

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Barry K. Hogan, Community Development Director 
Prepared By: Laura Stringer, Administrative Services Manager

DATE: November 3, 2006 (CC Meeting of 12/6/2006)

SUBJECT: Consider Report of Annual Development Agreement Review,
Established in Connection with Warehouse Discount Center at White
Sage Road and the SR-23 Freeway (NLA 118, LLC)

BACKGROUND

Government Code Section 65864 and City of Moorpark Municipal Code Section 15.40 provide for Development Agreements between the City and property owners in connection with proposed plans of development for specific properties. Development Agreements are designed to strengthen the planning process, to provide developers some certainty in the development process and to assure development in accordance with the terms and conditions of the agreement.

On October 19, 2005, the Moorpark City Council adopted Ordinance No. 322 (effective November 18, 2005), approving a Development Agreement between the City of Moorpark and NLA 118, LLP, in connection with development of the Warehouse Discount Center (Commercial Planned Development No. 2004-03). The agreement remains in full force and effect for twenty (20) years from the operative date of the agreement.

Provisions of the agreement require an annual review and report to the City Council on the status of completion of all aspects of the agreement. This is the first annual review of the Development Agreement with NLA 118. NLA 118 has submitted the necessary application form, related materials, and fee/deposit for the 2006 annual review. The Community Development Director has reviewed the submitted information and the project status and provides the following report.

DISCUSSION

Current Project Status

- Grading permits and building permits have been issued for both buildings and shell improvements are under construction. A Permit Adjustment has been approved by the Community Development Director to reduce the floor area of the office and showroom and increase the floor area of the warehouse use.
- Caltrans is currently reviewing the landscape and irrigation plans. Based on a site visit, Caltrans has determined that the existing chain link fence at the Caltrans property line must remain, and not be replaced with decorative tubular steel railing with block pilasters.

Developer Compliance with Terms of Agreement

The developer's responsibilities are included in Section 6 of the Development Agreement and include sixteen (16) specific requirements, as summarized below. Compliance with the terms and conditions of the Development Agreement will occur at various stages of the development process. Action by the developer and other clarifying information has been noted.

NO.	REQUIREMENT	STATUS
1.	Developer shall comply with this Agreement, Project Approvals, all Subsequent Approvals the MMRP of the previously certified EIR and any subsequent or supplemental environmental actions.	Developer is in compliance with all requirements at this time.
2.	All lands and interests in land shall be dedicated free and clear of liens and encumbrances.	To be completed as required.
3.	Payment of "Development Fee" of Forty Thousand Twenty-Eight Dollars (\$40,028.00) per gross acre of commercial or institutional land.	This fee is adjusted annually (until paid) using the Consumer Price Index (CPI) in accordance with the agreement. This fee has been paid.
4.	Payment of "Citywide Traffic Fee" of Twenty-Two Thousand, Eight Hundred Thirty-Eight Dollars (\$22,838.00) per acre of commercial or institutional land.	This fee is adjusted annually (until paid) using the State Highway Bid Price Index in accordance with the agreement. This fee has been paid.
5.	Payment of all outstanding processing costs.	This is an ongoing requirement. At this time the developer is current with all processing costs, including submittal of Annual Review Application and deposit for Development Agreement - Annual Review.
6.	Payment of a fee in lieu of park dedication "Park Fee" of (\$.50) per square foot of each building used for commercial or institutional purposes.	This fee is adjusted annually (until paid) using the Consumer Price Index (CPI) in accordance with the agreement. This fee has been paid.

NO.	REQUIREMENT	STATUS
7.	Provide installation and permanent maintenance of landscaping under the freeway bridge along the north and south sides of Los Angeles Avenue within the Caltrans right-of-way, including fencing improvements if approved by Caltrans.	Caltrans is currently reviewing the landscape and irrigation plans. Based on a site visit, Caltrans has determined that the existing chain link fence must remain, and may not be replaced with decorative tubular steel railing with block pilasters. Staff is working with Caltrans on alternatives to the existing chain link fencing including, but not limited to painting the existing fence and additional landscape screening.
8.	Warrant total gross taxable sales in the first year of operation to be Seven Million Dollars (\$7,000,000.00), Eight Million Dollars (\$8,000,000.00) in the second year, Nine Million Dollars (\$9,000,000.00) in the third year and Ten Million Dollars (\$10,000,000.00) in the fourth through tenth years, commencing twelve months after initial occupancy. Should annual gross taxable sales not reach annual amount for any year in first ten years, Developer shall pay the City the difference in total gross taxable sales times 0.0075 for each year the total gross sales are not met. Credit for gross taxable sale which exceed the established amount shall be credited to offset a shortfall in any subsequent year.	The "first year" of operation starts twelve (12) month after the initial occupancy, which has not yet occurred.
9.	Pay Air Quality Fee in the amount of Sixty Six Thousand Dollars (\$66,000.00) in satisfaction of Transportation Demand Management Fund, or at the City's sole description, provide equipment, vehicles, improvements or other items for equivalent credit toward the fee.	These fees to be adjusted annually (until paid) using the Consumer Price Index (CPI) in accordance with the agreement. Fees must be paid prior to occupancy of the first building. No occupancy permits have been issued to date.
10.	Provide easement for location and maintenance of a City Welcome Sign and pay Twenty Five Thousand Dollars \$25,000.00 for construction and erection of the sign.	This will occur prior to occupancy of the first building. No occupancy permits have been issued to date.
11.	Agreement to cast affirmative ballots for formation of one or more assessment districts for maintenance of parkway and median landscaping and street lighting, including but not limited to all water and electricity costs. Agreement to form property owner's association(s) to provide landscape, street lighting and park (if necessary) open space land, trails drainage facilities maintenance and compliance with NPDES requirements.	Assessment district formation is currently underway. The developer is currently preparing exhibits and coordinating with Caltrans on requirements for property within the State right-of-way. This item to be completed prior to occupancy of the first building.
12.	Payment of all City capital improvement and processing fees.	Developer is in compliance with all requirements at this time. Fund review ongoing.

NO.	REQUIREMENT	STATUS
13.	Payment of Los Angeles Avenue Area of Contribution (AOC) Fee.	Fees must be paid prior to issuance of Zoning Clearance for Building Permit. This fee has been paid.
14.	Agreement to pay any fees and payments pursuant to this Agreement without reservation.	Developer is in compliance with all requirements at this time.
15.	Agreement to comply with requirements for annual review of the Agreement including evaluation of Mitigation Monitoring Program.	To date, the applicant has complied with review requests and Mitigation Monitoring Program requirements and has submitted the application and deposit for annual review.
16.	Agreement that any property to be acquired by eminent domain shall be at City's discretion and after compliance with all legal requirements.	No request for property to be acquired by eminent domain has been submitted to date.

All requirements of the Development Agreement will be considered in the City's review and approval process for all aspects of the development; including but not limited to, subsequent entitlement requests, public and private improvements, Final Maps, and building permits.

City Compliance with Terms of Agreement

The City's responsibilities are included in Section 7 of the agreement and include five (5) specific provisions, as summarized below.

#	REQUIREMENT	STATUS
1.	Agreement to commit reasonable time and resources on expedited and parallel processing of application for subsequent applications.	To date, City has complied with any such requests.
2.	If requested, at the developer's cost, proceed to acquire easements or fee title to land in order to allow construction of required public improvements.	To date, no such request has been received.
3.	Authorization for the City Manager to sign an early grading permit.	Grading has been completed
4.	Agreement to process concurrently, whenever possible, all land use entitlements for the same property (so long as deemed complete).	To date, City has complied.
5.	Agreement to facilitate reimbursement to developer of any costs incurred that may be subject to partial reimbursement from other developers.	To date, no such request has been received.

Evaluation of Good Faith Compliance

Based on a review of the Development Agreement Annual Review Application and the status of the project, the Community Development Director has determined, on the basis of

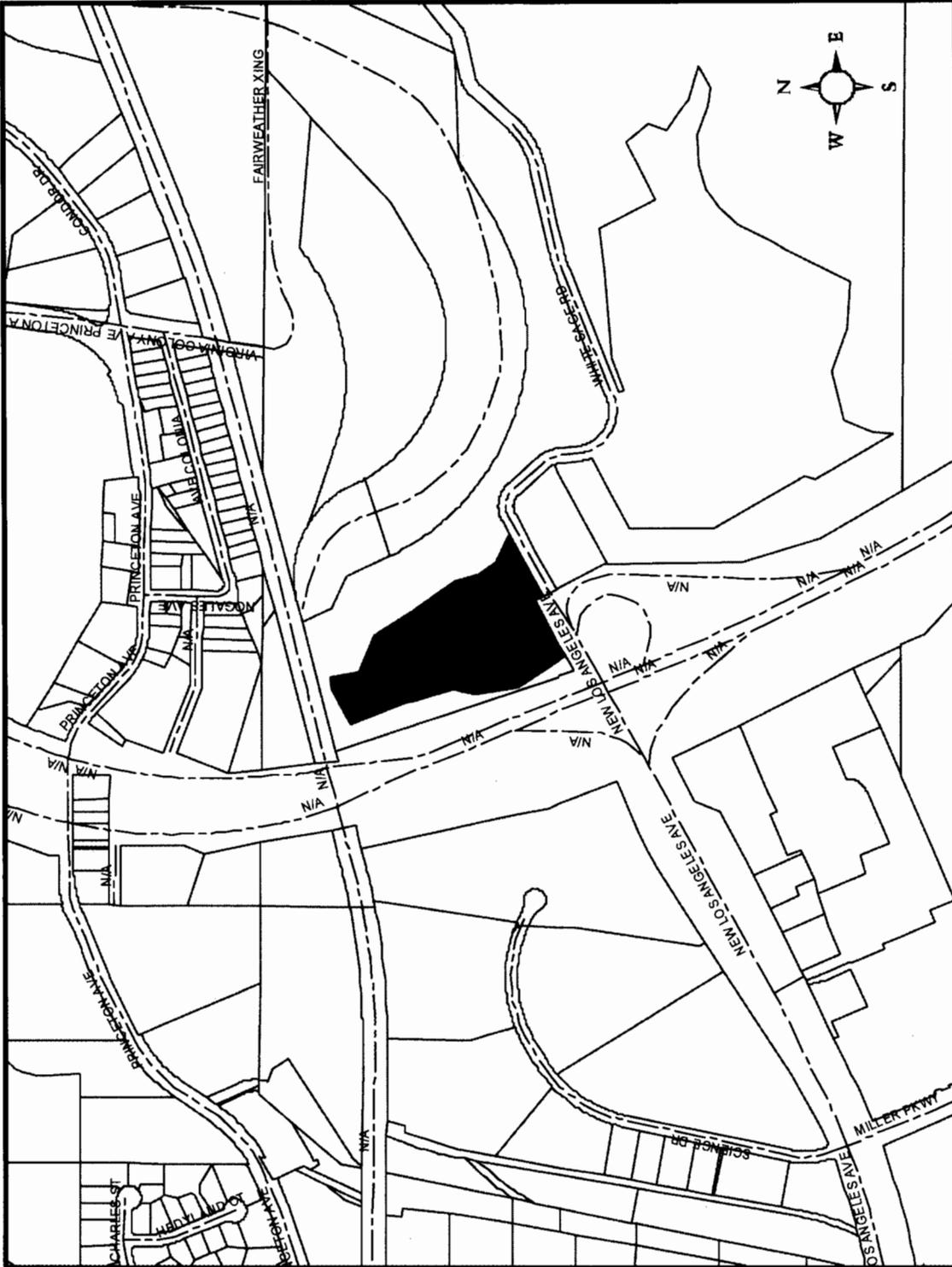
substantial evidence that NLA 118, LLC has, to date, complied in good faith with the terms and conditions of the agreement.

STAFF RECOMMENDATION

1. Accept the Community Development Director's Report and recommendation, on the basis of substantial evidence, that NLA 118, LLC has complied in good faith with the terms and conditions of the agreement.
2. Deem the annual review process complete.

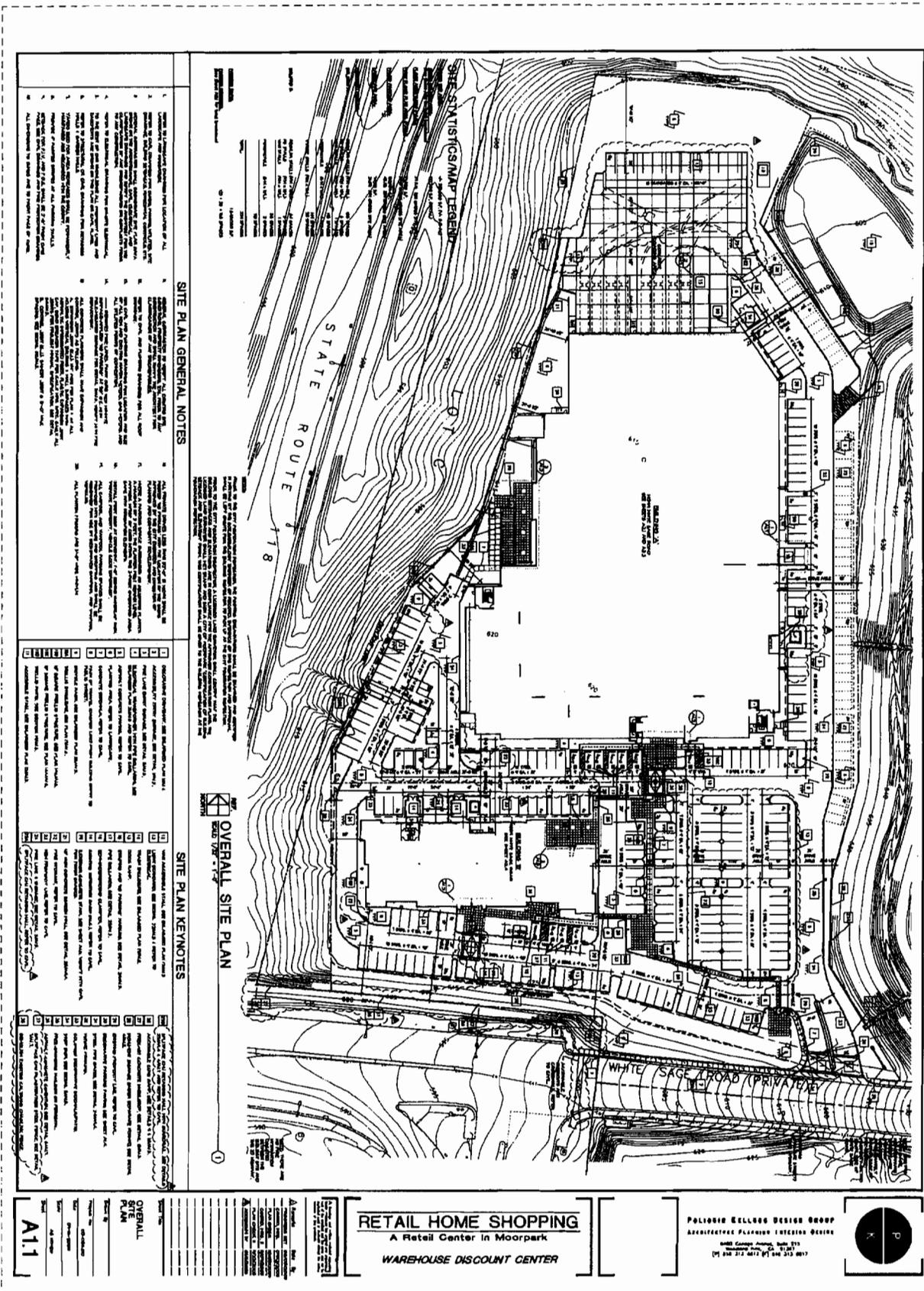
Attachments:

1. Location Map
2. Site Plan
3. Narrative



**LOCATION MAP
CC ATTACHMENT 1**

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NORTH



SITE PLAN GENERAL NOTES

1. THE SITE PLAN IS BASED ON THE SURVEY AND THE INFORMATION PROVIDED BY THE CLIENT.
2. THE SITE PLAN IS SUBJECT TO THE APPROVAL OF THE LOCAL AUTHORITY.
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SITE PLAN KEYNOTES

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OVERALL SITE PLAN

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NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMITTING	10/10/11
2	ISSUED FOR PERMITTING	10/10/11
3	ISSUED FOR PERMITTING	10/10/11
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10	ISSUED FOR PERMITTING	10/10/11

RETAIL HOME SHOPPING
 A Retail Center in Moorpark
WAREHOUSE DISCOUNT CENTER

POLLARD KELLOGG DESIGN GROUP
 ARCHITECTURE PLANNING INTERIOR DESIGN

4000 Campus Avenue, Suite 310
 Moorpark, Surrey, GU24 0JF
 Tel: 01483 512 4411 Fax: 01483 512 4417



DEVELOPMENT AGREEMENT ANNUAL REVIEW
NLA 118, LLC (WAREHOUSE DISCOUNT CENTER)

Owner/Developer has obtained the Grading Permit and Building Permits for the Shell Building Improvements for the construction of two buildings at 14339 and 14349 White Sage Road and made payment of all associated and required fees. The Owner/Developer has completed the items noted in the Developer Agreements, Section 6 of the Development Agreement with the exception of the following:

Section 6.7 – Irrigation and Landscaping of those areas under the freeway bridge along the north and south sides of New Los Angeles Avenue; the area on the north side of New Los Angeles Avenue along the entire reach of the Caltrans right-of-way, along the southern boundary of the site.

Progress: The irrigation and landscaping plans have been approved by the Community Development Director. The plans are in plan check with Dept. of Transportation (Caltrans), however, at Caltrans site visit, Caltrans made the determination that the existing chain link fence must remain and not be replaced with decorative tubular steel fence with block pilasters. The City approved plans reflect Caltrans decision for the existing chain link fence to remain.

Section 6.8 – Total Gross Taxable Sales

Progress: Not operational yet.

Section 6.9 – Air Quality Mitigation Fee

Progress: The fee shall be paid prior to the occupancy of the first building.

Section 6.10 – Easement on the project site and payment of \$25,000 to the City for City Welcome Sign.

Progress: The Easement and payment to be made prior to occupancy of the first building.

Section 6.11 – Formation of Assessment District that includes offsite landscaping and maintenance that includes Caltrans area and any drainage improvements previously maintained by a private responsible party and then assumed by the City.

Progress: Pending Caltrans approval of plans. To be complete prior to the occupancy of the first building.