



COUNTY OF PLACER
Community Development/Resource Agency

Michael J. Johnson, AICP
Agency Director

PLANNING

TO: Board of Supervisors

FROM: Michael J. Johnson, Planning Director

DATE: September 28, 2010

**SUBJECT: THIRD-PARTY APPEAL – PLANNING COMMISSION APPROVAL OF:
CONDITIONAL USE PERMIT (PCPA20080157)
MINOR USE PERMIT (PMPC20100058) AND
CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT
(PEIR20080235)
“BOHEMIA RETAIL PROJECT”**

ACTION REQUESTED

The Board is being asked to consider a third-party appeal from Tal C. Finney, on behalf of Alliance for the Protection of the Auburn Community Environment (APACE), of the Planning Commission's approval of a Conditional Use Permit and a Minor Use Permit for the Bohemia Retail Project. It is staff's recommendation that the Board uphold the decision of the Planning Commission and deny the appeal.

BACKGROUND

On March 25, 2008, the applicant submitted an Initial Project Application for the Bohemia Retail Project, a 155,000 square-foot retail building with an accessory fueling station. The project originally proposed a primary access to the site at Hulbert Way and State Route 49 and a secondary access at Canal Street. The Initial Study was completed on April 24, 2008, concluding that the project would result in potentially significant adverse environmental impacts and that an Environmental Impact Report (EIR) would be required. The County contracted with a consultant on September 16, 2008 to prepare the EIR for the project and the State Clearinghouse posted the Notice of Preparation for the EIR in December 2008. The Draft EIR (DEIR) was completed on January 19, 2010 and the Planning Commission held a public hearing to take comments on the document on February 25, 2010.

Following that hearing, and based on internal discussion of the project, staff directed the consultant to revise the Alternatives section of the DEIR in order to expand the discussion of the No Canal Street Access Alternative to provide additional environmental analysis that would allow for the adoption of that alternative in lieu of the proposed project. The new No Canal Street Access Alternative section in the Final EIR (FEIR) contains a more comprehensive evaluation of the project impacts, and concluded that restricting all but emergency, bicycle and pedestrian access on Canal Street would result in no new impacts and, therefore, no new mitigation measures.

On May 5, 2010, the applicant submitted a letter proposing to change the project description to allow only an emergency/pedestrian access at Canal Street. All other elements of the project remain unchanged.

The FEIR was published on June 16, 2010 and the public review period ran from that date until June 26, 2010. However, during the public review period, it was noticed that nine comments received on the DEIR had been inadvertently omitted from the FEIR. An Erratum was prepared that included responses to each of the comments. The Erratum was published and made available for public review from June 25, 2010 until July 6, 2010.

PLANNING COMMISSION HEARING

The Planning Commission heard the request for a Conditional Use Permit/Minor Use Permit for the Bohemia Retail Project on July 8, 2010. At that hearing, the Commission considered reports from the Development Review Committee staff and written correspondence in the form of approximately 50 letters and e-mails. In addition, 33 individuals provided oral testimony to the Planning Commission. Of those individuals who spoke, eight spoke in favor of the project, 22 opposed the project or aspects of the project, and three were neutral.

Finding the project consistent with the underlying zoning and also with the land use designation set forth in the Auburn/Bowman Community Plan, the Commission focused deliberations on addressing concerns raised in public testimony. Acting on some of the concerns expressed by neighboring property owners, the Commission added two new conditions of approval to the project. The first is a condition requiring the applicant to attempt to preserve a large oak tree at the southeast corner of the site by redesigning the site improvements currently proposed in the vicinity of the tree in question. The Commission also added a condition to require a graffiti-proof material or surface to be applied on the west face of the soundwall along Canal Street.

After deliberations, the Planning Commission adopted a motion (6-1, with Commissioner Gray in opposition) to approve the project as proposed. The Commission also certified the EIR as being complete, including the Findings of Fact and the Statement of Overriding Considerations.

APPEAL

Tal Finney, on behalf of APACE, appealed the decision by the Planning Commission on July 16, 2010 (Exhibit 1). The appeal states that the Environmental Impact Report is legally inadequate and refers to an attached letter that outlines the basis of the appeal in the following three sections:

1. The EIR fails to provide a meaningful analysis of air quality impacts expected under the No Canal Street Access Alternative.
2. The EIR fails to meet the basic requirement for adequacy, completeness and full disclosure regarding the urban decay analysis. This portion of the appeal is based on the following grounds:
 - A. The Fiscal Impact Analysis prepared for the project by Economic Research Associates (ERA) relied on outdated data in reaching its conclusions.

- B. The Fiscal Impact Analysis relied on a deficient retail trade area model and reached false conclusions due to this deficiency.
 - C. The EIR fails to assess the unique urban decay impacts of supercenters, such as Wal-Mart.
3. The EIR relies on a deficient cumulative impacts analysis, based on the following grounds:
- A. No Canal Street Access Alternative has not been thoroughly studied as it relates to cumulative impacts to air quality and traffic.
 - B. The cumulative analysis does not properly analyze the impact of supercenters.

RESPONSE TO APPEAL

In response to the three primary issues set forth in the appeal letter, staff has prepared the following statements, utilizing information contained in the Draft EIR, as well as subsequent analysis and discussion provided by individual consultants and incorporated into the public record in the form of an attached Addition to the Final EIR (Exhibit 8).

No Meaningful Analysis of Air Quality Impacts

1. Regarding the assertion that the EIR failed to provide meaningful discussion of the air quality impacts associated with the No Canal Street Access Alternative (now, the project), the Addition to the EIR clarifies that this alternative will not result in the creation of additional emissions or additional air quality impacts. Rather, this alternative will result in the same number of vehicle trips being distributed throughout the surrounding roadway network in a different fashion than the original project proposal (full access at Canal Street) would have resulted in.

A very slight delay at the primary access is noted, and this would create a correspondingly very slight increase in the concentration of emissions at the primary access. Therefore, the issue is one of concentration and not an issue of new or additional emissions. In order to address the confusion generated by a statement in the Final EIR (page 1-14) that the No Canal Street Access Alternative would result in "...a greater impact in regard to air quality than the proposed project during operational activities", the comment in the Final EIR has been revised to state:

"...because during operational activities the No Canal Street Access Alternative would result in higher traffic congestion at the Primary Access, thereby increasing emissions, the No Canal Street Access Alternative would result in a slightly greater impact concentration of emissions in regard to air quality than the proposed project during operational activities."

Accordingly, while the EIR acknowledges that the No Canal Street Access Alternative will slightly increase the concentration of emissions at the primary project entrance, the increase will not exceed the thresholds identified and analyzed in the EIR, and the increase will not result in new impacts that have not already been identified in the EIR.

Urban Decay Impacts Not Fully Disclosed

2. The appeal challenges the adequacy of the Fiscal Impact Analysis prepared by Economic Research Associates (ERA) for the project, asserting that the analysis relied upon outdated information and a deficient retail trade area model, in addition to failing to assess the unique urban decay impacts of supercenters. The Addition to the EIR addresses these concerns in the following fashion:
 - A. The Fiscal Impact Analysis was prepared based on information that was current as of January 2009. Within the analysis, the potential effects of the recession are discussed in detail on pages 25-28 (among other pages). On page 27, the analysis states that, to account for the recession, the assumptions about annual retail growth were adjusted downward from the previously applied 1.9 percent per year for the project area to 0.2 to 0.3 percent. The analysis also adjusted downward the estimated county population growth from the Department of Finance figure of 2.12 percent per year to 1.8 percent per year. Therefore, figures for both population growth and retail outlook have been adjusted to reflect current conditions.
 - B. The Appeal states that the Fiscal Impact Analysis relies on a deficient trade area model because it assumed the trade area to exist primarily to the north and east of Auburn, in the north-central portion of Placer County, as opposed to the more densely populated southwest Placer County. As stated in the Addition, the methodology for the creation of the trade area was to encompass those areas around the project site not currently served by similar retailers. This eliminated all areas south and west of Loomis, because the Roseville/Rocklin area (and the immediate outlying vicinity) is already served by existing similar retail. It is assumed that consumers will travel the shortest distance to shop at their preferred retailers, in this case a discount superstore or discount club store.
 - C. As stated in the Addition, the content of the Appeal is simply incorrect regarding its statement that the EIR did not address the urban decay impacts of supercenters. The analysis identified and evaluated the potential for urban decay to result from the construction of a discount club store, a home improvement center and a discount superstore (supercenter). Page 18 of the Analysis specifically defines a superstore, its general size (98,000 – 246,000 square-feet) and the average sales per square foot to be expected.

The Fiscal Impact Analysis also discusses the potential for urban decay to result from any of the three end-users analyzed, including the discount superstore. The analysis concludes the following:

- 1) Net new retail demand greatly exceeds supply by 2020 in most retail categories. In the club store scenario, projected sales exceed new demand in two categories through 2020. It is true that some existing retailers will be unable to compete with the new project. However, unmet retail demand means that there are opportunities for new tenants to compete effectively against the new store in other retail categories.
- 2) While retail supply by the proposed project exceeds new retail demand for some categories by 2015, any potential vacancies created by the new store can be occupied by retailers that operate in the categories where demand exceeds supply. Also, looking

at historic data we have seen that periods of declines in sales, which is a particular type of spending shift, have not led to significant urban decay in the Auburn area.

- 3) The new store creates shopping opportunities which will attract customers from the Grass Valley area and trade area residents who are currently traveling to places like Rocklin to shop at club stores, discount supercenters, or home improvement centers. This may have a positive spillover effect on other retailers in the area as a result of the added traffic.

The Appeal states that many news and research articles have been admitted into the record regarding the unique and damaging effects that supercenters have on their adjacent communities. The Appeal asserts that these effects are due, among other things, to a lack of proportion between supply and population demand. However, as stated above, although the new retail supply generated by the Bohemia Retail project will exceed demand in some categories, sufficient retail demand in other categories will remain and this will allow potential business vacancies to be occupied by new businesses that can successfully compete with, and potentially compliment the project.

In summary, the Fiscal Impact Analysis concludes that the potential for urban decay as a result of the project is considered less than significant because there is unmet retail demand in the area. While some businesses may fail to compete with the Bohemia Retail project, most will not. Furthermore, because the project will draw outlying residents to the Auburn area to shop (residents who currently travel to Rocklin or further), the project may bring additional retail demand to the area.

Deficient Cumulative Impacts Analysis

3. Although Omni-Means performed an in-house review of the cumulative traffic model results for the proposed project during the preparation of the Draft EIR and determined that it is unlikely any additional cumulative intersection impacts would occur should the No Canal Street Access Alternative be implemented instead of the original project, subsequent to the filing of the Appeal, the County prepared a quantitative Cumulative Plus No Canal Street Access Alternative analysis.

- A. The Addition to the EIR provides analysis of the cumulative impacts of the No Canal Street Access Alternative. This additional analysis concludes that there are no new impacts associated with this alternative that weren't identified in the original proposal. The analysis also concluded that those intersections that would have operated at acceptable levels under the original proposal would also operate acceptably under the No Canal Street Access Alternative. Correspondingly, those intersections that would have operated at an unacceptable Level of Service under the original proposal would also operate at an unacceptable Level of Service under the No Canal Street Access Alternative, as well.

Therefore, the additional analysis serves to substantiate the following statement provided in the Alternatives Chapter of the Draft EIR regarding the No Canal Street Access Alternative: "Therefore, impacts related to transportation and circulation under this alternative would be similar to the proposed project."

The project's operational air quality impacts associated with the No Canal Street Access Alternative are identical to impacts associated with the originally proposed project (full access at Canal Street). As mentioned above, the traffic-generated air quality impacts differ slightly, but do not create new impacts or change any less-than-significant determinations to potentially-significant impacts. Under both alternatives, the Draft EIR determined that the proposed project's incremental contribution to cumulative air quality impacts would be significant. Although the Draft EIR includes several mitigation measures to reduce the project's contribution to cumulative air quality impacts to the maximum extent feasible, these impacts would remain significant and unavoidable.

Regarding the cumulative noise impacts, it is not necessary to conduct a full traffic analysis of the No Canal Street Access Alternative in order to adequately evaluate the potential cumulative noise impacts because the same number of vehicle trips would be generated. Furthermore, although the No Canal Street Access Alternative would result in the redistribution of vehicle trips, it would place a larger percentage of the project's vehicular traffic along SR 49 and the Primary Access, locations which do not have any surrounding sensitive receptors. In this regard, the No Canal Street Access Alternative actually reduces cumulative noise impacts.

- B. As mentioned above, and also in Chapter 18 of the Draft EIR, the cumulative socio-economic analysis did, in fact, consider the potential effects of a supercenter. The following conclusion in Chapter 18 specifically addresses this issue:

In order to analyze the proposed project socio-economic impacts, the project must be considered in connection with the effects of other current projects, and the effects of probable future projects. The socio-economic analysis discusses the socio-economic impacts of the proposed project in conjunction with the existing retail, potential Target Expansion, Home Depot, Auburn Creekside Center, and other potential retail in the area. The socio-economic analysis includes projected retail demand, retail sales, and Urban Decay through the year 2020. Therefore, as socio-economic impacts are cumulative by nature, consistent with the conclusions in Chapter 16, Socio-Economics, impacts related to cumulative socio-economics would be less-than-significant.

The Planning Commission determined that the EIR prepared for the Bohemia Retail project is adequate and satisfies the provisions of CEQA by sufficiently mitigating those impacts that can be reduced to less than significant levels and properly identifying those impacts that are, by nature, less than significant or significant and unavoidable.

RECOMMENDATION

Based on the analysis described above, staff recommends that the Board of Supervisors deny the appeal and uphold the Planning Commission's approval of the Conditional Use Permit (PCPA20080157) and Minor Use Permit (PMPC20100058) subject to the following findings and attached Conditions of Approval:

FINDINGS:

- I. **FINDINGS FOR APPROVAL OF CONDITIONAL USE PERMIT (PCPA20080157):**
 - A. Certify the Final Environmental Impact Report for the Bohemia Retail Project (SCH No. 2001042086) and adopt the Statement of Findings and the Statement of Overriding

Considerations as attached as Exhibit 7, and approve the Mitigation Monitoring Plan as included in the Final Environmental Impact Report.

- B. Adopt the following findings and approve Conditional Use Permit PCPA20080157, subject to and including Conditions of Approval Nos. 1-136, attached as Exhibit 4:
1. The Conditional Use Permit is consistent with the Placer County Zoning Ordinance (Section 17.20.010).
 2. The proposed use is consistent with applicable policies and requirements of the Auburn/Bowman Community Plan and the Placer County General Plan.
 3. The establishment, maintenance or operation of the proposed use or building will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of people residing or working in the neighborhood of the proposed use, or be detrimental or injurious to property or improvements in the neighborhood or to the general welfare of the county; except that a proposed use may be approved contrary to this finding where the granting authority determines that extenuating circumstances justify approval and enable the making of specific overriding findings.
 4. The commercial activities of the proposed project will be screened from the residences to the north and east by sound walls and vegetative screening, and will therefore be consistent with the character of the immediate neighborhood and will not be contrary to its orderly development.
 5. The proposed project will not generate a volume of traffic beyond the design capacity of all roads providing access to the project, either those existing or those to be improved with the project unless a specific design deficiency is acknowledged and approved in conjunction with the adoption of a community plan applicable to the area in question.

II. FINDINGS FOR APPROVAL OF MINOR USE PERMIT (PMPA20100058):

- A. Find the approval of the off-site sign is categorically exempt from the provisions of CEQA per Section 18.36.050 of the Placer County Code and CEQA Guidelines section 15303 (Class 3).
- B. Adopt the following findings and approve Minor Use Permit PMPA20100058, subject to and including Conditions of Approval Nos. 1-7, attached as Exhibit 5:
1. The proposed off-site sign is consistent with the objectives, policies, general land uses and programs as specified in the Placer County General Plan, the Auburn Bowman Community Plan and the Design Guidelines.
 2. The proposed Minor Use Permit is consistent with the Placer County Zoning Ordinance (Section 17.20.010).

3. The proposed use will be consistent with the character of the immediate area, which is commercial retail, and will not be contrary to its orderly development.
4. The off-site sign as proposed will not be detrimental to the health, safety, and general welfare of people residing in the neighborhood, and will not be detrimental or injurious to property or improvements in the neighborhood or the general welfare of the County. To the contrary, the provision of an off-site sign will facilitate vehicular access from State Route 49, thereby reducing impacts to existing residents in the vicinity.

Respectfully submitted,



MICHAEL J. JOHNSON, AICP
Agency Director

EXHIBITS:

- Exhibit 1 – Appeal to Board of Supervisors
- Exhibit 2 – Vicinity Map
- Exhibit 3 – Site Plan
- Exhibit 4 – Conditions of Approval – PCPA 20080157
- Exhibit 5 – Conditions of Approval – PMPC 20100058
- Exhibit 6 – Planning Commission Staff Report
- Exhibit 7 – Findings of Fact and Statement of Overriding Considerations for the EIR
- Exhibit 8 – Addition to the Environmental Impact Report
- Exhibit 9 – Correspondence Received since 7/8/10 Planning Commission Hearing

EXHIBITS PROVIDED UNDER SEPARATE COVER AND AVAILABLE AT THE CLERK OF THE BOARD'S OFFICE:

- Draft Environmental Impact Report (January 2010)
- Final Environmental Impact Report (June 2010)
- Erratum to the Final Environmental Impact Report (June 2010)

cc: Tal C. Finney – Appellant
APACE
Jim Conkey – Property Owner
Bohemia Properties, LLC – Applicant

Copies Sent by Planning:

Michael Johnson – Community Development Resource Agency Director
Paul Thompson – Deputy Planning Director
Scott Finley - County Counsel
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Vicki Ramsey - Environmental Health Services
Andy Fisher - Parks Department
Angel Rinker - Air Pollution Control District
Subject/chrono files