



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Upon motion of Supervisor Armenta, seconded by Supervisor Salinas and carried by those members present, the Board of Supervisors hereby:

Held a Public Hearing and adopted Resolution No. 14-360:

- a. Finding that the Corral de Tierra Neighborhood Retail Village project (Omni Resources LLP) has a long term sustainable water supply both in quality and quantity to serve the project pursuant to Policies PS 3.1 and PS 3.2 of the 2010 Monterey County General Plan, in response to the Order of Interlocutory Remand issued by the Monterey County Superior Court in litigation resulting from the Board of Supervisors' February 7, 2012 approval of the project. The project previously approved by the Board included a Combined Development Permit consisting of a: 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); and
- b. Authorizing County Counsel to advise the court that the County has completed its proceedings on remand(Omni Resources LLP/(File Nos. PLN110077 and PLN020344; 5 Corral de Tierra Road, Toro Area Plan.)

PASSED AND ADOPTED on this 16th day of December 2014, by the following vote, to wit:

- AYES: Supervisors Armenta, Calcagno and Salinas
- NOES: Supervisors Parker and Potter
- ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 77 for the meeting on December 16, 2014.

Dated: December 19, 2014
File Number: RES 14-119

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

By 
Deputy

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

Resolution No. 14-360

Resolution of the Monterey County Board of)
Supervisors finding pursuant to the 2010 Monterey)
County General Plan that the Corral de Tierra)
Neighborhood Retail Village project has a long term)
sustainable water supply.)
(Omni Resources LLP/PLN110077 and PLN020344), 5)
Corral de Tierra Road, TORO AREA PLAN (APN:)
161-171-003-000 AND 161-581-001-000).....)

Omni Resources LLP’s request for an interlocutory remand hearing came on for public hearing before the Monterey County Board of Supervisors on December 16, 2014. Having considered all the written and documentary evidence, the staff report, oral testimony, and other evidence presented, the Monterey County Board of Supervisors hereby finds and decides as follows:

1. **FINDING:** **PROCEDURAL BACKGROUND:** The Board of Supervisors conducted a duly noticed public hearing on December 16, 2014 to consider adoption of a finding regarding whether the project has a long term sustainable water supply within the meaning of Policies PS 3.1 and PS 3.2 of the 2010 Monterey County General Plan. The hearing was conducted pursuant to the Order of Interlocutory Remand issued on July 29, 2014 by the Monterey County Superior Court in *The Highway 68 Coalition v. County of Monterey (Omni Resources, Real Parties in Interest)*(Monterey County Superior Court Case No. M116436) and pursuant to the request of applicant Omni Resources LLP.
- EVIDENCE:** a) On February 7, 2012, the Board of Supervisors adopted Resolution 12-039 certifying the EIR prepared for the Corral de Tierra Neighborhood Center. The Board also adopted Resolution 12-040 approving the project, subject to conditions of approval, and the Board adopted Resolution No. 12-387, denying the request to remove the B-8 zoning overlay from the subject property. The project approved by the Board consists of a Combined Development Permit for a: 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) (Planning File Nos. PLN020344 and PLN 110077) (hereafter referred to as the “project,” “Corral de Tierra Neighborhood Retail Village, or “Corral de Tierra Retail Village Center).
- b) The Highway 68 Coalition brought suit against the County and Real Parties in Interest challenging the approval (*The Highway*

68 Coalition v. County of Monterey (Omni Resources, Real Parties in Interest) (Monterey County Superior Court Case No. M116436.) On July 29, 2014, the court issued an Order of Interlocutory Remand staying the court's intended decision "so the Board of Supervisors can decide whether or not there is a Long Term Sustainable Water Supply" for the project.

- c) On November 14, 2014, applicant Omni Resources LLP requested that the Resource Management Agency-Planning Department schedule the court-ordered interlocutory remand hearing before the Board of Supervisors on December 16, 2104.
- d) The hearing is limited to the single issue identified by the court of whether the project has a long term sustainable water supply within the meaning of Policies 3.1 and 3.2 of the 2010 Monterey County General Plan.
- e) At least ten days prior to December 16, 2014, notice of public hearing was published on December 4, 2014 in the *Monterey County Weekly*, the site was posted, and notices of a public hearing were sent to property owners within 300 feet and other individuals who had expressed an interest. The applicant and the public were provided the opportunity to testify and be heard at the public hearing.

2. **FINDING:**

LONG-TERM SUSTAINABLE WATER SUPPLY AND ADEQUATE WATER SUPPLY SYSTEM: The project, as conditioned, has a long-term, sustainable water supply, both in quality and quantity to serve the development in accordance with the 2010 Monterey County General Plan Policies PS-3.1 and PS-3.2 and is therefore consistent with Policies PS- 3.1 and PS-3.2.

EVIDENCE:

- a) Policy PS-3.1 of the 2010 Monterey County General Plan provides: "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 the evidence, that there is a long-term, sustainable water supply, both in quality and quantity to serve the development."
- b) Policy PS-3.2 of the 2010 Monterey County General Plan provides criteria for developing an ordinance for determining whether a long term sustainable water supply (LTSWS) exists. Until the ordinance is adopted, staff has used the criteria in Policy PS-3.2 for guidance.
- c) The General Plan defines "Long Term Sustainable Water Supply" as "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."
- d) The finding of long term sustainable water supply is supported by evidence in the record of the Board's 2012 decision. This

evidence includes: the staff report for the Board of Supervisors' April 12, 2011 hearing on the project, which addressed the criteria contained in PS-3.2 for finding a Long Term Water Supply; presentation by County Resource Management Agency planner John Ford to the Board at the Board's April 12, 2011 hearing, presenting analysis and evidence that supports a determination that the project is consistent with Policies PS-3.1 and PS-3.2's requirement of a finding that the project have a long term sustainable water supply (transcript of hearing, found at pages 5578-79 of the administrative record presented to the court, attached to the staff report for December 16, 2014); presentation by Director of Planning Mike Novo to the Board at the Board's February 7, 2012 hearing on the project (transcript of hearing, found at page 2259 of the administrative record presented to the court, attached to the staff report for December 16, 2014).

- e) The project has a long term sustainable water supply because of the project's net positive water balance. The underground water recharge system approved for the project would return more water to the groundwater basin than the project would use. The Board acknowledges that the existing groundwater basin in the El Toro area is in overdraft; however, this project will not adversely affect the groundwater basin because the project's water use is limited to a maximum of 9.0 acre-feet per year (afy), and the underground water recharge system approved for the project would return 9.66 afy of water to the underground basin, which results in a net positive water balance. This evidence was presented to the Board prior to its 2012 approval of the project and was cited in its 2012 findings for project approval. In its intended decision, the Superior Court held that there is substantial evidence to support the County's 2012 findings and conclusions regarding the water balance analysis, the water demand analysis, and the recharge analysis (page 143 of the Order of Interlocutory Remand). The Board by its finding today does not disturb its 2012 findings and conclusions regarding water balance, water demand, and recharge.
- f) The project has been conditioned to ensure that the water use is limited and maintained at 9.0 afy. The Director of the Monterey County Water Resources Agency has been given the authority through the conditions of approval to regulate the use of water at the site and monitor the use in order to ensure that the positive water balance is achieved.
- g) Water for the development would be provided by the Ambler Park Water System.
- h) The first four criteria of Policy PS-3.2 are related to the water provider for the project which in this case is 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 publicly regulated 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.

- i) Subsection (e) of Policy PS-3.2 provides the following criterion for determining Long Term Sustainable Water Supply: *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 project provides a water recharge system which would direct more water into the groundwater than the project uses, thus resulting in a net benefit to the groundwater basin. This water recharge proposal would collect runoff and divert this water into infiltration chambers. A condition of approval of the project limits the total amount of water used on site to 9 afy. The limitation on water use is intended to insure that the factors considered in developing the water balance are maintained in the implementation of the project.

- j) Subsection (f) of Policy PS-3.2 provides the following criterion for determining Long Term Sustainable Water Supply: *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 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.

- k) Subsection (g) of Policy PS-3.2 provides the following criterion for determining Long Term Sustainable Water Supply:
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.

3. FINDING:

CLARIFICATION OF 2012 FINDINGS: The Board's 2012 findings in support of approving the project implied that the project has a long term sustainable water supply and were based on substantial evidence in the record. The Board's finding today in response to the court's interlocutory order clarifies for the court that the Board intended to find and does hereby explicitly find that the project has a long term sustainable water supply.

EVIDENCE:

- a) In Finding 1 of Board Resolution No. 12-040 approving the project, the Board found that the project was consistent with applicable plans and policies. This finding lists the 2010 Monterey County General Plan as a plan with which the project was reviewed for consistency. Implicit in these statements is that the project is consistent with Policies PS-3.1 and PS-3.2, policies of the 2010 Monterey County General Plan. This resolution makes that finding explicit.
- b) In addition, in Finding 9 of Board Resolution No. 12-040, the Board found that "the project has an adequate long term water supply and manages development in the area so as to minimize adverse effects on the aquifers." This finding was based upon the fact that "the project would use a maximum of 9 afy of water and the underground water recharge system would return 9.66 afy of water to the underground basin, which results in a positive water balance." In staff's presentation to the Board of Supervisors on February 7, 2012, Director of Planning Mike Novo referred the Board to Finding 9 for a finding of consistency with Policy PS-3.2. (Transcript of hearing, found at page 2259 of the administrative record presented to the court and attached to the staff report for December 16, 2014.)
- c) The Board found that, because of the positive water balance, the project did not adversely affect the water constraints which

caused B-8 zoning to be applied to the subject property, and therefore the Board found the project consistent with the B-8 zoning overlay. (Resolution No. 12-040, Finding 9; Resolution No. 12-387, denying applicant's request to remove B-8 zoning from the subject property.)

- d) Finding 9 used the word "adequate" rather than "sustainable," but the intent was to find that the project has a long term sustainable water supply. The use of the word "adequate" rather than "sustainable" in Finding 9 was inadvertent, as staff reports and presentations of staff to the Board and Finding 1 of Resolution No. 12-040 recognize the applicability of the 2010 General Plan and the consistency of the project with the 2010 General Plan.

4. FINDING:

CEQA: To the extent that the Board's action today finding that the project has a long term sustainable water supply could be construed as a discretionary action subject to CEQA, the Board finds pursuant to Public Resources Code section 21166 and CEQA Guidelines section 15162 that no additional environmental review for this action is required because there are no substantial changes in the project description, no changes in circumstances, and no new significant information that would require revision to the Environmental Impact Report prepared for the project.

EVIDENCE: a)

The EIR prepared for the Corral de Tierra Neighborhood Retail Village (SCH # 2007091137) supports the conclusion of a finding of Long Term Sustainable Water Supply. The DEIR found that the original project proposal did not have a "sustainable water supply" as required by Monterey County Code Title 19, the County's subdivision ordinance, but this analysis pertained to the original project proposal, not the alternative the Board approved. The original project proposal was larger than the project approved by the Board, included a subdivision component, and did not include a water recharge system. (Draft EIR at page 257.) The project the Board approved is a Reduced Density/Redesigned Project Alternative which includes requirements to provide water conservation and water recharge and includes a limitation on water use. The Final EIR found that project alternatives that include the water recharge system would have a net benefit to the groundwater basin. (FEIR, at page 19.)

- b) The Board's action today is clarifying a finding but involves no changes to the project approved by the Board in February 2012. Accordingly, there are no changes in the project that would require revision of the EIR due to involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects.
- c) There are no changes in circumstances from the time of Board approval of the project that would require revision of the EIR

due to involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects.

- d) There is no new information of substantial importance which was not known and could not have been known at the time of the certification of the previous EIR that shows involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects.

NOW, THEREFORE, the Board of Supervisors of the County of Monterey does hereby:

1. Find that the foregoing findings are true and correct;
2. Find that the Corral de Tierra Neighborhood Retail Village project has a long term sustainable water supply both in quality and quantity to serve the project pursuant to Policies PS-3.1 and PS-3.2 of the 2010 Monterey County General Plan; and
3. Authorize County Counsel to advise the Monterey County Superior Court that the County has completed its proceedings on remand.
- 4.

PASSED AND ADOPTED upon motion of Supervisor Armenta, seconded by Supervisor Salinas and carried this 16th day of December 2014, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno and Salinas
NOES: Supervisors Parker and Potter
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 77 for the meeting on December 16, 2014.

Dated: December 19, 2014
File Number: RES 14-119

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

By



Deputy