

# Attachment A

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## **EXHIBIT A DISCUSSION**

### THE GENERAL DEVELOPMENT PLAN (GDP)

The McIntosh application involves an application for residential development on lots that were created as part of the Laguna Seca Office Park (LSOP) subdivision in 1983. The LSOP contains 19 lots that are all northeast of the intersection of York Road and Highway 68. The subdivision was approved prior to the requirement for a General Development Plan (GDP). Therefore, no GDP exists for the entire LSOP subdivision. As lots have been developed in the LSOP, GDPs have been considered on each lot.

The application involves a GDP that extinguishes the residential potential on certain developed lots within the LSOP and allowing that residential potential to be built on undeveloped lots. Without the GDP, the zoning restricts residential development to not exceed commercial development on each lot. Rather than requiring a mix of commercial and residential on each lot, the GDP would credit existing commercial development in the park and allow residential uses to be concentrated. Because of the implications of the GDP on private property, this GDP applies only to those lots where the property owners have provided written permission. Those property owners who did not respond to the request or responded that they do not want residential potential precluded from their lot have been excluded from the GDP. The GDP reflects the ability of Lots 1, 8, 13, 14, 17, 18, & portions of 10 and 19 to pursue adding residential square footage to the existing commercial square footage (Owners of these lots have not given written agreement for a transfer of residential potential), while owners of Lots 2-7, 9, 11, 12, 15, 16, & portions of 10 and 19 have provided written authorization to transfer residential development potential as outlined in the GDP. Agreement with the GDP signifies a parcel owner gives over potential residential development square footage on said parcel to the LSOP pool of residential square footage that would be allowed throughout the LSOP.

The GDP includes a spreadsheet that shows existing commercial square footage in the LSOP, proposed square footage of residential development, and the amount of square footage agreed to by LSOP parcel owners to contribute to the LSOP pool of residential square footage (**Exhibit E1**).

The Environmental Impact Report (EIR) certified for the subdivision contained a buildout assumption of 260,000 square feet of commercial space within the LSOP. Approximately 153,000 square feet of commercial office space has been permitted within the LSOP to date. Factoring in the 260,000 square foot buildout assumption and the zoning regulations that limit the residential square footage to not exceed the total commercial square footage this GDP is limited to no more than 107,000 square feet of residential development throughout the LSOP. The proposed GDP reflects this limit. Thus far, the applicant has secured written permission from property owners within the office park for 94,859 square feet of residential potential. If the amendment to the permit on Lot 5 is approved, 22,137 square feet will be deducted from the 94,859 square feet for a remaining 72,722 square feet of residential development potential. This 72,722 square feet may be still be increased by 12,163 square feet to stay within the 107,022 square feet threshold of residential development throughout the LSOP, subject to obtaining written permission from property owners.

This proposal also preserves the potential for a mix of commercial and residential uses on lots

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without current written permission to extinguish and transfer residential development opportunities, to do so in the future.

### ZONING AND LAND USE

The LSOP is located between Ryan Ranch Industrial Park and Laguna Seca Ranch Estates 1 and 2 subdivisions, north of State Route 68 (SR 68). The site is zoned “VO/B-6-D-S-UR” [Visitor Serving/Professional and Office Serving in the Urban Reserve Zoning District with overlays for Building Site, Design Control, and Site Plan Review]. Residential use is allowed within this zone provided the gross square footage of the residential use does not exceed the gross square footage of the commercial use, and subject to review and approval of a Use Permit (Section 21.22.060 of Title 21). A General Development Plan (GDP) is required for development in the VO zone when the site is in excess of one acre, includes more than one use, or includes any form of subdivision (Section 21.22.030 of Title 21).

The LSOP was approved in 1983 to create 19 parcels. At that time a GDP was not required, so development of each parcel in the LSOP has been required to submit a GDP as part of each project application for lots which are in excess of one acre. Approval of this GDP for the entire LSOP would eliminate the future need for a GDP on each parcel. However, underlying permitting requirements for development would remain, such as Design Approval and Administrative Permits for development in the “D” and “S” districts.

None of the currently developed Lots 1 & 8-19 in the LSOP include residential use, although the VO zoning district would permit residential use on each individual lot subject to a Use Permit in each case and provided the square footage of the residential use does not exceed the square footage of the commercial use.

The LSOP Covenants, Conditions, and Restrictions (CC&Rs) currently limit the development potential of Lots 1 & 8-19 to professional, executive or administrative offices; however, the County does not enforce CC&Rs. A letter dated December 20, 2019 from the County of Monterey RMA-Planning was sent on December 23, 2019 to all owners of parcels within the LSOP. Responses received are included as (Lot 16, Archer) and (Lots 13 & 14, Jesson). Archer’s response is that the proposed GDP confirms and conforms to the existing use restrictions in the CC&Rs that were both expressly approved by the owners of LSOP properties and that run with the land, consequently, binding the owners of the Lots. Jesson’s response is that an owner of an LSOP lot should not lose the future ability to change to residential use so that neighboring LSOP property owners may have residential use. Jesson does not object to apartments on the neighboring property.

The County does have the ability to enforce GDPs which it approves. Therefore, if approved, the GDP would be enforceable by the County. The GDP is consistent with the existing constraint on LSOP properties that runs with the land.

The LSOP shares the easternmost boundary with Ryan Ranch within the City of Monterey and is zoned Urban Reserve (“UR”) which identifies areas that are reserved for annexation and are to be developed in a phased manner as part of an incorporated city (i.e. City of Monterey). The

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development was referred to the City of Monterey for comment. City staff expressed concern about tree removal and replacement with respect to the proposed amendment/development on Lot 5. With assurance that trees would be replaced at a 1:1 ratio, City staff had no further comments or concerns.

### GENERAL PLAN LAND USE POLICY LU-1.19

General Plan Policy LU-1.19 calls for the establishment of a Development Evaluation System (DES) for areas of unincorporated County outside of Community Areas, Rural Centers, and Affordable Housing Overlay Districts. The DES is intended to provide a method for quantitative evaluation of development proposed in areas of the County outside the targeted areas for development. Pending adoption of a program implementing the DES, the County has been implementing the DES through application of the criteria in LU-1.19. Accordingly, a qualitative analysis has been completed for this project based on the Policy LU-1.19 criteria.

The DES criteria specified in Policy LU-1.19 are:

- a. Site Suitability
- b. Infrastructure
- c. Resource Management
- d. Proximity to a City, Community Area, or Rural Center
- e. Mix/Balance of uses including Affordable Housing consistent with the County Affordable/Workforce Housing Incentive Program adopted pursuant to the Monterey County Housing Element
- f. Environmental Impacts and Potential Mitigation
- g. Proximity to multiple modes of transportation
- h. Jobs-Housing balance within the community and between the community and surrounding areas

Residential development shall incorporate the following minimum requirements for developments in Rural Centers prior to the preparation of an Infrastructure and Financing Study, or outside of a Community Area or Rural Center:

- 1) 35% affordable/Workforce housing (25% inclusionary; 10% Workforce) for projects of five or more units to be considered.
- 2) If the project is designed with at least 15% farmworker inclusionary housing, the minimum requirement may be reduced to 30% total.

As governed by the *2010 General Plan*, development proposals of five or more lots or units outside of the priority development areas in unincorporated County areas are subject to analysis using the DES. Staff analyzed both the proposed LSOP GDP and Lot 5 apartment building using criteria set forth in the Development Evaluation System (DES) of the *2010 General Plan Policy LU-1.19*.

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### INCLUSIONARY AND WORKFORCE HOUSING OBLIGATION FROM THE DES

Currently there are three different levels of affordable housing contained in Monterey County Code. Two different policies in the 2010 General Plan (Policy LU-1.19 and Policy LU-2.13) and one in the Inclusionary Housing Ordinance (Chapter 18.40 of the Monterey County Code). In Policy LU-2.13, the General Plan requires the consistent application of an affordable housing ordinance that requires 25% of new housing units to be affordable at specified levels. Policy LU-1.19 (the Development Evaluation System Policy) increases the required affordable housing mix for projects located outside of priority growth areas in the County to 35%. The Inclusionary Housing Ordinance establishes a 20% affordable housing requirement.

Staff's interpretation of these three regulations is that 35% is required in this case. First, the General Plan is the guiding document for development in the Inland areas of Monterey County. County Code, such as Chapter 18.40, implements the General Plan as it relates to development. In the hierarchy of law, the General Plan predominates for the implementing regulations. Therefore, General Plan policies are applicable to the project with use of the Inclusionary Housing Ordinance as the implementation tool, in this case. The Inclusionary Housing Ordinance was adopted under the *1982 General Plan* and has not yet been updated to reflect the policies of the *2010 General Plan*. An update to the Inclusionary Housing Ordinance has been on the County's long-range work list in recognition of the need to update the code to be consistent with the General Plan.

The *2010 General Plan* contains a policy that requires consistent application of a 25% affordability requirement County-wide (inland). In more specific cases, and given the way the *2010 General Plan* is structured, inclusionary housing at a 35% level (25% combination of Very low-, Low-, and Moderate-income levels + 10% Workforce) is required. This project meets the criteria for this specific policy. The proposal for the 15 unit apartment building is not located within a Community Area, Rural Center, or Affordable Housing Overlay district, and it would include construction of more than 5 units.

### AIRPORT LAND USE COMMISSION

On February 25, 2019, while staff was still working with the applicant on this project, the Airport Land Use Commission (ALUC) adopted an Airport Land Use Compatibility Plan (ALUCP) for the Monterey Regional Airport. The new plan replaced the 1987 Compatibility Land Use Plan (CLUP) for the airport that was previously in effect. The 2019 ALUCP shows most of LSOP as located within a potentially hazardous approach zone (Safety Zone 4) for the Monterey Regional Airport. To minimize aviation related hazards, the new plan limits residential development density to a maximum of 1 dwelling unit per 2 acres creating a potential inconsistency with the proposed 15 unit apartment complex. The 1987 CLUP does not include Safety Zone 4, indicating a finding of consistency could be made for the proposed project if analyzed using the 1987 CLUP.

During review, this project was referred to the ALUC for a consistency determination. The ALUC ultimately voted in a 6(ayes) – 0(noies) to not make a consistency determination of the proposed project with either the 1987 CLUP or the 2019 ALUCP. The reason for the vote was

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that it was not clear based on the policies within the ALUCP regarding which plan applied to this project. Therefore, no consistency determination has been made for the project. Pursuant to PUC Section 21676(d) and 2019 ALUCP Policy 4.1.11.2, the decision by ALUC not to make a determination of consistency on the project indicates the project is deemed consistent with the 2019 ALUCP by operation of law.

### **SAFETY AND LAND USE**

The 2019 ALUCP seeks to ensure that people and facilities are not concentrated in areas susceptible to high risk of aircraft accidents per the 2011 Handbook (Chapter 1, pg. 1-1, 2019 ALUCP), and allows a maximum 150 persons per acre for non-residential uses in Zone 4 (Chapter 4, Table 4b, pg. 4-28, 2019 ALUCP). Of the nineteen LSOP parcels, Lots 1 and 19 are outside Zone 4. Although a potential hazard exists due to the project location within the airport approach zone, this 15 unit apartment complex would place roughly the same number of people in the zone as would the previously approved office building. With the *de facto* deeming of the project consistent with the ALUCP by the ALUC, there is no legal limitation on the project from an airport compatibility perspective. In analyzing this project, staff has balanced the safety concerns with the underlying land uses and development rights and patterns. Staff opinion is that the proposal does not change the intensity of land use developed or previously approved at the site. It also does not change the severity of the hazard from what has historically existed.

Zone 4 is the Outer Approach/Departure Zone with an accident risk level considered moderate, encompassing approximately five percent of general aviation aircraft accidents. There are seven total safety zones appointed in the 2019 ALUCP. Five of the safety zones account for a total of 47 percent of general aviation aircraft accidents. LSOP location in Zone 4 of the 2019 ALUCP is fully disclosed and the applicant shall be required to record a deed restriction that encumbers each of the affected lots. The deed restriction shall include a disclosure clause requiring the property owner fully state in each rental agreement, the circumstances of airport proximity, potential hazards, and restrictions for residents within Zone 4 (Condition No. 17).

### **CONCERNS FROM THE PUBLIC**

Concerns expressed by the Public include ability of local streets to accommodate egress during an emergency evacuation, the availability of water from the Seaside Basin, the capacity of the Pasadera Wastewater Treatment and Recycling Facility (Facility), fear of potential litigation regarding drainage issues, and the determination of traffic impacts.

#### **Seaside Basin Groundwater**

The adjudication of the Seaside Basin includes a Physical Solution (Superior Court of the State of California in and for the County of Monterey Case No. M664343, 27 March 2006). Further clarification is provided in the court ruling on May 11, 2009 that the Physical Solution governs the environmental aspects of Seaside Basin Groundwater usage, and attempts by any agency or organization to impose obligations on the use of Basin water rights must be viewed with concern for the integrity of the Physical Solution. The Physical Solution includes the potential for *de minimis* use of up to 5 acre feet of water per year (AFY) per lot. The proposal would remain within the *de minimis* water use per lot threshold.

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The “Application of California-American Water Company (U210W) for an Order Authorizing and Imposing a Moratorium on Water Service Connections in the Laguna Seca Subarea of its Monterey County District” that was filed on 2 July 2019 and provided by Mark Blum in his 13 August 2019 correspondence has not been approved by the California Public Utilities Commission (CPUC). Therefore, a moratorium is not in effect at this time. Information about the application and who to contact for following the CPUC proceedings is on the website <https://amwater.com/caaw/customer-service-billing/billing-payment-info/water-rates/monterey-district>

### **Emergency Egress on Local Streets**

Staff relayed public concerns regarding the ability of local streets to accommodate egress during an emergency evacuation to Monterey County Regional Fire District (MCRFD) Deputy Marshall Dorothy Priolo who addresses these concerns in a letter dated January 29, 2020. MCRFD is confident that Citation Court, Blue Larkspur Lane, York Road, etc. will provide sufficient means of egress for evacuating vehicles. The County of Monterey Office of Emergency Services (OES) Emergency Operation Plan (EOP) provides emergency response that conforms to the requirements of the State of California Standardized Emergency Management System (SEMS), incorporates the Incident Command System (ICS), and is consistent with the Department of Homeland Security’s National Incident Management System (NIMS). For the complete EOP document, visit <https://www.co.monterey.ca.us/Home/ShowDocument?id=72548>

### **Pasadera Wastewater Treatment and Recycling Facility**

Concerns were raised by the public as to the capacity of Pasadera Wastewater Treatment and Recycling Facility (Facility). California-American Water Company (Cal-Am) received its waste discharge and recycled water producer requirements (WDR Order No. 98-58) from the Central Coast Region California Regional Water Quality Control Board (Water Board) on 23 October 1998 to operate the Facility. The order prohibits daily flow, averaged over each month, to not exceed 106,000 gallons of effluent. Facility effluent volumes for 2012 averaged a daily flow of approximately 43,000 gallons (*Seaside Groundwater Basin Salt & Nutrient Management Plan* prepared June 2014 for the Monterey Peninsula Water Management District). In regard to operations of the Facility, the Water Board is responsible for inspections, enforcements, documentation of violation, and assignment of corrective action which are available to the public through the California Integrated Water Quality System (CIWQS) online. The most recent inspection logged into CIWQS was on 25 June 2019 the last violation receiving corrective action on 31 December 2018, and the last enforcement action on 18 February 2005.

### **Potential Litigation Regarding Drainage Issues**

A concern was raised related to past incidents involving drainage from York Hills property owners that led to a lawsuit from a business owner in the LSOP after heavy rains caused a mudslide onto LSOP properties. In an effort to be good neighbors and to avoid incurring the potential legal costs of a law suit, York Hills property owners opted to perform the cleanup. Monterey County Code Chapter 16.14 Urban Stormwater Quality Management and Discharge Control Ordinance is implemented by the requirement of an engineered plan prepared by a drainage management expert and approved by the County prior to approval of building permits.

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This ordinance is applicable to all development in unincorporated County.

Lot 5 has a Drainage Report Update (LIB180117) that recommends onsite stormwater detention implemented as underground storage using two fiberglass tanks to provide a total 30,000 gallons of storage, and a 1,000-gallon sediment tank with an oil interceptor compartment for stormwater quality control. The site would be suitable for onsite detention of stormwater with implementation of stormwater control, as recommended in the Drainage Report Update. The project is conditioned to provide certification from the licensed practitioner of report recommendations incorporated appropriately into the approved stormwater control plan.

### **Determination of Traffic Impacts**

Attorney Mark Blum, representing the York Hills Homeowners Association, asserts the traffic reports do not include enough metrics to come to a conclusion about traffic impacts and that staff is obligated to require more information from the applicant rather than putting the burden on the public to submit information to support a finding that impacts will be more substantial than identified in the previously certified FEIR. During the August 14, 2019 hearing, the Planning Commission directed staff to provide additional information regarding traffic impacts on local streets. The applicant submitted the Traffic Study Update (LIB200010) prepared by Higgins in response to the request for additional information regarding traffic impacts on local streets. The Trip Generation Study (LIB190165) prepared by Higgins shows evidence that fewer overall traffic trips would be generated by the residential use proposal on Lots 2-7 than by commercial use on the same lots that was contemplated in the certified FEIR. Further, the Update showed evidence of the same outcome with traffic distribution on the local streets. Staff concludes the evidence does not show that additional information must be requested from the applicant to support a finding that impacts will be more substantial than identified in the previously certified FEIR.

### CEQA

An Addendum to the certified Laguna Seca Office Park FEIR (File No. 80-109, Resolution No. PC-3734) has been prepared for this project. The Addendum describes changes in circumstances and conditions that had occurred subsequent to approval of the office park (1983) including groundwater and traffic. Site-specific information for Lot 5 was analyzed for potential environmental impacts and a 2012 IS/Addendum demonstrated that major revisions to the LSOP FEIR were not required due to these changes in circumstances. The apartment building proposal for Lot 5 presents no changes in circumstances that were not contemplated in the 2012 IS/Addendum for the professional office building. This 2019 Addendum contemplates potential project-specific impacts on the environment due to the change in use from commercial to residential and shows that the General Development Plan for the LSOP, residential development on specified lots, and a 15-unit apartment building on Lot 5, as proposed, would have less than significant impact on traffic and groundwater supplies. Therefore, there are no new significant impacts due to implementation or operation of the proposed project.

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