of the adjacent offsite hillside in the predevelopment water calculations and suggests that offsite water recharge should not be considered in the 'water balance' calculations. The LEED Alternative and Staff Alternative Water Balance Analyses propose post-project retention of stormwater runoff from the hillside area; therefore, the hillside area is included in each water balance analysis which includes pre-project and post-project recharge conditions for the total area. See Master Response 2." (AR 367.)

(3). Draft EIR

"The watershed area at the Site is approximately 15.3 acres (including the adjacent 0.7 acre service station site, 11.0 acre site, and 3.6 acre adjacent hillside) with drainage to the low point of the Site near the northeast corner of the property, adjacent to the private property to the east, (Whitson Engineers, 2009). The natural topography and the divide created by Corral de Tierra Road form a watershed that includes only the Site, the eastern half of Corral de Tierra Road along the western Site boundary, and a portion of the hillside to the east, and the surface area of the adjacent service station site. Runoff from this watershed consists of overland flow to a drainage swale that flows east along the south side of SR-68 and ultimately drains to El Toro Creek. The total drainage area is comprised of two distinct sub-drainage areas. Drainage Area A (11.7 acres) generally consists of the Site and the adjacent service station site (refer to Figure 4.7.2). It is level, underlain by San Gorgonio Sandy Loam and consists of mostly open pasture land. Drainage Area B (3.6 acres) essentially includes the western half of the hillside to the east of the Site, has west-facing slopes of approximately 25 percent, is underlain by undifferentiated continental deposits equivalent to the Paso Robles Formation (refer to Figure 4.7.2). Based on the Preliminary Drainage Study conducted by Schaaf and Wheeler (2002) and Supplement #2 to the Preliminary Drainage Report (February 17, 2009), the drainage area that includes the Site has a pre-development storm water runoff flow of 4.4 cubic feet per second (cfs) during a 10-year, 24-hour storm event, and l 0.5 cfs during a 100-year, 24-hour storm event." (AR 1046.)

(4). Court analysis

The hillside is not part of the Project "site" and was considered only in the water balance calculations as part of the watershed.

The County did not abuse its discretion because there was no improper segmentation regarding the gas station and/or the hillside. (*Sierra Club v. West Side Irrigation Dist.* (2005) 128 Cal.App.4th 690, 698.)

(IX). Cumulative impacts – wastewater

The Coalition contends that the EIR did not adequately address the cumulative impacts of wastewater treatment.

Omni says that the EIR evaluated the possibility that other projects could be built such that all the projects together would exceed wastewater treatment plant capacity. However, after mitigation, the Project's contribution is less than significant.

(A). Final EIR

(1). Condition 99 - Capacity of Wastewater Treatment Facility: Final EIR 4.13.7

"Prior to approval of any building permits, the applicant shall verify that there is sufficient capacity in the California Utilities Service, Inc. (CUS) wastewater treatment facility to address the wastewater needs of the Project. If the CUS facility would exceed its permitted capacity, then the County of Monterey shall not issue a building permit until such time as the CUS wastewater treatment facility has attained a revised permit from the Regional Water Quality Control Board." (AR 67.)

(2). Response to comments

"J-1: The commenter states the B-8 Overlay was applied to the area for water, traffic, and sewage capacity concerns. The commenter raises issues relative to the Project's generation of wastewater and the capacity of the sewage treatment operated by the California Utilities Service to treat such waste water in view of the Encina Hills project currently under consideration by the County. The commenter is incorrect relative to the reasons for the adoption of the B-8 Overlay. The B-8 Overlay applicable to the Site was applied due only to water availability constraints in the area. Ordinance No. 03647 (See Exhibit 1, in Appendix J in Volume Two of the DEIR) adopted by the Board of Supervisors to apply the B-8 Overlay regulations in the area of the project Site, referred to specific water constraints in the area. Regarding the capacity of the California Utility Service sewage treatment plant, the DEIR (p.409) states that 'CUS is allowed a maximum discharge of 300,000 gallons per day (GPD) and a peak flow rate of 450,000 GPD,' and that 'CUS has estimated its current average monthly flow rate to be 220,000 GPD.' Therefore, the sewage treatment plant is not over capacity and has an estimated excess capacity of 80,000 GPD. This information was confirmed by staff from the Environmental Health Bureau. Mitigation Measure 4.13.7 has been revised as follows to assure that the sewage treatment plant will have adequate capacity to treat sewage from this and other projects in the area. The change to the language of the mitigation measure will also be reflected in the FEIR errata.

> **Mitigation Measure 4.13.7 - Capacity of Wastewater Treatment Facility**: 'Prior to approval of any building permits, the applicant shall verify that there is sufficient capacity in the California Utilities Service, Inc. (CUS) wastewater treatment facility to address the wastewater needs of the Project. If the Project would cause the CUS facility [] to exceed its permitted capacity, then the County of Monterey [] shall not issue a building permit until such time as the CUS wastewater treatment facility has attained a revised permit from the Regional Water Quality Control Board.'

"J-2: The commenter asks how much sewage the development is proposing, and what specific uses were used to calculate how much sewage would be generated. The DEIR (Section 4.13.5, p.416) states that the Project required sewage treatment would range between 16,962 and 34,161 GPD. Both estimates would be within the sewage treatment excess capacity of 80,000 GPD identified in the response to Item J-1 above.

"J-3: The commenter states the numbers don't add up, and fails to see the wisdom in adding additional load to an already over capacity system. See responses to Items J-1 and J-2 above. (AR 161). (Boldface, underliniation and strikeout deleted in original.)

(B). Draft EIR

(1). "Wastewater Treatment. An assessment of wastewater issues is based on services required to treat the volumes of wastewater expected from the Project and whether there is sufficient capacity to treat project wastewater within the existing permit requirements for the wastewater treatment plant that would serve the Project (CUS, 2007). The capacity of CUS to treat wastewater from the Project is specified in a letter dated September 20, 2007 from CUS to Eric Phelps, Omni Resources LLP (Finegan, 2007). The wastewater assessment also is based on an evaluation of the existing 12 inch sewer line and whether it is sufficient for the volume of wastewater that is specified for the Project in addition to other approved planned future development in the area according to the County's information and the planning horizon." (AR 1257.) (Boldface in original.)

(2). 4.13.6 Cumulative Impacts

"**Wastewater.** The study area for cumulative impact assessment for wastewater is that of the CUS service area. The CUS service area includes the Site, which is part of an area that was annexed by CUS in 1987, and extends south from the intersection of Corral de Tierra Road and SR-68 and east of Corral de Tierra Road to Calera Canyon Road. The older part of the service area includes the Toro Hills area that is north of the Site and on the west side of SR-68, which continues to encompass a narrow area along the highway to the Salinas River (Adcock, 2008). Based on the current permit Order, CUS permitted discharge is 300,000 gpd (CRWQCB, 2007; CUS, 2007). The monthly average flow rate for CUS in February 2007, at the time the Order was rendered effective, was 220,000 gpd; therefore the excess capacity was 80,000 gpd. The treatment requirements for the Project are estimated to be 34, 161 gpd (Finegan, 2007), therefore, in addition to the Project, the CUS would be able to accommodate an approximate additional 45,800 gpd of wastewater from other facilities that are planned for the service area. One new residential development, the Oaks Subdivision, has been approved within the CUS service area, and two additional residential developments, the Harper Canyon Subdivision and the Ferrini Ranch Subdivision, are being proposed within the CUS service area. The wastewater discharge requirements estimated for each of these developments are 2,700 gpd, 5,200 gpd, and 63,300 gpd respectively. As shown in Table 4.13.A, if all of the proposed projects, including the subject Project, are approved, demand for wastewater treatment would exceed CUS's permitted discharge of 300,000 gpd by about 10%. This would be considered a significant adverse cumulative impact. In this case, CUS would need to expand the wastewater treatment facility. This would need to be accomplished prior to occupancy of the projects if they were to all

develop simultaneously. CUS would be responsible for completing this expansion. This potentially significant environmental impact can be mitigated to a less than significant level by implementing Mitigation Measure 4.13.7 which would require the applicant to coordinate their construction schedule with CUS to insure that adequate capacity is available to provide for the Project." (AR 1263.) (Boldface in original.)

(3). Table 4.13.A: California Utilities Service Estimated Wastewater Flow (AR 1264)

	Gallons per day (GPD)
CSU Existing Connections	220,000
Oaks Subdivision (Approved)	2,700
Harper Canyon Subdivision (Proposed)	5,200
Ferrini Ranch Subdivision (Proposed)	63,300
Corral De Tierra Neighborhood Retail Village (Subject Project)	34,161
Approximate Total	325,361

(4). Level of Significant Prior to Mitigation

"**Wastewater**. Based on the current permitted wastewater capacity of the CUS and the estimated treatment requirements of the Project, there would be no significant impacts upon CUS wastewater facilities or the ability of CUS to meet wastewater treatment demands of current discharges and those of the Project. According to Monterey County General Plan, Policy 53.1.4, the sewer facilities of the Project would connect to the existing 12-inch line adjacent to the Site. Moreover, sewage disposal would need to follow the requirements to be connected to a County-approved sanitary septic or sewage treatment facility (Monterey County Planning Ordinance Title 15, Public Services, Chapter 15.20 Sewage Disposal). Therefore, no mitigation measures are required." (AR 1264-1265.) (Boldface in original.)

(5). Mitigation Measure 4.13.7

"**Capacity of Wastewater Treatment Facility.** Prior to approval of any building permits, the applicant shall verify that there is sufficient capacity in the California Utilities Service, Inc. (CUS) wastewater treatment facility to address the wastewater needs of the Project. If the CUS facility has exceeded 60% of its existing capacity or the Project would cause the facility to exceed its permitted capacity, then the County of Monterey would not issue a building permit until such time as the CUS has attained a revised permit from the Regional Water Quality Control Board." (AR 1267.) (Boldface in original.)

(C) January 12, 2011 Planning Commission meeting – response to comments

"H. Ability of California Utilities to Treat Wastewater. A concern was expressed that the information in the EIR was incorrect regarding the ability of the California Utilities System to treat the wastewater generated by this project. This was based upon a claim that a foot survey

had been made of all the homes in the service area and that the wastewater system is way over capacity. The DEIR does identify that the proposed project in the cumulative condition has the potential along with other proposed project to result in a need for additional capacity to be constructed at the existing wastewater treatment facility. Staff did research the existing number of service connections and permitting capacity and confirmed this information with the State when preparing the FEIR and those findings are reported in the FEIR. There is existing capacity for the wastewater for this project within the existing plant." (AR 8280.) (Underliniation in original.)

(D). April 6, 2010 email from Ms. Knaster to Mr. VanHorn

"Roger: I just read the letter from CUS re Omni re 'can and will serve' for wastewater. The 2nd page indicates that if they exceed the 300,000 they would have to expand the capacity and this would have to be approved by the Regional Board. My guess therefore is that CUS isn't planning to expand right now. While you can still ask them whether they have plans to expand, an additional question to them is 'what would it take besides a discharge permit revision to upgrade your capacity'? Is there room for expansion of the plant? Where do they discharge?

"We have a Thursday deadline for getting material to our consultant, so hopefully you will be able to connect with CUS. Adcock wrote the letter to us 831-424-0442.

"We still also still have to discuss whether as a County we would approve the project based upon the assumption that it is first come first serve. Does the County have to worry about whether Ferrini can be served for all of its project? I think we started to discuss this, but will have to finish the discussion so we can write the impact conclusions in the DEIR". (AR 10008.)

(D). Courts analysis

The County had concerns about the capacity and treatment of wastewater from the cumulative impacts of the Project and other proposed developments. However, there is substantial evidence to support the mitigation measures that render the Project's contributions to less than significant impact and the County did not abuse its discretion.

(X). Reports not available for public review – missing EIR references

The Coalition notes that there were four (4) reports that were relied on in the EIR that were not available for public review, i.e., infiltration report by Grice, traffic impact analysis by Higgins for Wang project, Ferrini Ranch traffic impact analysis report by Higgins, and a hydrology report by the MCWRA. The Coalition argues that the EIR did not fulfill the

informational function of CEQA. (*Sunnyvale West Neighborhood Association v. City of Sunnyvale* (2010) 190 Cal.App.4th 1351, 1388, Guidelines, § 15087 (c)(5).)

The County counters, joined by Omni, that none of the documents at issue were incorporated by reference into the EIR and were not required to be available. (Guidelines, § 15150 (b).) And because the documents were only cited and not relied on in the EIR, they do not have to be made available. (*El Morro Community Assn. v. California Dept. of Parks & Recreation* (2004) 122 Cal.App.4th 1341, 1354, fn. 5.) Further, the Coalition should have requested the documents under the Public Records Act.

(A). Infiltration report by Grice

(1). Assessment of potential impact of proposed on-site stormwater disposal system dated November 23, 2009 by Moore Twining Associates

"The scope of work conducted, as delineated in our proposal (dated November 12, 2009), included reviewing site plans and available geotechnical reports and stormwater disposal system design information, and review of anticipated groundwater levels based on currently available groundwater data. In addition, the work scope included preparation of an updated liquefaction and seismic settlement analyses, including consideration of the potential impact of the stormwater disposal systems. Our scope of work did not include any additional subsurface exploration, groundwater modeling, or a formal analysis of groundwater mounding. The actions undertaken during the investigation are summarized as follows:

[¶] ... [¶]

2.2.3 A report entitled: 'Infiltration Testing for the proposed Phelp's Center, Corral De.Tierra @ Highway 68, Corral De Tierra, California,' prepared by Grice Engineering, Inc., dated September 2008, was reviewed. This report is referred to herein as the 'Infiltration Testing Report.'" (AR 1576.)

"Based on discussions with Mr. Nathaniel Milam with Whitson Engineers, it is understood that Whitson utilized the data contained in the Infiltration Testing Report to derive infiltration rates for the stormwater disposal facilities. For the higher capacity Option 2, an infiltration volume of about 5-acre feet infiltrated over a total area of 0.9 acres, at a rate of 3.2 cubic feet per second for a total 19-hour period, were calculated by Whitson Engineers as a result of the 100-year storm. (AR 1578.)

"The following conclusions are based on our review of documents and the aforementioned evaluations.

"Based on our evaluations, it is anticipated that the rise in the groundwater table below buildings with a minimum setback of 30 to 50 feet from the infiltration areas, resulting from the design infiltration rate of 5 acre feet over a 19 hour period, would not exceed about 1 to 1 ½ feet.

"The proposed Corral De Tierra commercial project site would be subject to liquefaction and seismic settlement as a result of the design level seismic event. Preliminary estimates of seismic settlements range from about 2 ½ to 7 inches for the conditions not impacted by stormwater infiltration (groundwater depth of 15 feet BSG).

"The estimated impact of stormwater infiltration (rise in the groundwater levels) on the magnitude of seismic settlement was assessed. The results indicate that a rise in the groundwater level of 1 ½ feet would produce about ½ inch of additional seismic settlement. Accordingly, a range of seismic settlement of 3 to 7 ½ inches would be estimated for the building areas in the event that the design seismic event were to coincide with the 100 year storm event. Considering that the project will need to be designed to address the seismic settlements (preliminarily estimated to range from about 2 ½ to 7 inches), these higher seismic settlements of 3 to 7 ½ inches, associated with the stormwater disposal, would not require significantly different mitigation measures. Additionally, the potential for the design level seismic event (10 percent chance of occurring in a 50 year period) to occur at the same time as the 100 year storm event is extremely low. Therefore, the potential impact of the infiltration type stormwater disposal system on liquefaction susceptibility is considered low.

"It has been our experience that several structural and ground modification measures could be used to mitigate the range of seismic settlements of 3 to 7 ½ inches estimated in the event that the design seismic event were to coincide with the 100 year storm event. These measures include deep foundations and grade beams, stone columns (vibro-compaction), deep soil mixing, injection grouting, etc." (AR 1580.)

(2). Whitson Engineers Supplement #2 to Preliminary Drainage Study

"Option 1 - Retention and Percolation with Discharge At Or Below Pre-Development Peak[.]This is the option that was investigated by Schaaf & Wheeler in the Preliminary Drainage Study dated July 30, 2002. It was assumed that off-site drainage from the adjacent hillside would not enter the proposed retention system. Discharge from the site retention system would be limited to the estimated pre-development site runoff in both the 10- and 100-year cases. The model outlined in the Preliminary Drainage Study was used as the basis for the calculations performed here. The soil percolation rate was updated to 3.6 inches per hour, as recommended in *Infiltration Testing for the Proposed Phelps Center* by Grice Engineering and Geology, dated September 2008. (The Schaaf & Wheeler report assumed a soil percolation rate of 3.0 inches per hour.) The results of the analysis are presented in Table 1.

"The case analyzed in the previous Supplemental Drainage Report dated February 27, 2008, in which it was assumed that no percolation would occur, is not revisited in this report, since soil percolation tests have been completed." (AR 2114.) (Boldface and italics in original.)

"Percolation was calculated as the product of the percolation facility footprint and the design percolation rate as recommended in *Infiltration Testing for the Proposed Phelps Center* by Grice Engineering, Inc." (AR 2116.) (Italics in original.)

(3). Coalition letter dated February 3, 2012 to Board of Supervisors

"Later in the DEIR, there are references to a document called 'Infiltration Testing for the Proposed Phelps Center' by Grice Engineering and Geology, dated September 2008. This is one reference: 'The soil percolation rate was updated to 3.6 inches per hour, as recommended in Infiltration Testing for the Proposed Phelps Center by Grice Engineering and Geology, dated September 2008.' However, the Grice report is not available, despite repeated requests by me and other members of the public to County Planning and County Water Resources. The public and the decision makers do not know where on the site the percolation tests were done, which is relevant because the stormwater infiltration chambers were originally proposed for multiple locations at the site that were different areas of the project site than currently proposed. Further, it is unknown whether the percolation tests were monitored by MCWRA, as required when the percolation is for stormwater purposes." (AR 2832.)

(4). Email date November 3, 2011 from the Coalition to County

"I am seeking a copy of a report called something like 'Infiltration Testing for the Proposed Phelps Center by Grice Engineering and Geology dated September 2008. Would you please email that to me as soon as possible?'" (AR 3054.)

(5). Letter dated January 4, 2012 from the Coalition to the Board of Supervisors

"The percolation rate at the site of the proposed 'recharge' chambers is of key importance. The percolation rate may prohibit any actual percolation to the usable aquifer. This situation would be similar to that found by the research for the Heritage Oak subdivision project in Aromas in north Monterey County, where the on-site percolation analysis showed that there were clay lenses that would prohibit onsite recharge from reaching the overdrafted aquifer. Here, at the proposed Omni shopping center site, there is no evidence of percolation rate at the location of the stormtech chambers. The borings that have been disclosed indicate that there are clay layers present at the site that would prevent percolation of recharge from reaching the aquifer. Although there is a study of the onsite percolation, called the Grice Report, which is referenced in various EIR references, the report itself is not available for public inspection. I have asked both County planner John Ford and MCWRA staff member Tom Moss for the report, and both told me they did not have it. This important report should be available for public review and scrutiny." (AR 8372-8373.)

(6). Court analysis

Guidelines section 15087 subd. (c)(5) provides that "[t]he address where copies of the EIR and all documents referenced in the EIR will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours."

Guidelines section 15150. "Incorporation by Reference

(a) An EIR or negative declaration may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the text of the EIR or negative declaration.

(b) Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or negative declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the public in an office of the lead agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the lead agency does not have an office in the county.

(c) Where an EIR or negative declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.

(d) Where an agency incorporates information from an EIR that has previously been reviewed through the state review system, the state identification number of the incorporated document should be included in the summary or designation described in subdivision (c).

(e) Examples of materials that may be incorporated by reference include but are not limited to:

(1) A description of the environmental setting from another EIR.

(2) A description of the air pollution problems prepared by an air pollution control agency concerning a process involved in the project.

(3) A description of the city or county general plan that applies to the location of the project.

(4) A description of the effects of greenhouse gas emissions on the environment.

(f) Incorporation by reference is most appropriate for including long, descriptive, or

technical materials that provide general background but do not contribute directly to the analysis of the problem at hand."

The Moore Twining Associated 2009 assessment noted the 2008 Grice infiltration report with the understanding that it has been used by Whitson Engineers to derive infiltration rates, and it appears that Moore Twining independently reviewed the Grice report. Whitson Engineers used the Grice report to update the soil percolation rate.

The Grice report was not incorporated by reference into the EIR and there was no abuse of discretion.

(B). Traffic impact analysis by Higgins for Wang project

(1). Final EIR – comment by Omni and EIR response

"Page 380. Wang Traffic Analysis. The second-to-last paragraph on this page cites the Wang Subdivision Traffic Impact Analysis. This report is not cited in the bibliography (Chapter 9.D), nor is it referenced as a source document on p. 367. Please disclose where it can be reviewed by the public." (AR 259.)

"The commenter requests information on the availability of the Traffic Report for the Wang Subdivision mentioned on page 380. This report is available for review at the Resource Management Agency- Planning Department (County Planning Department File No. 010422)." (AR 274.)

(2). Final Traffic Report by Hexagon Transportation Consultants, Inc. September 1, 2009

"Effect of Highway 68 Widening

"TAMC has adopted a regional development impact fee program to fund improvements to state and county roadways, including Highway 68.

"The recent TAMC *Regional Impact Fee Nexus Study Update-Draft Report* (March 26, 2008) includes a project that would widen Highway 68 to four lanes from the existing four-lane segment at Toro Park to Corral de Tierra Road, a distance of 2.3 miles. This improvement would mitigate the project impacts at San Benancio Road and at Corral de Tierra Road. In addition, this improvement would result in a travel time reduction in the corridor. A portion of the roadway segment targeted for improvement has been analyzed for the net reduction in travel time that a widening improvement would provide. The Highway 68 segment studied was the 1.1-mile two-lane segment from the current end of the four-lane highway to the west end of Toro Park. The study found that the combined eastbound and westbound traffic during both AM and PM peak

hours over the 1.1-mile segment would incur a net reduction in travel time of approximately 286 seconds *(Wang Subdivision Traffic Impact Analysis,* Higgins Associates, March 9, 2007)." (AR 1754-1755.) (Boldface and italics in original.)

(3). February 3, 2012 letter to the Board of Supervisors from the Coalition

"The shopping center EIR also relies in key part and on key points on a traffic report from 2007 for the Wang Subdivision. (DEIR, p. 380.) A commenter asked about this report, pointing out that it was not in the bibliography or reference materials (comment 11-30). The shopping center FEIR response was inadequate because it did not provide the report, or make it part of the bibliography. In fact, the Wang DEIR has not been released to the public, and the subdivision traffic report from 2007 is not a public record. After I requested the traffic report on January 9, 2012, County staff told me that the traffic report was not a public record. Without access to a key report relied on by the shopping center EIR traffic expert, the decisionmakers and the public cannot adequately comment or critique the project, and the decision makers are not adequately informed under CEQA." (AR 2822.)

(4). April 14, 2010 letter from the County to Pacific Municipal Consultants

"Due to the age of the Administrative Draft EIR (March 15, 2006) on the Wang 26-Lot Subdivision Project, County staff has informed the applicant that the document needs to be refreshed and updated on many levels to be current in 2010 - and that the long-outstanding hydrology issue be addressed to the satisfaction of the County of Monterey. The following notes and comments are meant to guide you through preparing a revised scope of work to bring the Wang EIR current in 2010 and to prepare a Revised Project Specific Hydrologic Report." (AR 2942.)

"**TRAFFIC**. Since the preparation of the Administrative Draft EIR on the Wang Project March 15, 2006, the County's approach and TAMC's approach to traffic impacts and mitigation along Hwy 68 have come under great scrutiny through numerous involved discussions. Presently, the County is striving for consistency in language and approach across several EIRs under preparation from different starting points in time, yet none have come yet for certification: Ferini, Harper, Wayland/Merrill, Wang, etc.

"The Wang EIR needs to be updated for consistency with recent County determinations and approaches to traffic mitigation along HWY 68." (AR 2944.) (Boldface, underliniation and italics in original.)

(5). January 20, 2012 letter from the County to the Coalition

"This letter is written in response to your Public Records Act Request dated January 9, 2012 that was sent to Taven Kinson Brown via email asking for a copy of the Wang Subdivision Traffic Report written by Higgins Associates sometime around March of 2007. This report is a draft and has not been released for public disclosure." (AR 3191.)

(6). Court analysis

The Coalition made a public records request for the Wang traffic report and the request was rejected by the County.

The EIR relies on the Wang traffic analysis for mitigation of Project impacts and the County abused its discretion in not making the report available for the public's review. However, noncompliance with CEQA's information disclosure requirements is not necessarily reversible; prejudice must be shown. (*Bakersfield Citizens* vs. *City of Bakersfield* (2004) 124 Cal. App. 4th 1184 at 1197-1198) Prejudice occurs if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process. (*Irritated Residents* vs. *County of Madera* (2003) 107 Cal. App. 4th 1383, at 1391.)

The EIR relied primarily on the Harper Canyon Traffic Study, the Hexagon Study, and the TMAC Study. The Hexagon Study referenced the Wang Study. The EIR grappled with the traffic issue and found all but one of the project level impacts to be significant and unavoidable. Once a project is identified as having an impact that is significant and unavoidable, mitigations are mandated. The absence of this document did not hinder informed decision making and public participation in the traffic analysis. Petitioner has not shown how the availability of the draft study would have altered the analysis, conclusions or mitigation measures concerning the traffic impacts.

(C). Ferrini Ranch traffic impact analysis report by Higgins

(1). Final EIR

(a). Condition 93 – Mitigation Measure 26 (Final EIR 4.12.2)

"Prior to the issuance of each building permit, the owner shall pay the TAMC Regional Development Impact Fee (RDIF) in effect at that time to mitigate the project's cumulative impacts to the regional roadway system." (AR 65.)

(2). Draft EIR – 4.12.6 Cumulate Impacts

(a). Cumulative Adverse Impact on Level of Service

"Implementation of the Project would contribute to a cumulative increase in traffic volumes that would result in or exacerbate unacceptable levels of service on the regional roadway network. This would be considered **a significant cumulative impact.**

"A number of other projects have been proposed within the geographic study area that have not yet been approved or even formally submitted for evaluation. This list of cumulative projects relevant to this traffic study was developed in consultation with County staff and is included in the Traffic Report in Appendix H of Volume II of this EIR. The geographic reach of the Projects considered with the cumulative analysis encompasses a regional area, including growth from several Monterey County cities as well as Projects in the unincorporated area. The Project plus cumulative growth would impact several intersections on SR-68 as described below.

"**SR-68/San Benancio Road.** In the cumulative scenario, the intersection operates at unsatisfactory LOS during both peak hours. The addition of Project traffic would increase the v/c ratio by more than 0.01, which is considered a significant Project impact per County of Monterey Significance level of service guidelines.

"**SR-68/Corral de Tierra Road.** In the cumulative scenario, the intersection operates at unsatisfactory LOS during both peak hours. The addition of Project traffic would increase the v/c ratio by 0.01 or more and the intersection would degrade from LOS E to LOS F. Addition of Project traffic causes a significant Project impact per County of Monterey Significance level of service guidelines.

"**SR-68/Laureles Grade.** In the cumulative scenario, the intersection operates at unsatisfactory LOS during the p.m. peak hour. The addition of Project traffic would increase the v/c ratio by more than 0.01, which is considered a significant Project impact per County of Monterey Significance level of service guidelines." (AR 1228-1229.) (Boldface in original.)

(b). Mitigation Measure 4.12.4

"**Impact Fee for Cumulative Traffic Impacts at SR-68/San Benancio Road; SR-68/Corral de Tierra Road; and SR-68/Laureles Grade**. Prior to the issuance of building permits, the Project applicant shall comply with one of the following actions to address cumulative impacts to intersections along SR-68:

> 1. Upon issuance of each building permit for proposed development on the Site, the applicant shall contribute his proportionate fair share, as calculated by the County, towards the 'State Route 68 Commuter Improvements' through payment of the TAMC Regional Development Impact Fee (RDIF) in effect at that time. The TAMC RDIF payment will be earmarked for completion of the Cal Trans Project Study Report (PSR) for the 2.3 miles 'State Route 68 Commuter Improvements' project identified with the TAMC RDIF; or

2. Prior to the issuance of the first building permit for proposed development on the Site, the applicant shall pay the entire fair share for the proposed development toward the 'State route 68 Commuter Improvements' through payment of the TAMC RDIF or ;
3. The Project applicant shall fund, initiate and complete a Caltrans Project Study Report for the 2.3 mile 'State Route 68 Commuter Improvements' project, identify the total roadway improvement costs, as well as each Project applicant's proportionate fair share of those costs. If costs of the PSR exceed the Project's proportionate fair share of the T AMC RDIF obligation, the applicant shall be reimbursed the amount in excess of the proportionate fair share. Monterey County will enter into a reimbursement agreement with the Project applicant to refund the costs in excess of the proportionate fair share of the TAMC RDIF as additional fees are collected from other applicants and sources." (AR 1233-1234.) (Boldface in original.)

(3). Hexagon Transportation Consultants, Inc. Final Traffic Report – September 1, 2009

"Cumulative Impacts and Mitigation Measures

The project's contribution to any measures that are proposed to mitigate significant cumulative impacts must be fair share continuations. 'Fair share' means the proportional share attributable to a new development project of the cost of providing additional service facility capacity necessary for the new development project to meet the adopted level of service standards for that service facility. Fair share is that portion of the cost of providing such additional service facility capacity, excluding the cost of remedying any existing capacity deficiencies in that service facility, calculated as the ratio between the burden placed on the service facility by the new development project, and the total burden on that service facility from existing uses, the proposed new development project, and reasonably anticipated cumulative development.

"The project would cause a significant cumulative impact on traffic conditions at three study intersections, as described below.

"*Impact: The PM peak-hour level of service at the intersection of Highway 68 and Laureles Grade would be an unacceptable LOS D under cumulative conditions without the project and the addition of project trips would cause the critical-movement volume-to-capacity ratio (VIC) to increase by .01 or more. This constitutes a significant cumulative impact by Monterey County standards.*

"Mitigation Measure: (same as project mitigation) Payment of the TAMC fee would constitute fair-share mitigation of the cumulative impact. The project would be subject to these fees.

"*Impact: The AM peak-hour level of service at the intersection of Highway 68 and Corral de Tierra Road would be an unacceptable LOC D under cumulative conditions without the project, and the addition of project trips would cause the critical-movement volume-to-capacity*

ratio (VIC) to increase by .01 or more. The PM peak-hour level of service at the intersection would be an unacceptable LOS E under cumulative conditions without the project, and the addition of project trips would cause intersection operations to degrade to an unacceptable LOS F. These constitute a significant cumulative impact by Monterey County standards.

"Mitigation Measure: (same as project mitigation) Payment of the TAMC fee would constitute fair-share mitigation of the cumulative impact. The project would be subject to these fees.

"*Impact: The AM peak-hour level of service at the intersection of Highway 68 and San Benancio Road would be an unacceptable LOS D under cumulative conditions without the project and the addition of project trips would cause intersection operations to degrade to an unacceptable LOS E. The PM peak-hour level of service a[t] the intersection would be an unacceptable LOS D under cumulative conditions without the project and the addition of project trips would cause the critical-movement volume-to-capacity ratio (VIC) to increase by .01 or more. These constitute a significant cumulative impact by Monterey County standards.*

"Mitigation Measure: (same as project mitigation) Payment of the TAMC fee would constitute fair-share mitigation of the cumulative impact. The project would be subject to these fees. The intersection level of service results are summarized in Table ES I." (AR 1720-1721.) (Boldface, interlineation and italics in original.)

"**Cumulative Conditions with Regional Projects**

"Various approved and proposed projects throughout the region, including the Cities of Marina, Seaside, San City, Monterey, Del Rey Oaks, Salinas, as well as Monterey County are anticipated to be developed, or at least partially developed, within the next *25* years. Trip generation estimates from these approved and proposed projects in the region were used along with traffic growth rates from the AMBAG traffic forecasting model to develop traffic estimates for the study intersections. The resulting cumulative with regional projects traffic estimates for the study intersections therefore include the cumulative with project traffic volumes plus all approved and proposed projects projected for the study area in the next 25 years. The study intersections were analyzed for level of service under cumulative conditions with regional projects *(Ferrini Ranch Subdivision Traffic Impact Analysis,* Higgins Associates, April 18, 2008).

"The results of the analysis show that six of the study intersections would operate at unacceptable levels of service under cumulative conditions with regional projects. According to the Higgins study, the recommended mitigation for these conditions is to widen Highway 68 to four lanes for its entire length. The project's payment of the T AMC impact fee would constitute a fair share contribution toward the cost of widening Highway 68." (AR 1775.) (Boldface and italics in original.)

(4). Coalition Public Records Act request dated August 16, 2011

"This is a request under the California Public .Records Act on behalf of The Open

Monterey Project to inspect and possibly to copy all of the following records regarding the Ferrini Ranch project:

> 1 . All parts of the administrative draft environmental documents that have been provided to the Ferrini Ranch applicant or any other member of the public." (AR 2973.)

(5). Response by County to a request for Ferrini Ranch documents

On March 23, 2011, you placed a request, via phone call, for electronic copies of the following report relative to the Ferrini Ranch project:
1) The Hydrogeologic Report; and
2) The Traffic Report

"After a comprehensive review of the file, I need to inform you that these specific reports were prepared under contract of PMC for the preparation of the EIR.

"At this particular time, information within these is still be analyzed and evaluated by the appropriate departments for the preparation of the DEIR; therefore these documents are not public documents at this particular time, but will be released for public review at the time of circulation of the Draft EIR. At that time, electronic copies can be supplied to your office." (AR 2988.)

(5). Court analysis

As noted in the EIR, the Project would cause a significant cumulative impact on traffic. The 2008 Ferrini traffic impact analysis's recommended mitigation was used in the EIR.

In 2011, the County stated that the Ferrini traffic impact analysis would be available for public review, but it appears this was not the case, and the County abused its discretion. However, noncompliance with CEQA's information disclosure requirements is not necessarily reversible; prejudice must be shown. (*Bakersfield Citizens* vs. *City of Bakersfield* (2004) 124 Cal. App. 4th 118 at 1197-1198) Prejudice occurs if the failure to include relevant information precludes informed decision making and informal public participation, thereby thwarting the statutory goals of the EIR process. (*Irritated Residence* vs. *County of Madera* (2003) 107 Cal. App. 4th 1383, at 1391.)

The EIR relied primarily on the Harper Canyon Traffic Study, the Hexagon Study, and the TMAC Study. The Hexagon Study referenced the Ferrini Study. The EIR grappled with the traffic issue and found all but one of the project level impacts to be significant and unavoidable. Once a project is identified as having an impact that is significant and unavoidable, mitigations are mandated. The absence of this document, like the absence of the Wang report, did not hinder informed decision making and public participation in the traffic analysis. Petitioner has not shown how the availability of the draft study would have altered the analysis, conclusions or mitigation measures concerning the traffic impacts.

(D). Hydrology report by the MCWRA.

(1). Draft EIR

(a). **Groundwater Occurrence and Flow**

"The El Toro Primary Aquifer System is, in part, hydrogeologically contiguous between the watershed subareas of Corral de Tierra, San Benancio Gulch, Watson Creek, at least the eastern portion of Laguna Seca, and Calera Canyon (north of Chupines fault), which allows groundwater to flow between the subareas (Kleinfelder, 2004). In addition, the aquifers of the Laguna Seca subarea, which are to the west of the Toro Planning Area, are contiguous with the northwestern margin of the Toro Planning Area (Corral de Tierra subarea) and groundwater flows from the Toro Planning area into the Laguna Seca subarea (Geosyntec, 2007).

"The components of a water budget prepared by Geoyntec (2007), which was based on the results of previous studies, are illustrated in Figure 4.7.6. This water budget includes the following components.

> • Groundwater underflow from the Toro Planning Area to the Laguna Seca subarea is estimated to range between 200 to 500 acre-ft/year ('AFY') (Yates *et al.*, 2002). The direction of groundwater flow between the Toro and Laguna Seca Planning Areas depends on local groundwater gradients, which are controlled by groundwater pumping (Geosyntec, 2007). Most of the southern, eastern, and northeastern margins of the Toro Planning area are underlain by relatively impermeable basement rocks, so inflow and outflow of groundwater in these areas is likely minor (Geosyntec, 2007)." (AR 1054.)

(b). Existing Conditions – Supply, Treatment and Distribution of Water

"The Site is currently undeveloped and is within the Ambler Park Water System service area. The Ambler Park Water System is a public water system owned and operated by the

California American Water Company (Cal-Am) (Geosyntec, 2007). CalAm is responsible for ensuring that water supplies meet water demand and that State and federal water quality standards are achieved within the Ambler Park Water System service area.

"The Ambler Park Water System serves Ambler Park, Paseo Pravado, Harper Canyon, and Rimrock subdivisions in the northern Corral de Tierra and northwestern San Benancio Subarea (Geosyntec, 2007). The water supply is distributed for residential and commercial use. The Ambler Park Water System includes approximately 250,000 gallons of aboveground tank storage and a water treatment plant that was constructed in 1974 to remove iron and manganese, and has recently been modified to remove arsenic (Jordan, 2008). The water treatment plant also conducts chlorination and pH adjustments. The maximum flow-through capacity of this treatment system is approximately 967 afy.

"Water supply for the Ambler Park Water System is provided from three water supply wells (Ambler Park Wells #4, #5, and #6) located approximately 500 feet southeast of the Site. Figure 4.13.1 illustrates the location and construction details for the Ambler Park water supply wells. Ambler Park Well #4 is completed to a depth of approximately 440 feet below ground surface (bgs); Ambler Park Well #5 is completed to approximately 480 feet bgs, and Ambler Park Well #6 is completed to approximately 580 feet bgs (Geosyntec, 2007). The Ambler Park water supply wells are located within the Corral de Tierra subarea, which is one of five subareas in the water shed-based El Toro Planning Area located in the north-central portion of the County of Monterey in the Salinas Valley Groundwater Basin. WorleyParsons Komex projected the Ambler Park Wells on cross section D-D' prepared by Geosyntec (2007) and cross section A-A' prepared by Kleinfelder (2004). The Geosyntec (2007) and the Kleinfelder (2004) cross sections are shown in Figures 4.13.2 and 4.13 .3, respectively. According to these cross sections, the Ambler Park water supply wells are screened or perforated intervals are entirely within the continental deposits (commonly called the 'Aromas-Paso Robles'), which is one of the units that comprises the El Toro Primary Aquifer System as defined by Geosyntec (2007). Refer to Chapter 4.7 Hydrology and Water Quality for a detailed discussion of the hydrostratigraphy near the Site. The amount of water obtained from this source varies from year to year and is primarily dependent on weather conditions and demand.

"The pumping capacities of Ambler Park Wells #5 and #6 are approximately 400 and 600 gallons per minute (gpm), respectively; and the capacity of Ambler Park Well #4 is less than 50 gpm (Geosyntec, 2007). Based on these reported pumping capacities, the theoretical maximum production capacity of the Ambler Park Water System is approximately 1,500 gpm or 2,418 AF/Y. However, the current maximum treatment system capacity is approximately 967 AF/Y so this quantity is likely the maximum annual production capacity for the Amber Park Water System, assuming there is sufficient groundwater to supply this production rate. The maximum production capacity of the Ambler Park Water System was not reported in any of the sources reviewed for this analysis or provided by CalAm. Since 2000, production has been primarily from Well #5 and annual production rates for the Ambler Park Water System have increased from 250 AF/Y in 2001 to nearly 300 AF/Y in 2005 (Geosyntec, 2007). Production rates for the Ambler Park Water System have steadily increased at a rate of approximately 10 AF/Y since 2001 as illustrated on Figure 4.13.4 and Geosyntec (2007) projected this increase in production rate through 2010. Based on this analysis, the annual production rate in 2010 would reach

approximately 325 AF/Y (Geosyntec, 2007). Annual production for the Ambler Park Water System in 2006 and 2007 was not reported in the sources reviewed for this evaluation or provided by Cal-Am." (AR 1235-1236.)

(2). September 13, 2011 email from Mr. LeWarne (Assistant Director, Environmental Health) to Mr. Phillips (Omni) et al.

"It is my understanding that WRA as part of their project review for the Omnicommercial subdivision performed a hydrology analysis. I am not sure what the whole scope of the study/report was but it did establish which way the aquifer flows. Tom Moss had mentioned this study to Roger VanHorn. EHB is in the middle of reviewing reports related to hazardous materials contamination on the adjacent parcel (old gas station) and how it may impact groundwater and soils especially in relation to the storm water system being proposed. Tom Moss indicated to Roger VanHorn that he would need to get permission from Curtis to obtain a copy of the report. This is not the El Toro Groundwater Study. Jon Goni from the Regional Water Quality Control Board will be evaluating the site contamination in relation to groundwater contamination. It appears Curtis is out of the Country and Tom is on vacation. This report/study would be invaluable information as far as assessing potential groundwater impacts from the HM contamination. Is there some way that we can obtain a copy of this study? It would be very much appreciated as part of the analysis and will have direct bearing as part of our analysis on the Omni hearing on October 4, 2011[.]" (AR 4744.)

(3). October 15, 2011 CapRock Geology, Inc. Workplan for Soil Mitigation – Hydrogeologic Setting

"The site is in an area of shallow groundwater (approximately 20 - 30 feet below ground surface).

"Generally, groundwater flow direction in this area is to the west and towards the Monterey Bay. This water table may not be a permanent water table, and could represent a perched saturated zone.

"Groundwater was encountered during installation of the soil borings at approximately 17 feet bgs. Groundwater gradient was found in the groundwater monitoring wells at the site to flow in a southerly direction at .0047 to .0064 ft/ft in August 2011.

"It should be noted that flow directions change due to strong local pumping and variations in recharge." (AR 10276.)

(4). Court analysis

Although it is not clear to the Court the impact of the MCWRA hydrology report has on the findings and mitigation in the EIR, it appears that the report involves the aquifer flow and the

gas station contamination. Given that the gas station contamination issue is resolved above, and the report was not incorporated by reference, there was no abuse of discretion.

(XI). The Project's consistency with 2010 General Plan Policies PS-3.1 and PS-3.2: Long term Sustainable Water Supply

The Coalition contends that the Project became subject to the 2010 General Plan when Omni withdrew its subdivision application and made a lot line adjustment application. Because the Project is subject to the 2010 General Plan, the County was required to make a finding of Long Term Sustainable Water Supply for the Project under 2010 General Plan policies PS-3.1 and PS-3.2. Instead, the County found there is an Adequate Long Term Water Supply.

Omni argues that the 1982 General Plan was in effect when the Draft EIR was prepared, and if the 2010 General Plan applies, CEQA only requires that an EIR contain a discussion of inconsistencies with the plan, and the County found that the Project was consistent with the 2010 General Plan. Further, the County adopted a 2010 General Plan finding because the words "adequate" and "sustainable" are synonymous, and the findings regarding water supply are consistent with the requirements of CEQA, as set for in *Vineyard, supra*.

(A). Applicability of 2010 General Plan

(1). February 7, 2012 Notice of Determination – Findings Approval of Combined Development Permit and General Development Plan.

(a). Finding 1: "**CONSISTENCY** - The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

"a) The project has been amended to consist of a 99,970 square foot shopping center, consisting of 10 buildings (9 single story buildings, and a two story building). All buildings will maintain a 100 foot setback from Corral de Tierra and Highway 68. A storm water collection system and ground water recharge system are included within the project design. The site will comply with LEED Silver construction standards. References in this resolution to the 'Project' are to the project as herein described.

"b) **APPLICABLE PLAN AND APPLICABLE ZONING ORDINANCES**

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

- 2010 Monterey County General Plan
- Toro Area Plan,
- Monterey County Zoning Ordinance (Title 21)

"No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

"c) **SITE DESCRIPTION**

"The Site is located at 5 Corral de Tierra Road (Assessor's Parcel Numbers 161-571-003-000 and 161-581-001-000), within the Toro Area Plan. The Site is an 11-acre property designated as Commercial in the Land Use Plan of the General Plan. The approved project is a shopping center consistent with this land use designation.

"d) **SITE DESCRIPTION (ZONING)**

"The parcel is zoned 'LC-B-8-D', which allows the development of a shopping center with a Use Permit and General Development Plan. Mitigation measures and conditions of approval have been required that make the approved project fully comply with the requirements of the zoning district.

"e) LAND USE ADVISORY COMMITTEE

"Earlier versions of the project were referred to the Toro Land Use Advisory Committee (LUAC) twice for review. The LUAC reviewed the project on August 26, 2002 prior to the preparation of the Environmental Impact Report (EIR) whereby the LUAC recommended denial of the application citing numerous factors which were later evaluated in the EIR. The LUAC again reviewed the project on July 26, 2010 after the preparation of the EIR. Based on the LUAC Procedures adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, the second review by the LUAC was asked to focus on review of visual resources, building and parking layout, architectural design, landscaping and accessibility to public transit. The LUAC recommended approval of the application and recommended further analysis and possible reduction of the height of the proposed 50-foot-high tower, increased accessibility to public transit and the requirement of sufficient tree and plant coverage. These recommendations have been addressed in the 99,970 square foot redesign submitted by the applicant.

"f) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN020344. (AR 4-5.) (Boldface and all capitalization in original.)

(b). Finding 3: "CONSISTENCY - 2010 GENERAL PLAN

"The approved project has been determined to be consistent with Policy Nos. T-3.1, T-3.3 and C-1.3 of the 2010 General Plan.

"**EVIDENCE:**

"a) Policy C-1.3 of the 2010 General Plan requires that circulation improvements that mitigate Traffic Tier 1 direct on-site and off-site project impacts be constructed concurrently with new development; and requires that off-site circulation improvements that mitigate Traffic Tier 2 or Traffic Tier 3 impacts be constructed concurrently with new development or by fair share payment pursuant to Policy C-1.8, Policy C-1.11 and/or other applicable traffic fee programs that shall be made at the discretion of the County. The approved project has been conditioned to comply with this Policy through improvements required on Corral de Tierra Road and through payment of TAMC fees.

"b) **CONSISTENCY - 2010 MONTEREY COUNTY GENERAL PLAN POLICY T-3.1**. Policy T-3.1 states: *Within areas designated as 'visually sensitive' on the Toro Scenic Highway Corridors and Visual Sensitivity Map (Figure 16), landscaping or new development may be permitted if the development is located and designed (building design, exterior lighting, and siting) in such a manner that will enhance the scenic value of the area. Architectural design consistent with the rural nature of the Plan area shall be encouraged.*

"The Project's design has been reduced to 99,970 square feet and contains the following elements which are consistent with the Site's location in the critical viewshed: 1) A village component with strong internal pedestrian orientation; 2) parking around the perimeter on the eastern boundary to minimize parking and asphalt visible from the scenic corridors; and 3) architectural building design that is predominantly single story with variation in the pattern of building location providing visual interest. The revised design also includes increased perimeter landscaping along the scenic frontages using native plant material and berming. The combination of the site layout, architectural design of the center and a strong native landscape palate will enhance the scenic value of the area and be consistent with the rural character of this location. The applicant orally testified that he would remove the gas station; a condition of approval has been added to require that the gas station be removed prior to construction of the project.

"c) **CONSISTENCY - 2010 MONTEREY COUNTY GENERAL PLAN POLICY T-3.3**

"The approved project is consistent with the provisions of Policy T-3.3 which requires: *'Portions of County and State designated scenic routes shall be designated as critical viewshed as shown on the Toro Scenic Highway Corridors and Visual Sensitivity Map. Except for driveways, pedestrian walkways, and paths, a 100-foot building setback shall be required on all lots adjacent to these routes to provide open space and landscape buffers. This setback may be reduced for existing lots of record that have no developable area outside the setback and to accommodate additions to existing structures that become non-conforming due to this policy. New development shall dedicate open space easements over setback areas established by this policy.'*

"The proposed project includes development within a designated critical viewshed and area of visual sensitivity. The DEIR concluded that the proposed project would result in

significant potential impacts on visual resources and on the designated scenic corridors on Corral de Tierra Road and State Route 68 and the designated critical viewshed. The approved project includes a redesign to maintain all buildings outside of the 100 foot building setback and includes significant landscape buffer areas along the frontages on Corral de Tierra Road and State Route 68. The DEIR included a mitigation measure to expand the landscape areas along the road frontages for the proposed 126,523 square foot project. The 99,970 square foot project proposed by the applicant achieves or exceeds the mitigation measures contained in the DEIR. Therefore, the 99,970 square foot project is consistent with this Policy." (AR 6-7.) (Boldface, all capitalization and italics in original.)

(3). Finding 4: "GENERAL PLAN POLICY T-2.6

"The approved project is consistent with the provisions of this Policy, which require that '*Improvements to Corral de Tierra and San Benancio Roads shall be designed to accommodate bicycles, horses and people.*'

EVIDENCE:

"The project will provide sidewalks and bicycle lanes along Highway 68 and Corral de Tierra Road." (AR 8.) (Boldface, all capitalization and italics in original.)

(4). Finding 8: "GENERAL DEVELOPMENT PLAN -Monterey County Code requires a General Development Plan (GDP) prior to the establishment of uses/development if there is no prior approved GDP, and if: 1) the lot is in excess of one acre; or, 2) the development proposed includes more than one use; or, 3) the development includes any form of subdivision.

"**EVIDENCE**:

"a) Zoning Ordinance, Chapter 21.18 (Regulations for Light Commercial Zoning Districts). The approved project meets the size and number of uses criteria; therefore, a GDP is required to be approved prior to new development, changes in use, expansion of use, or physical improvement of the site.

"b) The project and General Development Plan as described in the plans for the approved project and accompanying materials were reviewed by the RMA-Planning Department, Monterey County Regional Fire Protection District, RMA-Public Works Department, Environmental Health Bureau, and the Water Resources Agency. The respective departments have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood; or the county in general.

"c) A General Development Plan has been approved that establishes the uses allowed; establishes parameters for site design issues such as scenic corridors, vehicle circulation, landscaping and building design; and assures water availability for the allowed uses and future changes in the use of the buildings.

"d) The General Development Plan allows staff review of proposed changes to the use of the buildings and to verify that the proposed changes are consistent with the overall intent of the approval of commercial uses and consistent with the water use limitations of the site.

"e) Materials in Planning File PLN020344." (AR 9.) (Boldface and all capitalization in original.)

(5). Finding 9: WATER SUPPLY - The project has an adequate long-term water supply and manages development in the area so as to minimize adverse effects on the aquifers and preserve them as viable sources of water for human consumption.

"**EVIDENCE:**

"a) The existing groundwater basin in the El Toro area is in overdraft and this has resulted in the placement of the 'B-8' Zoning Overlay District in an area of the Toro Area Plan including the project site. The project would use a maximum of 9.0 acre-feet per year (AFY) of water and the underground water recharge system approved for the 99,970 square foot project would return 9.66 AFY of water to the underground basin which results in a net positive water balance.

"b) The project has been conditioned to ensure that the water use is limited and maintained at 9.0 AFY. The Planning Director and General Manager of the Water Resources Agency have been given the authority through the conditions of approval to monitor the use of water at the site in order to ensure that the positive water balance is achieved and maintained.

"c) The 'B-8' District regulations allow the commercial development of the site provided that the development can be found to not adversely affect the constraints which caused the 'B-8' District to be applied to the property.

"d) Water for the development would be provided by the Ambler Park Water System." (AR 9-10.) (Boldface and all capitalization in original.)

(6). Finding 10: "LOT LINE ADJUSTMENT- Pursuant to Section 66412 of the California Government Code (Subdivision Map Act) lot line adjustments may be granted where among other things:

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

"**EVIDENCE**:

"a) The parcel is zoned LC-B-8-D (Light Commercial with a Building Site and Design Control overlays).

"b) The project area has a total of 10.98 acres. The proposal would adjust the lot line between two existing parcels (5.6 acres and 5.38 acres in area) to create Parcel A (1.12 acres) and Parcel B (9.86 acres).

"c) The lot line adjustment is between more than one and less than four existing adjacent parcels. The two existing parcels are located along the east side of Corral de Tierra Road south of Highway 68.

"d) The lot line adjustment will not create a greater number of parcels than originally existed. Two contiguous separate legal parcels of record will be adjusted and two contiguous separate legal parcels of record will result from the adjustment. No new parcels will be created.

"e) The proposed lot line adjustment is consistent with the Monterey County Zoning Ordinance (Title 21). Staff verified that the subject property is in compliance with all rules and regulations pertaining to the use of the property and that no violations exist on the property. The light commercial zoning designation does not have a minimum parcel size. The Proposed Lot Line Adjustment will not create any lots that would require a variance from any Zoning Ordinance Standard.

"f) The Proposed Lot Line Adjustment is consistent with the B-8 District as discussed under Finding and Evidence 2 (above).

"g) SEWER/WATER/ACCESS

"The subject site is served by an approved water system and sewer system. The site will have access from both Corral de Tierra and Highway 68.

"h) RECIPROCAL ACCESS

"A condition of approval requires that a legal instrument be recorded on both properties to require that the properties provide shared access and parking for the newly configured lots. This will allow development of both parcels without adding to the number of driveways.

"i) As an exclusion to the Subdivision Map Act, no final map is recorded for a Lot Line Adjustment. In order to appropriately document the boundary changes, a Certificate of Compliance for each new lot is required per a standard condition of approval in Exhibit 1.

"j) The project planner conducted various site inspections to verify that the project would not conflict with zoning or building ordinances.

"k) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project

File PLNl 10077 appeal of PLN020344." (AR 10-11.) (Boldface and all capitalization in original.)

(7). Development Project Application submitted by Omni in 2011

The application was for a "Combined Development Permit Amended", "Use Permit [] Amended", "Design Approval Amended", "General Development Plan Amended", and a "Lot Line Adjustment." (AR 10272-10273.)

(8). Court analysis

The Court finds that the 2010 General Plan applies to the Project because in part, the County made findings that the Project was consistent with Policy Nos. T-31, T-3.3 and C-1.3 of the 2010 General Plan.

(B). Policies PS-3.1 and PS-3.2

(1). See Findings 1, 3 and 9 *supra*.

(2). Draft EIR – Table 1.B: Summary of Mitigation Measures

4.8 Landuse and Planning: "The Project is consistent with all the use policies applicable to the Project except for Policy 26.1.4.3 which requires evidence of an assured long-term water supply before a subdivision can be approved." (AR 861.)

(3). 2010 General Plan – Long Term Water Supply

PS-3.1: "Except as specifically set forth below, new development for which a discretionary permit is required, and that will use or require the use of water, shall be prohibited without proof: based on specific findings and supported by evidence, that there is a long-term, sustainable water supply, both in quality and quantity to serve the development.

"This requirement shall not apply to:
"a. the first single family dwelling and non-habitable accessory uses on an existing lot of record; or

"b. specified development (a list to be developed by ordinance}designed to provide: a) public infrastructure or b) private infrastructure that provides critical or necessary services to the public, and that will have a minor or insubstantial net use of water (e.g. water facilities, wastewater treatment facilities, road construction projects, recycling or solid waste transfer facilities); or

"c. development related to agricultural land uses within Zone 2C of the Salinas Valley groundwater basin, provided the County prepare a report to the Board of Supervisors every five (5) years for Zone 2C examining the degree to which:

1) total water demand for all uses predicted in the General Plan EIR for the year 2030 will he reached;

2) groundwater elevations and the seawater intrusion boundary have changed since the prior reporting period; and

3) other sources of water supply are available. If, following the periodic report, the Board finds, based upon substantial evidence in the record, that:

- the total water demand for all uses in Zone 2C in 2030 as predicted in the General Plan EIR is likely to be exceeded; or
- it is reasonably foreseeable that the total water demand for all uses in Zone 2C in 2030 would result in one or more of the following in Zone 2C in 2030: declining groundwater elevations, further seawater intrusion, increased substantial adverse impacts on aquatic species, or interference with existing wells,

then the County shall initiate a General Plan amendment process to consider removing this agricultural exception in Zone 2C. Development under this agricultural exception shall be subject to all other policies of the General Plan and applicable Area Plan; or

"d. development in Zone 2C for which the decision maker makes a finding, supported by substantial evidence in the record, that the:

1) development is in a Community Area or Rural Center and is otherwise consistent with the policies applicable thereto;

2) relevant groundwater basin has sufficient fresh water in storage to meet all projected demand in the basin for a period of 75 years; and,

3) benefits of the proposed development clearly outweigh any adverse impact to the groundwater basin." (AR 4265-4266.)

PS-3.2 "Specific criteria for proof of a Long Term Sustainable Water Supply and an Adequate Water Supply System for new development requiring a discretionary permit, including but not limited to residential or commercial subdivisions, shall be developed by ordinance with the advice of the General Manager of the Water Resources Agency and the Director of the Environmental Health Bureau. A determination of a Long Term Sustainable Water Supply shall be made upon the advice of the General Manager of the Water Resources Agency. The following factors shall be used in developing the criteria for proof of a long term sustainable water supply and an adequate water supply system:

"a. Water quality;

"b. Authorized production capacity of a facility operating pursuant to a permit from a regulatory agency, production capability, and any adverse effect on the economic extraction of water or other effect on wells in the immediate vicinity, including recovery rates;

"c. Technical, managerial, and financial capability of the water purveyor or water system operator;

"d. The source of the water supply and the nature of the right(s) to water from the source;

"e. Cumulative impacts of existing and projected future demand for water from the source, and the ability to reverse trends contributing to an overdraft condition or otherwise affecting supply; and

"f. Effects of additional extraction or diversion of water on the environment including on in-stream flows necessary to support riparian vegetation, wetlands, fish or other aquatic life, and the migration potential for steelhead, for the purpose of minimizing impacts on the environment and to those resources and species.

"g. Completion and operation of new projects, or implementation of best practices, to renew or sustain aquifer or basin functions.

"The hauling of water shall not be a factor nor a criterion for the proof of a long term sustainable water supply." (AR 4266-4267.)

(4). 2010 General Plan – Definitions

"**LONG TERM SUSTAINABLE WATER SUPPLY** means a water supply from any source (e.g. groundwater, surface water, aquifer storage recovery project or other) that can provide for the current and projected future demand for water from that source as determined pursuant to the criteria required to be adopted by *Policy PS-3.2.*" (AR 4268.) (Boldface, all capitulation and italics in original.)

(5). Transcript of April 12, 2011 Board of Supervisors meeting

Mr. Ford (Staff presentation): "In terms of consistency with the general plan, the general plan requires that a long term sustainable water supply be determined for the site. We believe that policy PS-3.2[e] which reads cumulative impacts consisting of projected future demand for water from the source, and the ability to reverse trends contributing to an overdraft condition or otherwise affecting supply, is the critical element to consider and we believe that the implementation of the recharge scheme, the ability to maintain a positive water balance, the fact that there is a good amount of water in storage where Ambler Park wells are and the fact that there will not be a negative net impact to the groundwater, would allow this project to be determined in compliance with PS-3.2 and thus PS-3.1 requiring that there be a determination of a long term sustainable water supply.

"So we would request that the Board give us direction related to the appropriate size of the center, give direction related to Policy PS-3.2 related to long term sustainable water supply and then direct staff to prepare appropriate findings and evidence and continue the public hearing to May 17, 2011.

"I would just like to, oh, and just as further amplification, the B-8 does not need to be removed. Staff would recommend that the Board give direction to bring back findings for denial of the request to remove the B-8 and that one last housekeeping thing: on the Board order requesting continuance or directing the continuance to May 17th, it says that this was passed and adopted on the 29th day of March and that obviously should be the 12th day of April so if that could be changed as part of the Board's action." (AR 5578-5579.)

(6). Omni appeal – Long Term Sustainable Water Supply (Board of Supervisors April 12, 2011 meeting) Staff Report-Exhibit A

"1. Background

"The action on this application must include a determination whether the project is in compliance with 2010 General Plan Policy PS-3.1 which, with certain exemptions, requires proof of a long term sustainable water supply ('LTSWS') for development that requires a discretionary permit. Making the determination that the site has a LTSWS is complicated by the fact that the subject site has been evaluated under several different studies using different criteria. Looking at some of the relevant policies will help provide an understanding of LTSWS for this site.

"The initial application included a tentative map, and accordingly, under the Subdivision Map Act it was subject to the rules in effect when the application was deemed complete. The application has been processed under the provisions of the 1982 General Plan, Title 19 (Subdivision) and Title 21 (Zoning Ordinance.) The 1982 General Plan had a policy (53.1.3) which did not allow development in areas which do not have proven adequate water supplies. Areas that do not have proven adequate water supplies have typically been given a B-8 Zoning District overlay which limits further development in those areas. Given that the B-8 implemented the 1982 General Plan, this project was considered consistent with the 1982 General Plan.

"The subject site is designated with the B-8 overlay zone related to concerns with water supply (Ordinance 03647, November 24, 1992). The 'B-8' District allows *'construction or expansion of commercial uses where such construction or expansion can be found to not adversely affect the constraints which caused the 'B-8' district to be applied to the property.'* A commercial center is allowable under the B-8 Zoning for this site, subject to the Board making a determination that the development would not adversely affect ground water resources.

"The B-8 zoning on the property does not allow further subdivision, so a subdivision cannot be approved under the B-8. The applicant believes there is sufficient water available for the site and has requested that the B-8 be removed from the site. The *El Toro Groundwater Study, Geosyntec, July 2007,* ('Geosyntec') was prepared to evaluate the groundwater resource capacity of the El Toro Planning Area and assessed what the study called the 'El Toro Primary Aquifer System'. The study recommended maintaining or revising the B-8 zoning overlay. The conclusion of the Geosyntec study was that the El Toro Primary Aquifer System Area is in overdraft. The Study indicates that *'current and increased rates of pumping can be sustained for decades in areas with large saturated thickness of the El Toro Primary Aquifer System because of the large volume of groundwater in storage'.* The study then states: *'If long term declines in*

groundwater levels and reliance on groundwater storage are acceptable to the County, the B-8 zoning could be lifted in areas with large saturated thicknesses of the El Toro Primary Aquifer System where additional groundwater production is feasible for several decades. However, if County Policy does not allow overdraft conditions and mining of groundwater, the B-8 zoning should be expanded to cover the entire extent of the El Toro Primary Aquifer System.['] There has been no new information submitted which would contradict the findings of the Geosyntec Study, so staff recommended to the Planning Commission and the Planning Commission has recommended to the Board, that the B-8 zoning not be removed.

"In addition, a subdivision would have required consistency with Title 19 of the Monterey County Code, specifically section 19.07.020.K which requires proof of an adequate long term water supply.

"In the context of the 1982 General Plan the project could have been considered on this basis, but shortly before this project was reviewed for the first time by the Planning Commission, the 2010 General Plan became effective. In addition, on November 30, 2010, the applicant withdrew the subdivision component of his application, thus rendering the application subject to the 2010 General Plan but no longer subject to the requirements of Title 19. To be found consistent with the 2010 General Plan, the Board must either determine that the project fits into one of the exemptions set out in Policy PS 3.1, or find that there is a LTSWS pursuant to Policy PS-3.2.

"2. Determination of LTSWS.

"Policy PS-3.2 of the 2010 General Plan identifies the factors which must be considered when making the determination of whether there is a LTSWS. Under Policy PS-3.2, the determination of water supply is made by the approving authority (in this case the Board of Supervisors), with the advice of the General Manager of the Monterey County Water Resources Agency. The General Manager of the Water Resources Agency has advised that, based upon the information on record, (Geosyntec and prior groundwater studies cited in Geosyntec) that the El Toro Primary Aquifer System is in an over drafted condition and there is a significant amount of water in storage.

"However, whether the aquifer system is in overdraft is not determinative of LTSWS. Under Policy PS-3.2 a determination of LTSWS requires consideration of seven factors. Policy PS-3.2 (a-g) requires the Board adopt an ordinance to further define how to determine whether LTSWS exists. Until that ordinance is adopted, the factors contained in the policy guide the determination of LTSWS and are applied on a case by case basis. Staff presents an analysis below of the criteria as applied to the subject application and is seeking direction from the Board regarding its determination as to whether the applicant's project, or staff's Reduced Density LEED Alternative, meets the criteria. We emphasize that this determination is unique to the facts and circumstances of this matter, and shall not constitute a general determination or overall policy direction.

"The following discussion identifies the factors contained in Policy PS-3.2 and analyzes the application of these factors to this project. The first four criteria of Policy PS-3.2 are related to the water provider for the project in this case, Cal Am:

a. *Water quality;*

b. Authorized production capacity of a facility operating pursuant to a permit from a regulatory agency, production capability, and any adverse effect on the economic extraction of water or other effect on wells in the immediate vicinity, including recovery rates;

c. Technical, managerial, and financial capability of the water purveyor or water system operator;

d. The source of the water supply and the nature of the right(s) to water from the source;

"The criteria listed above can be satisfied if a project will be served by an existing water system. In this case, the Ambler Park Water System will supply the water for the project. The Ambler Park Water System is a public water system owned and operated by the California American Water Company (Cal Am). Cal Am is responsible for ensuring that water supplies meet water demand and that the State and Federal water quality standards are achieved within the Ambler Park Water System service area. Cal Am can provide service to the project within its authorized production capacity. The applicant has received a Can and Will Serve Letter dating back to 1975, the water is extended to the site, with three fire hydrants already located on the property. As discussed in the EIR, Cal Am has the production capacity to meet the needs of the proposed development of this project. Cal Am as the water purveyor addresses Policy PS-3.2 in relation to water quality, production capacity, Technical, Managerial and Financial capability, and the right to extract water from the source. Thus, substantial evidence supports a finding that the criteria (a) through (d) of Policy PS-3.2 are satisfied.

e. *Cumulative impacts of existing and projected future demand for water from the source, and the ability to reverse trends contributing to an overdraft condition or otherwise affecting supply;*

"The staff recommended alternative would provide a water recharge system which would result in a net benefit to the groundwater basin. The interpretation which the Board of Supervisors must make in considering this project application is whether the proposed recharge system satisfies this criterion.

"The groundwater supply for the subject site is within the Corral de Tierra Sub basin, of the larger Salinas Valley Groundwater Basin (Bulletin 118, California's Groundwater, and State of California Department of Water Resources). The Geosyntec Study looked not at this sub basin, but at five watershed based planning sub areas. Within the sub areas, the study defined the El Toro Primary Aquifer System which is composed primarily of the Aromas Formation and the Paso Robles Formation. As noted above, the finding of the Geosyntec report is that this study area is in overdraft. It is important to note that the approach of the Geosyntec study was not to determine whether this project has a long term water supply, but rather to determine whether the B-8 Zoning Overlay should be removed from the planning area.

"The Geosyntec study identified that there were areas within the El Toro Primary Aquifer System that had good potential for groundwater production and areas where the potential for ground water production is poor. The location of the Ambler Park wells is in an area where there is good potential for groundwater production because the saturated thickness of the water table is over 600 feet thick. The project, thus, has a good source of water, and with the use of the recharge system will not contribute to the overdraft condition, but instead will provide a slight benefit.

"To mitigate impacts to the groundwater basin, the reduced density staff alternative has been designed to provide a positive water balance in relation to groundwater use. The staff alternative would be conditioned to use a maximum of 9.0 acre-feet per year (AFY) of water, and the underground water recharge system for the project would return 9.98 AFY of surface runoff water to the groundwater basin which results in a net positive water balance. The ability of the reduced density staff alternative to maintain this water balance relies on the success of the infiltration system. The Board must be satisfied that there is evidence to support that the recharge system will work as proposed. The County has denied projects which relied on recharge systems in circumstances where there is doubt about the viability of the design and operation of recharge system to achieve the desired results. Most of these have been related to small residential subdivisions that have not demonstrated the technical, managerial, and/or financial resources to maintain the recharge system over time. In this case, the project is a commercial center which will have a property manager responsible for the maintenance and functioning of the property. Based upon the managerial presence, and the financial backing needed to operate a commercial center of this size, there is reason to find that an 112,000 square foot commercial center has the necessary technical, managerial and financial resources to maintain the recharge system.

"This water recharge proposal would collect the runoff from the site, the hillside behind the site, and the gas station site at the comer of Corral de Tierra and Highway 68, and divert this water into infiltration chambers. These infiltration chambers will allow the water to move more directly to the ground water that would occur from surface infiltration. According to William L. Halligan, Hydrogeologist with Luhdorff Scalmanini, the reason infiltration chambers have a higher percentage of water directed to the ground water than normal infiltration, is because the infiltration chambers place the water into the ground below the root zone of trees and plants, thus there is not the same loss of water through evapotranspiration.

"Under the proposal, 9.98 AFY would be directed to the groundwater above what is currently infiltrating back into the groundwater. This net infiltration is calculated from the following factors:

Added infiltration from	
Site	9.66 AFY
Existing Service Station	.65 AFY
Hillside	.60 AFY
Total	10.92 AFY
Subtract existing infiltration	.94 AFY

Net Infiltration 9.98 AFY

"Staff recommends a condition be added to limit the total amount of water used on site to 9 AFY. The applicant does not want any limitation placed on the amount of water to be used. The findings to determine that there is a LTSWS are based upon the project's ability to direct more water into the groundwater than the project uses. The limitation on water use is important to insure that the factors considered in developing the water balance are maintained in the implementation of the project.

"Questions have been raised about the use of infiltration chambers to divert water into the groundwater, including whether this approach has been successfully implemented before and how much of the water will actually reach the water table. This type of storm water infiltration chamber has been used in many different settings, and from a water quality and storm water management standpoint, this is currently a best management practice. The input from hydrologists, geologists and engineers is that the proposal should work as the models show. Staff from the Water Resources Agency has reviewed the model and finds that it is accurately characterized.

"The storm water retention plan involves collecting storm water runoff from the hillside behind the site, and from the corner gas station parcel. These properties are not included within the project site. A number of people have questioned the use of these properties because they are off site and not included within the application. The gas station is under the ownership of the applicant and is currently paved. It has excellent potential to divert surface water run off to the ground. In evaluating this part of the request, staff determined that it is feasible to collect the storm water and thus could be included in the water balance for the site. It is desirable to collect the runoff from this site and direct it to the water table. Ideally the corner parcel and the remainder of the center would all be developed at once, but short of that it makes logical sense to connect the gas station parcel to the infiltration system now. The success of the infiltration system in achieving the water balance is not dependent upon water from the gas station site. As noted in the illustration above, if the gas station site were removed from the water balance calculation, it would reduce amount of water directed to ground water by 0.65 acre feet per year. This would still result in a positive water balance of 9.33 AFY. It is recommended that a condition be added requiring that an agreement be entered into and recorded on the property requiring that all runoff from the gas station site must be reserved for the shopping center, and that no development of the site will be allowed which alters the ability to collect this storm water runoff.

"Comments have also been received questioning whether the hillside behind the site is 3.6 acres in area as assumed in the water balance calculation. This was the information submitted by the applicant. In response to an inquiry from staff, the applicant has provided a map showing the area of the hillside and documenting that it is in fact 3.6 acres. The hillside area is located on two parcels. The Phelps parcel contains 1.5 acres and the Villas parcel contains 2.1 acres that drains toward this site. The Phelps parcel has a dedicated easement, and the hillside on the Villas parcel is in a scenic easement so it will not be modified. The amount of surface water diverted to ground water from the hillside is limited. The hillside would contribute a total of 0.60 AFY to the water balance, but of this 0.37 AFY already infiltrates into the groundwater, leaving

the net additional water at 0.23 AFY. This small amount could be removed without significant impact to the water balance. This would result in a net infiltration of 9.75 AFY. If the existing service station were also removed from the calculation the net infiltration would be 9.1 AFY.

"There is a great deal of public controversy associated with the water balance provisions. Members of the public have commented that they do not believe that the system as proposed will work. The engineers, geologists, and hydrogeologists that have been involved in developing the system have presented a model, and supporting information to demonstrate that it is feasible. These proposals have been reviewed by the Water Resources Agency which has found the proposal as designed to be acceptable. There has not been scientific evidence from a geologist, hydrogeologist or engineer to indicate that this water balance proposal will not work.

"The Board must determine whether this water retention proposal, designed to achieve a water balance for the developed condition of the site, is consistent with General Plan Policy PS-3.2 (e) which requires consideration be given to *'impacts of existing and projected future demand for water from the source and the ability to reverse trends contributing to an overdraft condition or otherwise affecting supply'*. If the Board finds that with the water retention plan the project meets the criteria under PS-3.2 for LTSWS then staff would include recommended conditions of approval to maintain the limit on water usage, and require adequate maintenance of the infiltration chambers.

> *f. Effects of additional extraction or diversion of water on the environment including on in-stream flows necessary to support riparian vegetation, wetlands, fish or other aquatic life, and the migration potential for steelhead, for the purpose of minimizing impacts on the environment and to those resources and species.*

"The net positive water balance for the reduced density staff alternative would allow a finding that the project does not cause adverse impacts to in-stream flows and riparian vegetation. Maintaining or improving the amount of water within the groundwater basin will result in no impact to either in-stream flows or riparian vegetation.

> g. *Completion and operation of new projects, or implementation of best practices, to renew or sustain aquifer or basin functions.*

"As discussed above, in maintaining a positive water balance, the proposed recharge system is designed to not adversely impact ground water levels. The recharge of the aquifer will sustain the existing aquifer functions which are consistent with this criterion. As described above, based on the seven factors staff recommends finding that there is a LTSWS for the staff recommended alternative. In the event that the Board of Supervisors finds that there is not a long term sustainable water supply for this site, then under the provisions of Policies PS- 3 .1 and PS-3 .2 as presently interpreted, no development of the site could be allowed unless the site were exempted from PS-3.1." (AR 5613-5618.) (Italics and underlination in original.)

(7). Court analysis

Guidelines section 15125 subd. (d) "The EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans. Such regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, regional blueprint plans, plans for the reduction of greenhouse gas emissions, habitat conservation plans, natural community conservation plans and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains."

"The standard for judicial review of administrative decisions by local public agencies with respect to consistency with applicable general plans 'is whether the local adopting agency has acted arbitrarily, capriciously, or without evidentiary basis.' " (*San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 677 [quoting *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 96].) "A city's findings that the project is consistent with its general plan can be reversed only if it is based on evidence from which no reasonable person could have reached the same conclusion." (*A Local & Regional Monitor v. City of Los Angeles* (1993) 16 Cal.App.4th 630, 648.)

" 'An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.' " (*Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994 [quoting General Plan Guidelines, p. 212, Governor's Office of Planning and Research, 1990].) "A given project need not be in perfect conformity with each and every general plan policy." (*Families Unafraid v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336.)

CEQA requires that the FEIR "show a likelihood water would be available, over the long term, for this project. Without an explanation that shows at least an approximate long-term sufficiency in total supply, the public and decision makers could have no confidence that the identified sources were actually likely to fully serve this ...project". (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412.)

"The EIR identifies existing, available, and sufficient sources of water for the project and in that respect is sufficient." (*Western Placer Citizens v. County of Placer* (2006) 144 Cal. App. 4th 890; 909.)

PS-3.1 requires a "specific finding and supporting evidence" of a long-term sustainable water supply based on the PS-3.2 criteria.

Finding 9 provides: "The Project has an adequate long-term water supply and manages development in the area so as to minimize adverse effects on the aquifers and preserves them as viable sources of water for human consumption.

EVIDENCE:

a) The existing groundwater basin in the El Toro area is in overdraft and this has resulted in the placement of the "B-8" Zoning Overlay District in an area of the Toro Area Plan including the project site. The project would use a maximum of 9.0 acre-feet per year (AFY) of water and the underground water recharge system approved for the 99,970 square foot project would return 9.66 AFY of water to the underground basin which results in a net positive water balance.

b) The project has been conditioned to ensure that the water use is limited and maintained at 9.0 AFY. The Planning Director and General Manager of the Water Resources Agency have been given the authority through the conditions of approval to monitor the use of water at the site in order to ensure that the positive water balance is achieved and maintained.

c) The "B-8" District regulations allow the commercial development of the site provided that the development can be found to not adversely affect the constraints which caused the "B-8" District to be applied to the property.

d) Water for the development would be provided by the Ambler Park Water System." AR9-AR10

Under the 2010 General Plan, "Long Term Sustainable Water Supply" means a water supply... that can provide for current and projected future demand for water from the source as determined pursuant to the criteria required to be adopted by Policy PS – 3.2.

The Respondent found that this project would collect storm water and direct it to a groundwater recharge system that will result in a positive water balance (AR5; AR 79). Along with the water limitations. Respondent imposed reporting obligations, and provided the Water Resources Agency with the authority, to ensure a positive water balance is achieved and maintained. (AR –10; Conditions of Approval) This authority includes allowing the Water Resource Agency to impose accelerating fines. Real Party proceeded with the LEED Silver Alternative because it will result in a positive net water balance (AR 81; AR 97; AR 1303; AR 5621).

The court has already found there is substantial evidence to support the findings and conclusions regarding the water balance analysis, the water demand analysis, and the re-charge analysis.

Respondent found an adequate water supply. PS-3.2 requires a finding of a Long Term Sustainable Water Supply. Based on this finding of "adequacy", the County approved the project.

The court finds the County is required to determine whether or not there is a Long Term Sustainable Water Supply. The failure to make this determination was an abuse of discretion.

(XII). Project's consistency with 2010 General Plan Policy C-1.3 and Toro Area Plan Polices T-3.1, T-3.3 and T-2.6.

The Coalition contends that the consistency findings are not supported by an EIR analysis, and because of the 2010 General Plan and the changes to the Project, recirculation of the EIR was required.

Omni argues that the Project was consistent with the 2010 General Plan and no analysis was required (Guidelines, § 15125(d)), and because no new information was introduced, recirculation was not required.

(A). C-1.3, T-3.1, T-3.3 and T-2.6

(1). See Findings 3 and 4 *supra* for C-1.3, T-3.1, T-3.3 and T-2.6

(2). Recirculation issue - Findings For Certification of EIR and Adoption of Overriding Considerations

Finding 1: "CEQA (EIR) - The County of Monterey has completed an Environmental Impact Report (EIR) in compliance with CEQA, and the Final EIR reflects the County of Monterey's independent judgment and analysis.

"**EVIDENCE**:
"a) The California Environmental Quality Act (CEQA) requires preparation of an environmental impact report if there is substantial evidence in light of the whole record that the project may have a significant effect on the environment.

"b) The Draft Environmental Impact Report ('DEIR") for Omni Resources' Application PLN20344 was prepared in accordance with CEQA and circulated for public review from May 28, 2010 through July 16, 2010 (SCH#: 2007091137).

"c) For purposes of the findings contained in this resolution, the 'project' refers to the revisions submitted by the applicant which include: a 99,970 square foot commercial center, all the buildings are outside of the 100 foot building setback, the mass and scale of the buildings have been reduced to single story except building 5 which is two story, provides increased landscaping along both Corral de terra and Highway 68, and a lot line adjustment to modify the property boundaries.

"d) SUMMARY OF IMPACTS

"Issues that were analyzed in the Draft EIR include aesthetic resources, air quality, biological resources, cultural resources, geology and soils, hazards/hazardous materials, hydrology/water quality, land use and planning, noise, population, employment and housing, public services, traffic and transportation, utilities and global climate change. The DEIR identified potential significant impacts that are either less than significant or can be mitigated to less than significant levels on aesthetics, air quality, biological resources, noise, public services and utilities. The DEIR identified significant impacts on hydrology and traffic and transportation resources that cannot be mitigated to less than significant levels.

"e) All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval. A Condition Compliance and Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations and is designed to ensure compliance during project implementation and is recommended to be adopted in conjunction with project approval. The applicant must enter into an 'Agreement to Implement a Mitigation Monitoring and/or Reporting Plan' as a condition of project approval (Condition of Approval No. 6)

"f) Evidence that has been received and considered includes: the application, technical studies/reports, staff reports that reflect the County's independent judgment, and information and testimony presented during public hearings before the Planning Commission and Board of Supervisors. These documents are on file in the RMA-Planning Department (PLN020344) and/or Clerk of the Board of Supervisors and are hereby incorporated herein by reference.

"g) RECIRCULATION of the DEIR IS NOT REQUIRED.
• While new information has been submitted by the applicant and the public as part of the comments on the DEIR, which has been included and responded to in the FEIR, no new information has been submitted that identifies a new significant environmental impact not previously disclosed, no substantial increase in the severity of the identified environmental impacts would result from implementation of the approved project or implementation of the mitigation measures, and no feasible project alternative or mitigation measures considerably different from those analyzed in the DEIR have been identified. No new information has been added to the record that deprived the public of a meaningful opportunity to comment upon a substantive adverse environmental effect of the project.
• The applicant has reduced the size of the project and proposed to modify the lot line of the two affected parcels on the site, but these changes do not pose any new impacts not already addressed in the EIR. The reduced project size is consistent with the Environmentally Superior Alternative and thus no recirculation is necessary.
• Soil and water sampling revealed that there is contaminated soil and contaminated water on the adjacent (APN 161-571 2) gas station property ('corner parcel'). While soil and water sampling have shown that the ground water aquifer has not been contaminated under the subject site or under the corner parcel and that the location of the contamination is limited to the corner parcel, EHB is requiring assessment of the maximum extent of the

soil contamination and the Regional Water Quality Control Board is requiring delineation of groundwater contamination. Both agencies are requiring remediation. This information has been fully disclosed to the public, and the public has had an opportunity to comment on the information before and during public hearings on the project. Therefore, the public has not been deprived of a meaningful opportunity to review and comment on the information. The contaminated soil and groundwater contamination will be required to be remediated regardless of the disposition of the subject project. The remediation requirement is independent of this project. The soil contamination is not an impact of project, and the obligation to remediate the contamination is not an impact resulting from the project. Thus, this information does not require revision or recirculation of the EIR prepared for this project. In order to insure proper sequencing, a condition of approval has been added requiring the contamination be remediated prior to the County issuance of any construction permits.

• There will not be significant impacts associated with removal of the gas station because the demolition permit will require appropriate best management practices be implemented to mitigate erosion and dust control and protect air quality and a condition of this permit has been added to insure that the demolition complies with Monterey Bay Unified Air Pollution Control District requirements.

• New conditions of approval imposed on the project, related to protecting water quality from the storm drain and groundwater recharge system provide greater protection to groundwater by ensuring that runoff is cleaned and filtered through a series of actions and that monitoring occurs to ensure that the filtering system is effective." (AR 74-76.) (Boldface and all capitalization in original.)

Finding 3: "EIR-ENVIRONMENTAL IMPACTS NOT MITIGATED TO LESS THAN SIGNIFICANT - The proposed 99,970 square foot project would result in significant and unavoidable impacts that would not be mitigated to a less than significant level even with incorporation of mitigation measures from the EIR into the conditions of project approval, as further described in the evidence below. There are specific economic, legal, social, technological or other considerations which make infeasible mitigating these impacts to a less than significant level.

"**EVIDENCE:** a) The DEIR found that direct project impacts to the intersections of Highway 68 and Laureles Grade and Highway 68 and Corral de Tierra Road could not be mitigated to less than significant level through the 'State Route 68 Improvements' project component of the Transportation Agency of Monterey County Regional Development Impact Fee. The Laureles Grade intersection is not within the project improvement area. The improvements associated with Corral de Tierra will not mitigate the impacts to a less than significant level.

" b) No mitigation has been identified that would reduce these impacts to a less than significant level. The impacts to the intersections are based upon cumulative conditions, which is not the sole responsibility of the proposed project. The applicant is constructing frontage improvements on Corral de Tierra to tie into the proposed intersection improvements. Improvements beyond those identified in the TAMC Regional Development Impact Fee (RDIF) do not have a funding source, and it is beyond the

applicant's responsibility to design and construct a regional improvement and such a requirement would be disproportionate to the project's impact, thus making any additional improvement financially and legally infeasible.

"c) Contributions to the RDIF will result in improvements to the functioning of the Highway 68 corridor as a whole, but will not completely fix the intersections at Highway 68/Laureles Highway 68/Corral de Tierra." (AR 80.) (Boldface and all capitalization in original.)

Finding 5: EIR-STATEMENT OF OVERRIDING CONSIDERATIONS[.]In accordance with Section 15093 of the CEQA Guidelines, the County has evaluated the economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of the project against its unavoidable environmental risks in determining whether to approve the project, and has determined that the specific economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of the project outweigh its unavoidable, adverse environmental impacts so that the identified significant unavoidable impact(s) may be considered acceptable.

"**EVIDENCE:** a) The proposed project will result in development that will provide benefits described herein to the surrounding community and the County as a whole.

"b) The site is designated as commercial in the 2010 Monterey County General Plan. Policy LU-4.6 states: *Commercially designated areas may include provisions for professional offices as well as retail and neighborhood serving uses.* Development of the project at the site would achieve the intent of the General Plan.

"c) Development of the project would result in a reduction of miles traveled due to the proximity of the site to a large number of residents and the distance which must currently be traveled by residents to obtain goods and services that would be provided by the project. Development of a commercial center at this location will allow local residents to shop locally rather than driving into Salinas or Monterey. The center is also placed to attract a good number of pass-by trips where people commuting between Salinas and Monterey can stop in route to purchase needed items without diverting from their normal commute path or making an additional trip.

"d) The reduction in vehicle miles traveled would have a corresponding decrease in the production of greenhouse gases. Greenhouse gases are generated through the combustion of fossil fuels. A reduction in miles traveled will result in a reduction in fossil fuel consumption and in Greenhouse Gas emissions." (AR 83.) (Boldface, italics and all capitalization in original.)

(3). Monterey County 2010 General Plan

T-2.6: "Improvements to Corral de Tierra, River, and San Benancio Roads shall be designed to accommodate bicycles, horses, and people where possible." (AR 4090.)

T-3.1: "Within areas designated as 'visually sensitive' on the Toro Scenic Highway Corridors and Visual Sensitivity Map [], landscaping or new development may be permitted if the development is located and designed (building design, exterior lighting, and siting) in such a manner that will enhance the scenic value of the area. Architectural design consistent with the rural nature of the Plan area shall be encouraged." (AR 4090.)

T-3.3: "Portions of County and State designated scenic routes shall be designated as critical viewshed as shown on the Toro Scenic Highway Corridors and Visual Sensitivity Map. Except for driveways, pedestrian walkways, and paths, a 100- foot building setback shall be required on all lots adjacent to these routes to provide open space and landscape buffers. This setback may be reduced for existing lots of record that have no developable area outside the setback and to accommodate additions to existing structures that become non-conforming due to this policy. New development shall dedicate open space easements over setback areas established by this policy." (AR 4090.)

(4). Planning Commission December 8, 2010 meeting – General and Area Plan Consistency

"A. 1982 General Plan

"The initial analysis for General Plan Consistency was done for the 1982 General Plan. The Project has also been reviewed for consistency with 2010 Monterey County General Plan. The Project Site is designated as Commercial in both the 1982 General Plan and the Toro Area Plan. The designation of the Site as Commercial is consistent with the overarching provisions of General Plan Policies 20.1.5 and 28.2.2 which required the County 'to adopt a land use plan which promotes mixed land uses to reduce the need for vehicular travel; and designate commercial areas 'in a manner which offers convenient access.' Both the General Plan and the Toro Area Plan contain additional policies that would support the development of the proposed Project at the Site. The full extent of the Project's consistency with those policies is contained in the DEIR (pages 285-302).

"B. Toro Area Plan

"The Project's consistency with the following policies of the Toro Area Plan merits additional discussion and consideration as these policies are considered as the most constraining for the development of the Site.

> "**Policy 26.1.6.1 (T):** This policy requires that *'Within areas of visual sensitivity as indicated in the Toro Visual Sensitivity Map, no development shall be permitted without a finding by the Board of Supervisors or its designee that such development will not adversely affect the natural scenic beauty of the area.'*

"As stated in the Project Overview above, significant portions of the property along Corral de Tierra Road are designated as critical viewshed and visual sensitivity areas per the 'Visual Sensitivity and Scenic Highways Map' (figure 9) of the Toro Area Plan; and the Site is located along Corral de Tierra Road and Highway 68 which are designated as County and State

Scenic corridors. The conclusions of the visual impact analysis in the DEIR (Chapter 4.1) are that the Project would have potentially significant impacts on the designated scenic corridors, critical viewshed and areas of visual sensitivity. Mitigation measures recommended in the DEIR that require the provision of significant additional landscape buffers along both Corral de Tierra Road and Highway 68 to reduce these impacts to less than significant levels. These mitigation measures would aid the Planning Commission in finding that the proposed project will not adversely affect the natural scenic beauty of the area.

> "**Policy 40.2.4** (T): This Policy states that *'The County shall require a 100-foot building setback on parcels adjacent to County and State scenic routes. The 100 foot setback will also apply to areas designated in the Toro Visual Sensitivity Map (Toro Area Plan, Figure 9) as critical viewshed. This setback is established without causing existing structures to become nonconforming and without rendering existing lots of record unbuildable. Critical viewshed areas shall also have open space applied to the 100 foot setback area.'*

"The 100 foot setback required by this Policy applies to the Site's frontages on both scenic corridors and to the areas in the designated the critical viewshed. The application of the 100 foot setback requirement must be viewed in the context of other policies and the overarching goals of the Toro Area Plan to protect visual resources. The application of this policy must be balanced with the commercial land use designation of this site. Policy 40.2.7 (T) of the Toro Area Plan states: *'Where plan policies would prohibit any development on a parcel, the density allowed by the land use designation shall be permitted in the critical viewshed.'* This policy is critical because it balances the anticipated level of development of a commercial site with the fact that it is located in the critical viewshed.

"The Site has frontages on Highway 68 and Corral de Tierra Road both designated as scenic corridors. A portion of the existing northernmost parcel has a small portion designated as critical viewshed. The existing southernmost parcel is completely located in the designated critical viewshed (See Exhibit I). The location of proposed Building Nos. 1 and 2, which front on Highway 68 comply with the 100 foot setback requirement Proposed Building Nos. 4 and 5, the Market building and the Office building would be located with a front yard setback of 85, 70, 90 and 35 feet respectively which would not be consistent with the policy. This must be balanced with the Project's design elements which are consistent with the Site's location in the critical viewshed. These design elements include: 1) A village component with strong internal pedestrian orientation; 2) parking around the perimeter on the eastern boundary to minimize parking and asphalt visible from the scenic corridors; 3) architectural design that provides building design and variation in the pattern of building location which minimize unbroken wall space that characterizes typical shopping centers; and 4) location of an office building to provide a transition between the site and the residential areas to the south. From a land use planning and design perspective, one needs to consider whether it is better to maintain the 100 foot setback and develop the site as a linear strip mall with all parking areas in the front, or whether it is preferable to allow minor deviations from the setback requirement to achieve other important design objectives.

"As stated.in Policy 40.2.4 (T), the *'setback is established without causing existing structures to become nonconforming and without rendering existing lots of record unbuildable.'* The notion raised by this statement is that there can be some flexibility in the application of the setback requirement; and that when there are competing demands and objectives, they must be balanced with the overall and overarching goals of the General and Area Plan. Staff from the Planning Department believe that the strict application of the 100 foot setback requirement to the proposed Project, in addition to the restrictions arising from the designation of the majority of the Site as critical viewshed, would significantly limit the size, shape and location of the buildings, could unreasonably reduce the buildability of the Site and potentially result in development of a typical strip mall with all parking located in the front of the Site.

"Additionally, the development of the Project requires a General Development Plan per the provisions of the Light Commercial Zoning District. The General Development Plan policy is intended to allow flexibility in applying development standards for commercial and industrial Projects in order to accommodate specific site conditions. Accordingly, consistency with the visual policies of the Toro Area Plan may also be considered based upon what is proposed in the General Development Plan. This is discussed in greater detail below. Additional discussion related to this issue is found on pages 209-302 and 304-305 of the DEIR.

"C. 2010 General Plan

"The 2010 Monterey County General Plan is now effective and the Project must comply with the current General Plan. Many of the Toro Area Plan policies are restated in the new General Plan as follows.

"Policy 26.1.6.1 (T) is implemented by the following policy:

"T-3 .1 *Within areas designated as 'visually sensitive' on the Toro Scenic Highway Corridors and Visual Sensitivity Map (Figure 16), landscaping or new development may be permitted if the development is located and designed (building design, exterior lighting, and siting) in such a manner that will enhance the scenic value of the area. Architectural design consistent with the rural nature of the Plan area shall be encouraged.*

"This policy places emphasis on the Project design as the means to determine whether a project is acceptable in a visually sensitive area. There are design elements of this project which make it very appropriate in this setting, but there are some design elements which should be improved. This is addressed in more detail below under the discussion on the General Development Plan.

"Policy 40.2.4 (T) is replaced by the following policy:
"T-3 .3 *Portions of County and State designated scenic routes shall be designated as critical viewshed as shown on the Toro Scenic Highway Corridors and Visual Sensitivity Map. Except for driveways, pedestrian walkways, and paths, a 100-foot building setback shall be required on all lots adjacent to these routes to provide open space and landscape buffers. This setback may be reduced for existing lots of record that have no developable area outside the setback and to accommodate additions to existing structures that become*

non-conforming due to this policy. New development shall dedicate open space easements over setback areas established by this policy.

"In Policy 40.2 and T-3.3 a 100 foot setback is required in. the critical viewshed. As discussed above the issue associated with this policy for a commercial site is whether or not it is better to have a linear design, or typical strip mall, or to allow a more diverse design to encroach into the 100 foot setback. The policy decision, in this case, is how Policies T-3.1 and T-3.3 work together? On a shallow site, designated commercial, is it better to have a firm 100 foot setback and sacrifice design flexibility, or in a visually sensitive area, would it be better to give some design flexibility and focus on quality design? Staff believes that the emphasis should be placed upon a high quality project as the means for achieving consistency with the objectives of protecting the visual sensitivity of the area.

"In addition the 2010 General Plan has specific requirements for transportation related improvements contained in the following policy:

"C-1.3 *Circulation improvements that mitigate Traffic Tier I direct on-site and offsite Project impacts shall be constructed concurrently (as defined in subparagraph (a) only of the definition for "concurrency") with new development. Off-site circulation improvements that mitigate Traffic Tier 2 or Traffic Tier 3 impacts either shall:*

a. be constructed concurrently with new development, or
b. a fair share payment pursuant to Policy. C-1.8 (County Traffic· Impact Fee), Policy C-1.11 (Regional Development Impact Fee), and /or other applicable traffic fee programs shall be made at the discretion of the County.

"The Project has been conditioned to comply with this policy through the improvements required to Corral de Tierra and through the payment of TAMC fees." (AR 5632-5635.) (Boldface and italics in original.)

(5). Planning Commission December 8, 2010 meeting – Zoning Regulations and Requirements

"A. Light Commercial Zoning District

"The Project Site is zoned as Light Commercial with the 'B-8' and 'D' Overlay Districts. The B district is designated as a B-8 which is related to groundwater constraints.

"The Light Commercial Zoning District is intended to allow a broad range of light commercial uses suitable for the convenience of nearby residential areas. The uses proposed with this shopping center are consistent with the intent of the zoning district. The LC Zoning District requires that a General Development Plan be approved for the site. ·The following· site development standards apply:

"1. Height. The LC zone has a height limitation of 35'. The proposed design of the buildings includes tower features that exceed this height. Several of the elements are 42' high, and a proposed clock tower reaches a height of 50'. Section 21.62.030C of the Zoning Ordinance states: *Any structure in any Commercial or Industrial District may be erected to a greater height than the limit established for the district in which the structure is to be located, provided that the cubical contents of the structure shall not be greater than that possible for a structure erected within the height limit and provided the design, exterior lighting, siting and landscaping plan for the Project is approved by the Planning Commission.* The overall massing of the building will be less than the volume that would be allowed if the site were built out to the height limit, so the height of the buildings may be approved by the Planning Commission without a variance.

"2. The setbacks for the site are established as part of the General Development Plan (see discussion below).

"3. Section 21.18. 080 of the Zoning Ordinance requires that the site comply with the Zoning Ordinance Regulations for Reduction of Vehicle Trips.

"B. General Development Plan.

"Section 21.18.030 A of Chapter 21.18 of the Zoning ordinance (Regulations for Light Commercial Zoning Districts) require that a General Development Plan shall be required for development in this district if there is no prior approved General Development Plan and if 1) the lot is in excess of one acre; or 2) the development proposes more than one use; or the development includes any form of subdivision. Based on these criteria, the proposed Project requires a General Development Plan. Section 21.18 .030 D of Chapter 21.18 requires that general development plans *'shall address the long range development and operation of the facilities including physical expansion and new development, operational changes, circulation or transportation improvements, alternative development opportunities, environmental considerations, potential mitigation of adverse impacts and conformance to the policies of the area plan.'*

"Normally a General Development Plan (GDP) is submitted with the application that addresses the various required components in a GDP. In this case the plans constitute the GDP. The GDP requires that the Project design consider the surrounding uses and area. In this particular case the Project is in a rural residential area, and is bounded on two sides by scenic corridors (Hwy-68 and Corral de Tierra Road). Each component which needs to be considered is discussed below:

"1. Site Design. The site plan needs to address the scenic corridors through a combination of adequate setbacks, building design and sufficient landscape buffering. The property is irregularly shaped, which poses some design constraints but the Project is still required to comply with applicable policies related to design. Policy T-3.1 of the 2010 General Plan States:

> "*Within areas designated as 'visually sensitive' on the Toro Scenic Highway Corridors and Visual Sensitivity Map (Figure 16), landscaping or new development may be*

permitted if the development is located and designed (building design, exterior lighting, and siting) in such a manner that will enhance the scenic value of the area. Architectural design consistent with the rural nature of the Plan area shall be encouraged

"The ability of a Project to comply with this policy is related to whether the Project can create a positive visual aesthetic in the developed condition. This is typically achieved through a combination of appropriate building size and configuration, the ability of the site design to integrate parking and landscaping such that there is not a sea of asphalt, and the use of appropriate landscape buffers around the perimeter of the site. The pedestrian village concept in the northern portion of the site is appropriate. This design allows the building lines to be broken up, and provides the opportunity to have parking distributed around the buildings. The concept is desirable for this location. The southern portion of the site around the market is more of a conventional one sided design with store fronts facing the street and loading to the rear. The shallow depth of this site, makes it difficult to design the market differently than what has been proposed other than through a change in building size." (AR 5635-5637.) (Boldface, italics and underliniation in original.)

"4. Building Design. The Building Design is part of the General Development Plan and needs to achieve the applicable goals and policies of the General Plan. As noted above, the Building Design must also enhance the scenic value of the area. The scenic value of this area is primarily the existing rural landscape. The building design must take this into consideration. Portions of the building design (tower features) exceed the height limits in the LC Zoning District.

"The height of the buildings is a concern especially in a scenic area where General Plan Policy T-3.1 calls for the architectural design to maintain the rural nature of the Toro Area. The height of the Clock tower and the towers on the buildings is a consideration. The tower features on the buildings add architectural interest and create a sense of place. They are not features on every building but are associated with the larger tenant spaces. To remove these would detract from the architecture. The clock tower is a point of visual interest but staff does not believe it is integral to the design of the buildings and recommends it be removed to reduce the visibility of the project.

"Although a two story structure may be permitted on the site, staff questions whether the building height proposed in the Project is consistent with the rural character and visual sensitivity of the area. Retail buildings 1 and 6, at the northern end of the site, and the office building at the southern end of the site include two story elements. Retail building 6 has less of an impact overall because it is located behind other buildings and there is a hillside behind it. Only the rear portion of building 1 has a second story, it is a mezzanine. This tenant space is intended to be larger tenant space and as such the building height is warranted. This is the same scenario as the market. There is justification not to reduce the height of these buildings.

"The office building provides a transition between the commercial center and the residential area to the south of the site. The design of the building is a full two story height. Removal of the second story would be more compatible with the residential area to the south and

be more in keeping rural character of the area. Removal of the second story element the office would remove 5,924 square feet from the building area.

"The application has not specified the colors and materials for the project. Normally this is included in the design review application materials. The project has been conditioned to have the colors and materials approved prior to issuance of building permits. The condition calls for the use of earth tone colors and prohibits bright colors." (AR 5638-5639.) (Underlination in original.)

(6). Court analysis

"[T]he essential purpose of the EIR is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. 'Once a draft EIR has been circulated for public review, CEQA does not require any additional public review of the document before the lead agency may certify the EIR except in circumstances requiring recirculation. A lead agency must recirculate an EIR when 'significant new information' is added to an EIR after the draft EIR has been circulated for public review. (... § 21092.1; Guidelines, § 15088.5, subd. (a).) New information added to an EIR is not 'significant' unless 'the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement.' (Guidelines, § 15088.5, subd. (a).)' (*Clover Valley, supra*, 197 Cal.App.4th at p. 223.)

" 'Significant new information' includes, for example, a disclosure that (1) a new significant environmental impact would result from the project or a new mitigation measure; (2) a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted; (3) a feasible alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the project's significant impacts but the project's proponents decline to adopt it; or (4) the draft EIR 'was so fundamentally and basically

inadequate and conclusory in nature that meaningful public review and comment were precluded. [Citation.]' (Guidelines, § 15088.5, subd. (a).)' (*Clover Valley supra*, 197 Cal.App.4th at p. 223.) This guideline, however, was "not intend[ed] to promote endless rounds of revision and recirculation of EIR's.' Rather, recirculation is 'an exception, rather than the general rule.'

"Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR." (Guidelines, § 15088.5, subd. (b).) An agency's decision not to recirculate the draft environmental impact report is entitled to substantial deference; the petitioner bears the burden of proof to show no substantial evidence supports the agency's decision. (Guidelines, § 15088.5, subd. (e); *Western Placer Citizens for an Agricultural & Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890, 904–905 [50 Cal. Rptr. 3d 799] [no recirculation required despite changes in project phasing]; *California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 266–268 [115 Cal. Rptr. 3d 631] [seismic studies and requests for further investigation by regulators did not trigger duty to recirculate draft environmental impact report absent evidence of new seismic risks]; *Clover Valley, supra*, 197 Cal.App.4th at p. 223 [information in final environmental impact report provided further details but did not identify new impacts; recirculation not required].)." (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. Of Directors* (2013) 216 Cal.App.4th 614, 655-656.) (Some citations omitted.)

The Court finds that the County's analysis under the 2010 General Plan and the changes to the Project did not require recirculation because the new circumstances and information were not significant or changed the EIR "in a way that deprived the public of a meaningful opportunity to comment."

(XIII). Statement of overriding considerations

The Coalition argues that the statement of overriding consideration is not supported by the vehicle miles traveled analysis.

Omni notes that the County found that the benefits of the Project outweigh traffic impacts which are supported by substantial evidence in the record.

(A). Final EIR – Finding 5: Statement of overriding considerations

"In accordance with Section 15093 of the CEQA Guidelines, the County has evaluated the economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of the project against its unavoidable environmental risks in determining whether to approve the project, and has determined that the specific economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of the project outweigh its unavoidable, adverse environmental impacts so that the identified significant unavoidable impact(s) may be considered acceptable.

> "**EVIDENCE**: a) The proposed project will result in development that will provide benefits described herein to the surrounding community and the County as a whole.
> "b) The site is designated as commercial in the 2010 Monterey County General Plan. Policy LU-4.6 states: *Commercially designated areas may include provisions for professional offices as well as retail and neighborhood serving uses.* Development of the project at the site would achieve the intent of the General Plan.
> "c) Development of the project would result in a reduction of miles traveled due to the proximity of the site to a large number of residents and the distance which must currently be traveled by residents to obtain goods and services that would be provided by the project. Development of a commercial center at this location will allow local residents to shop locally rather than driving into Salinas or Monterey. The center is also placed to attract a good number of pass-by trips where people commuting between Salinas and Monterey can stop in route to purchase needed items without diverting from their normal commute path or making an additional trip.
> "d) The reduction in vehicle miles traveled would have a corresponding decrease in the production of greenhouse gases. Greenhouse gases are generated through the combustion of fossil fuels. A reduction in miles traveled will result in a reduction in fossil fuel consumption and in Greenhouse Gas emissions." (AR 83.) (Boldface, italics and all capitalization in original.)

(B). Draft EIR

(1). Project Site Location and Setting

"The Site is zoned for commercial development according to both the Monterey County General Plan and the Toro Area Plan. Currently, the Site is the only remaining site zoned for commercial development along SR-68 in the Toro Area." (AR 877.)

(2). Project Characteristics

"The Site is designated as Commercial by both the Monterey County General Plan - Land Use Element and the Toro Area Plan. The Site is zoned LC-D-B-8 (Light Commercial with the Design Review and Building Site Overlay Districts) pursuant to Title 21 of the Monterey County Code (Zoning for Inland Areas). The B-8 overlay zoning district restricts additional development within a substantial area of the Toro Area Plan, including the Site, because of constraints in water availability. The Project includes the rezoning of the Site to remove the B-8 zoning overlay to allow the proposed development." (AR 883.)

(3). General Plan Policies

"Policy 20.1.5 The County shall adopt a land use plan which promotes mixed land uses to reduce the need for vehicular travel.

"***Consistency Analysis***: The Site is designated for commercial development in the Toro Area Plan and is zoned "Light Commercial" in the Zoning Ordinance. The land use and zoning designations of the property took into account the Site's location at the intersection of two major roads in the area, and the need to provide access to basic services to residents in the Toro Area who currently have to travel further to obtain those services. The location and availability of basic services at the Site would reduce the need for longer vehicular travel for residents in the area of the Toro Area Plan. The designation of a commercial site at this location was included in the Toro Area Plan to be consistent with Policy 20.1.5. The Site is generally surrounded by established low and medium-density residential areas. The Project would add basic neighborhood services closer to the existing residences in an area that is already developed at various residential densities and potentially reducing vehicular travel. Therefore, the Project would be consistent with Policy 20.1.5." (AR 1131.) (Boldface, italics and underliniation in original.)

"Policy 25.1.2 The County shall promote economic development which is consistent with General Plan goals such as environmental, scenic, natural resource conservation, and growth management.

"***Consistency Analysis***: The Site is designated as Commercial in the Land Use Plan of the Toro Area Plan and is zoned for light commercial uses. Because the Site is zoned commercial and has been intended for commercial development as part of the County's land use plan and growth projections, the Project is consistent with the County's growth management plans. Development of the Project would result in a degree of economic development from actual construction and from the operation of businesses.

"The Project would add a neighborhood-serving facility that would provide services to a significant residential area under-served by commercial/retail development. The proposed

commercial development would provide a center of commerce closer to the existing residences and would thereby reduce the need for residents to travel on SR-68 to obtain basic needs. Implementation of mitigation measures and project changes recommended throughout the EIR would result in development of a Project that is consistent with this policy as well as with other policies of the General Plan and the Toro Area Plan." (AR 1131.) (Boldface, italics and underliniation in original.)

"Policy 37 .2.1 Transportation demands of proposed development shall not exceed an acceptable level of service for existing transportation facilities, unless appropriate increases in capacities are provided for.

"***Consistency Analysis:*** With implementation of the Project, the Level of Service (LOS) at the intersection of Corral de Tierra Road and SR-68 would deteriorate to below an acceptable LOS. Required project changes and mitigation measures in Section 4.12.5 and 4.12.8 of the EIR, and payment of the Regional Development Impact Fee (RDIF) would improve overall travel time across the highway corridor. Future roadway improvements planned in the RDIF Program would ultimately increase roadway capacity along the SR-68 corridor. Therefore, the Project is consistent with Policy 37.2.1." (AR 1136.) (Boldface, italics and underliniation in original.)

"Policy 37.4.1 The County shall encourage overall land use patterns which reduce the need to travel.

"***Consistency Analysis:*** The Project proposes to add neighborhood-serving uses into an area that is already developed at various residential densities but under-served by retail and neighborhoodserving uses. The Project would reduce the need for the residents of the residential areas in the Toro Area Plan to travel to Salinas or the Monterey Peninsula to obtain those services, thereby reducing the need to travel along the SR-68 corridor. Therefore, the Project is consistent with Policy 37.4.1." (AR 1136.) (Boldface, italics and underliniation in original.)

(4). Board of Supervisors April 12, 2011 - Appeal of Corral de Tierra Center – Exhibit A

"Traffic has been a major concern for people commenting on the DEIR and from the public during the public hearing process. Tier 1 impacts (direct on-site and off-site project impacts) are mitigated through mitigation measures (MM 4.12.2) required as part of the EIR. These improvements consist of constructing street improvements along Corral de Tierra to provide adequate traffic circulation and tie into the intersection improvements at Corral de Tierra and Highway 68. Tier 2 and Tier 3 impacts (Off-site circulation improvements mitigated by a fee program) are also mitigated through mitigation measures requiring payment of Transportation Agency of Monterey County (TAMC) Impact Fees. The EIR identifies that even with the mitigation proposed; there will be an unavoidable significant adverse impact to the intersections of Hwy 68 and Laureles Grade and Hwy 68 and Corral de Tierra Road.

"A number of the comments received on the DEIR focused on traffic impacts. The primary points of concern relate to the Trip Generation Rates, existing traffic counts, and the required mitigation measures. Several concerns were raised related to the payment of TAMC

fees as mitigation for off-site impacts and cumulative impacts. As explained in the FEIR, the payment of a fair share of TAMC fees does not ensure that street capacity would be available to mitigate the proposed projects' traffic impacts. A legal opinion prepared for TAMC concluded that payment of impact fees should be deemed to be adequate mitigation of a private development project's impacts on regional transportation improvements pursuant to the California Environmental Quality Act for regional transportation improvement projects by the Transportation Agency that have been identified and prioritized as being constrained, and therefore fully funded by either impact fees alone, or in combination with other potential federal, state and local sources[].

"The assessment of the fees must also be fair and equitable so the developer does not pay more than his/her fair-share of needed road improvements. The Highway 68 corridor is viewed as a single road network rather than a collection of individual road segments and intersections, so any improvement or fee that represents an equitable share is viewed as an appropriate mitigation to the corridor. There are many examples in Monterey County of how the assessment of impact fees has appreciably contributed to the funding of important roadway improvements. Safety and Operational improvements on SR-68, the SR-1 @ Salinas Road Interchange, the Davis Road Bridge and widening, US 101 Prunedale Improvement Project and the US 101 @ San Juan Road Interchange are just a few examples.

"The proposed project will result in additional traffic at the intersection of Hwy 68 and Corral de Tierra Road. The project will also allow people to do their shopping at a location that does not require an additional trip, and will reduce the length of trips. Overall the project will reduce the number of Vehicle Miles Traveled associated with household shopping trips. The EIR concluded this is a beneficial impact to the larger County road network and to Greenhouse Gas Emissions." (AR 5619-5620.)

(5). Courts analysis

Guidelines section 15093: "Statement of Overriding Considerations

(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) When the lead agency approves a project which will result in the occurrence of

significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to; Section 15091.

"When a project will have a significant environmental impact and the alternatives have been properly found to be infeasible, the project may be approved only if 'the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.' (Pub. Resources Code, § 21081, subd. (b).) '[A]n agency's decision that the specific benefits a project offers outweigh any environmental effects that cannot feasibly be mitigated, while subject to review for abuse of discretion (Pub. Resources Code, § 21168.5), lies at the core of the lead agency's discretionary responsibility under CEQA and is, for that reason, not lightly to be overturned.'" (*The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal. App. 4th 603, 623.)

The County's statement of overriding considerations stated that the benefits pertinent here are (1) a reduction in miles traveled because of the Project's location; and (2) the reduction in vehicle miles traveled would reduce greenhouse gas emissions.

The Court has already found that the Vehicle Miles Traveled analysis is supported by substantial evidence and the County did not abuse its discretion.

Disposition

The court stays its decision in this case and issues an interlocutory remand so the Board of Supervisors can decide whether or not there is a Long Term Sustainable Water Supply.

Respondent, County of Monterey, is directed to advise the court when it has completed its proceedings on remand, so the court can reconsider its determination of this issue.

The court retains jurisdiction.

Dated: JUL 29 2014

LYDIA M. VILLARREAL

HON. LYDIA M. VILLARREAL
Judge of the Superior Court

CERTIFICATE OF MAILING
(Code of Civil Procedure Section 1013a)

I do hereby certify that I am employed in the County of Monterey. I am over the age of eighteen years and not a party to the within stated cause. I placed true and correct copies of the Statement of Decision for collection and mailing this date following our ordinary business practices. I am readily familiar with the Court's practices for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Services in Salinas, California, in a sealed envelope with postage fully prepaid. The names and addresses of each person to whom notice was mailed is as follows:

Michael W. Stamp, Esq.
Molly Erickson, Esq.
Law Offices of Michael W. Stamp
479 Pacific Street, Suite One
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Charles J. McKee, County Counsel
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Office of the County Counsel
County of Monterey
168 W. Alisal Street, Third Floor
Salinas, CA 93901-2653

Dated: JUL 29 2014

Teresa A. Risi, Clerk of the
Superior Court

By Sally Lopez
Sally Lopez, Deputy Clerk

From: Nichols, Nick x5386
Sent: Thursday, December 11, 2014 10:56 AM
To: Mauck, Steven F. x3006
Cc: Hasson, Cynthia L. x5205; Greenway, Paul H. x4807
Subject: Request for comments re Indemnification language - proposed Property Rental Agreement for Contractor Staging Yard - Moss Landing Rule 20A Underground Utility Project

Attachments: Rental Agreement Contractor Staging Area Hist & Herit Ctr 2014-12-01 v2 Del Piero draft.pdf

Dear Steve: The County is responsible to acquire a temporary staging yard for the contractor to store its equipment and materials during the subject construction project. We have approached the owners of a property, and they are willing to rent a portion of their property to the County for this purpose. Attached is a draft of a proposed Real Property Rental Agreement that the owners are willing to agree to.

I would greatly appreciate your thoughts and comments regarding Section 9, Indemnification, of this draft agreement, particularly any modifications to paragraph 9b that you might recommend.

Thanks for your help with this. Please give me a call if you have any questions or wish to discuss this request.

Nick

G.H 'Nick' Nichols, P.E.
Monterey County
Resource Management Agency