Attachment E

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B. Long Term Sustainable Water Supply.

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 corner 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, Hydro geologist 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 AFT
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.

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.

2. Exemption from PS-3.1.

There are four exemptions to policy PS-3.1 as follows:

a. The first single family dwelling and non-habitable accessory structure on an existing lot of record

b. Public Utility infrastructure projects
c. Agricultural related development within Zone 2C
d. Development in Zone 2C meeting certain criteria including being in a Community Area, having sufficient ground water for a period of 75 years and that the project's benefits outweigh any adverse impacts to the groundwater basin.

It does not appear that any of these exemptions apply to this project; however, it is equally clear that the County intended not to deny all economically viable use of existing legal lots of record. The Board could consider creating an exemption for allowed commercial uses in a commercial zone, although such an addition to the policy language would require a General Plan amendment.

C. Traffic

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, US101 Prunedale Improvement Project and the US101 @ San Juan Road Interchange are just a few examples.

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