

Exhibit C  
Resolution Denying Appeal, Approving  
Project and Adopting Mitigation Monitoring  
Program

Omni Resources, LLC  
(Corral de Tierra Village)  
PLN110077

Board of Supervisors  
January 10, 2012

## DRAFT RESOLUTION

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

In the matter of the application of:  
**Omni Resources Inc. (PLN110077 Appeal of  
PLN020344)**

**RESOLUTION NO. \_\_\_\_\_**

Resolution by the Monterey County Board of Supervisors denying the appeal by Omni Resources LLC from the January 26, 2011 decision of the Monterey County Planning Commission and approving the Combined Development Permit for the project consisting of 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) (PLN110077 an appeal of PLN020344), Omni Resources LLC, 5 Corral de Tierra Road)

**The OMNI Resources LLC (Phelps) application (PLN110077 appeal of PLN020344) came on for public hearing before the Monterey County Board of Supervisors on March 29, April 12, May 17, July 12, August 30, October 4, November 8, 2011, and January 10, 2012. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board of Supervisors find and decide as follows:**

### FINDINGS

#### APPROVAL OF COMBINED DEVELOPMENT PERMIT AND GENERAL DEVELOPMENT PLAN

- 1 **FINDING:** **CONSISTENCY** – The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.
- a) The project has been amended to consist of a 99,970 square foot shopping center, consisting of 10 buildings (9 single story buildings, and a two story building). All buildings will maintain a 100 foot setback from Corral de Tierra and Highway 68. A storm water collection system and ground water recharge system are included within the project design. The site will comply with LEED Silver construction standards. References in this resolution to the “Project” are to the project as herein described.
  - b) **APPLICABLE PLAN AND APPLICABLE ZONING ORDINANCES**

During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:

- 2010 Monterey County General Plan
- Toro Area Plan,
- Monterey County Zoning Ordinance (Title 21)

No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

c) **SITE DESCRIPTION**

The Site is located at 5 Corral de Tierra Road (Assessor's Parcel Numbers 161-171-003-000 and 161-581-001-000), within the Toro Area Plan. The Site is an 11-acre property designated as Commercial in the Land Use Plan of the General Plan. The approved project is a shopping center consistent with this land use designation.

d) **SITE DESCRIPTION (ZONING)**

The parcel is zoned "LC-B-8-D", which allows the development of a shopping center with a Use Permit and General Development Plan. Mitigation measures and conditions of approval have been required that make the approved project fully comply with the requirements of the zoning district.

e) **LAND USE ADVISORY COMMITTEE**

Earlier versions of the project were referred to the Toro Land Use Advisory Committee (LUAC) twice for review. The LUAC reviewed the project on August 26, 2002 prior to the preparation of the Environmental Impact Report (EIR) whereby the LUAC recommended denial of the application citing numerous factors which were later evaluated in the EIR. The LUAC again reviewed the project on July 26, 2010 after the preparation of the EIR. Based on the LUAC Procedures adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, the second review by the LUAC was asked to focus on review of visual resources, building and parking layout, architectural design, landscaping and accessibility to public transit. The LUAC recommended approval of the application and recommended further analysis and possible reduction of the height of the proposed 50-foot-high tower, increased accessibility to public transit and the requirement of sufficient tree and plant coverage. These recommendations have been addressed in the 99,970 square foot redesign submitted by the applicant.

f) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN020344.

2. **FINDING:**

"B-8" ZONING REGULATIONS - The approved project would be consistent with the B-8 zoning on the subject property.

**EVIDENCE a)**

On September 7, 1993 the Board of Supervisors adopted Ordinance No. 3704 amending the original B-8 provisions relative to development of commercial uses. These provisions are found in Zoning Ordinance (Title 21 of the Monterey County Code) Section 21.42.030 H (1) which states that the "B-8" District does not affect the "*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.*" The approved project would collect storm water and direct it to a

groundwater recharge system that will result in a positive water balance. The project will not use more water than is directed to the groundwater basin. To insure that the water balance is maintained, limitations have been placed on the project to restrict the amount of water used. Therefore, the project would not adversely affect the constraints which caused the "B-8" district to be applied to the property.

- b) The subject site's B-8 Zoning overlay includes the following language in section 21.42.030.H.2: "The minimum building site shall be that which is recognized as an existing legal lot at the time the "B-8" Zoning District is imposed on the property, or lots that are created by minor or standard subdivision for which an application was received by the Monterey County Planning Department prior to the imposition of the "B-8" Zoning District on the property." The proposed lot line adjustment would result in a lot being reduced in size from 5.38 acres to 1.12 acres. The purpose of the "B-8" Zoning District is to restrict development and/or intensification of land use in areas where, due to water supply, constraints, additional development and/or intensification of land use would be detrimental to the health, safety, and welfare of the residents of the area, or the County as a whole. "Intensification" means "the change in the use of a building site which increases the demand on the constraint(s) which caused the "B-8" District to be applied over that use existing at that time the "B-8" district is applied to the property." (MCC section 21.42.030.H.1)

The County interprets these provisions to mean that no new parcels may be created in the B-8 zoning district, but does not interpret these provisions to restrict the adjustment of lot lines where there is no intensification of the use. In this case the Center has been conditioned to maintain a water balance between the water used and the water diverted into the groundwater. The water balance considers the amount of water used, and the amount of storm water which will be diverted into the groundwater. The Center has been conditioned to maintain a maximum water use limit of 9 acre feet per year. The condition applies to both parcels, regardless of their configuration. In addition the Lot Line Adjustment will not impact the amount of water directed into the ground water. This is a function of center design. The lot line adjustment would not result in an intensification of the use of ground water, and is thus consistent with the B-8 zoning overlay.

3. **FINDING: CONSISTENCY – 2010 GENERAL PLAN**

The approved project has been determined to be consistent with Policy Nos. T-3.1, T-3.3 and C-1.3 of the 2010 General Plan.

- EVIDENCE:** a) Policy C-1.3 of the 2010 General Plan requires that circulation improvements that mitigate Traffic Tier 1 direct on-site and off-site project impacts be constructed concurrently with new development; and requires that off-site circulation improvements that mitigate Traffic Tier 2 or Traffic Tier 3 impacts be constructed concurrently with new development or by fair share payment pursuant to Policy C-1.8, Policy C-1.11 and/or other applicable traffic fee programs that shall be made at the discretion of the County. The approved project has been conditioned to comply with this Policy through improvements required on Corral de Tierra Road and through payment of TAMC fees.

b) **CONSISTENCY - 2010 MONTEREY COUNTY GENERAL PLAN**

**POLICY T-3.1.** Policy T-3.1 states: *Within areas designated as "visually sensitive" on the Toro Scenic Highway Corridors and Visual Sensitivity Map (Figure 16), landscaping or new development may be permitted if the development is located and designed (building design, exterior lighting, and siting) in such a manner that will enhance the scenic value of the area. Architectural design consistent with the rural nature of the Plan area shall be encouraged.*

The Project's design has been reduced to 99,970 square feet and contains the following elements which are consistent with the Site's location in the critical viewshed: 1) A village component with strong internal pedestrian orientation; 2) parking around the perimeter on the eastern boundary to minimize parking and asphalt visible from the scenic corridors; and 3) architectural building design that is predominantly single story with variation in the pattern of building location providing visual interest. The revised design also includes increased perimeter landscaping along the scenic frontages using native plant material and berming. The combination of the site layout, architectural design of the center and a strong native landscape palate will enhance the scenic value of the area and be consistent with the rural character of this location. The applicant orally testified that he would remove the gas station; a condition of approval has been added to require that the gas station be removed prior to construction of the project.

c) **CONSISTENCY - 2010 MONTEREY COUNTY GENERAL PLAN**  
**POLICY T-3.3**

The approved project is consistent with the provisions of Policy T-3.3 which requires: *"Portions of County and State designated scenic routes shall be designated as critical viewshed as shown on the Toro Scenic Highway Corridors and Visual Sensitivity Map. Except for driveways, pedestrian walkways, and paths, a 100-foot building setback shall be required on all lots adjacent to these routes to provide open space and landscape buffers. This setback may be reduced for existing lots of record that have no developable area outside the setback and to accommodate additions to existing structures that become non-conforming due to this policy. New development shall dedicate open space easements over setback areas established by this policy."*

The proposed project includes development within a designated critical viewshed and area of visual sensitivity. The DEIR concluded that the proposed project would result in significant potential impacts on visual resources and on the designated scenic corridors on Corral de Tierra Road and State Route 68 and the designated critical viewshed. The approved project includes a redesign to maintain all buildings outside of the 100 foot building setback and includes significant landscape buffer areas along the frontages on Corral de Tierra Road and State Route 68. The DEIR included a mitigation measure to expand the landscape areas along the road frontages for the proposed 126,523 square foot project. The 99,970 square foot project proposed by the applicant achieves or exceeds the mitigation measures contained in the DEIR. Therefore, the 99,970 square foot project is consistent with this Policy.

4. **FINDING:** **GENERAL PLAN POLICY T-2.6**  
 The approved project is consistent with the provisions of this Policy, which require that *“Improvements to Corral de Tierra and San Benancio Roads shall be designed to accommodate bicycles, horses and people.”*
- EVIDENCE:** The project will provide sidewalks and bicycle lanes along the frontages of Highway 68 and Corral de Tierra Road.
5. **FINDING:** **SITE SUITABILITY** – The site is physically suitable for the use proposed.
- EVIDENCE:** a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department, Monterey County Regional Fire Protection District, RMA- Public Works, Environmental Health Bureau, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.
- b) Staff conducted various site inspections during the review of the project to verify that the site is suitable for this use.
- c) The application, plans of the approved project, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN020344.
6. **FINDING:** **HEALTH AND SAFETY** - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.
- EVIDENCE:** a) The project was reviewed by the RMA-Planning Department, Environmental Health Bureau, RMA-Public Works Department, Monterey County Water Resources Agency and the Monterey County Regional Fire District. The respective departments/agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
- b) Necessary public facilities are available or will be provided. Water will be provided by California American Water through the Ambler Park Water System. The applicant is required to verify that the California Utility Services wastewater treatment plant has sufficient capacity prior to issuance of any building permits for the Project. The mitigation measures contained in the Traffic/Transportation Chapter of the EIR require construction of road improvements that would provide adequate vehicular access to the Site.
- c) Preceding findings and supporting evidence for PLN020344.
7. **FINDING:** **NO VIOLATIONS** - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County’s zoning ordinance. No violations exist on the property.
- EVIDENCE:** a) Staff reviewed Monterey County RMA - Planning Department and Building Services Department records and is not aware of any violations existing on subject property.

- b) Staff conducted various site inspections and researched County records to assess if any violation exists on the subject property.
- c) There are no known violations on the subject parcel.
- d) Zoning violation abatement costs, if any, have been paid. A condition is included to assure that all zoning abatement costs, if any, have been paid.
- e) The clean up of contaminated soils and groundwater on the corner gas station parcel are not a violation of the Monterey County Code. The Monterey County Environmental Health Bureau and the Regional Water Quality Control Board are requiring remediation. A condition of approval has been added requiring remediation prior to issuance of any construction permits; however the contamination is not a violation of the County Code that prohibits issuance of the Combined Development Permit for the Shopping Center.
- f) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN020344.

8. **FINDING:** **GENERAL DEVELOPMENT PLAN** –Monterey County Code requires a General Development Plan (GDP) prior to the establishment of uses/development if there is no prior approved GDP, and if: 1) the lot is in excess of one acre; or, 2) the development proposed includes more than one use; or, 3) the development includes any form of subdivision.

- EVIDENCE:**
- a) Zoning Ordinance, Chapter 21.18 (Regulations for Light Commercial Zoning Districts). The approved project meets the size and number of uses criteria; therefore, a GDP is required to be approved prior to new development, changes in use, expansion of use, or physical improvement of the site.
  - b) The project and General Development Plan as described in the plans for the approved project and accompanying materials were reviewed by the RMA-Planning Department, Monterey County Regional Fire Protection District, RMA-Public Works Department, Environmental Health Bureau, and the Water Resources Agency. The respective departments have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood; or the county in general.
  - c) A General Development Plan has been approved that establishes the uses allowed; establishes parameters for site design issues such as scenic corridors, vehicle circulation, landscaping and building design; and assures water availability for the allowed uses and future changes in the use of the buildings.
  - d) The General Development Plan allows staff review of proposed changes to the use of the buildings and to verify that the proposed changes are consistent with the overall intent of the approval of commercial uses and consistent with the water use limitations of the site.
  - e) Materials in Planning File PLN020344.

9. **FINDING:** **WATER SUPPLY** – The project has an adequate long-term water supply and manages development in the area so as to minimize adverse effects on the aquifers and preserve them as viable sources of water for human consumption.

**EVIDENCE:** a) The existing groundwater basin in the El Toro area is in overdraft and this

has resulted in the placement of the "B-8" Zoning Overlay District in an area of the Toro Area Plan including the project site. The project would use a maximum of 9.0 acre-feet per year (AFY) of water and the underground water recharge system approved for the 99,970 square foot project would return 9.66 AFY of water to the underground basin which results in a net positive water balance.

- b) The project has been conditioned to ensure that the water use is limited and maintained at 9.0 AFY. The Planning Director and General Manager of the Water Resources Agency have been given the authority through the conditions of approval to monitor the use of water at the site in order to ensure that the positive water balance is achieved and maintained.
- c) The "B-8" District regulations allow the commercial development of the site provided that the development can be found to not adversely affect the constraints which caused the "B-8" District to be applied to the property.
- d) Water for the development would be provided by the Ambler Park Water System.

10      **FINDING:**      **LOT LINE ADJUSTMENT** – Pursuant to Section 66412 of the California Government Code (Subdivision Map Act) lot line adjustments may be granted where among other things:

- 1. The lot line adjustment is between four or fewer existing adjoining parcels;
- 2. A greater number of parcels than originally existed will not be created as a result of the lot line adjustment;
- 3. The parcels resulting from the lot line adjustment conforms to the County's general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances.

- EVIDENCE:**
- a) The parcel is zoned LC-B-8-D (Light Commercial with a Building Site and Design Control overlays).
  - b) The project area has a total of 10.98 acres. The proposal would adjust 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).
  - c) The lot line adjustment is between more than one and less than four existing adjacent parcels. The two existing parcels are located along the east side of Corral de Tierra Road south of Highway 68.
  - d) The lot line adjustment will not create a greater number of parcels than originally existed. Two contiguous separate legal parcels of record will be adjusted and two contiguous separate legal parcels of record will result from the adjustment. No new parcels will be created.
  - e) The proposed lot line adjustment is consistent with the Monterey County Zoning Ordinance (Title 21). Staff verified that the subject property is in compliance with all rules and regulations pertaining to the use of the property and that no violations exist on the property.  
The light commercial zoning designation does not have a minimum parcel size. The Proposed Lot Line Adjustment will not create any lots that would require a variance from any Zoning Ordinance Standard.
  - f) The Proposed Lot Line Adjustment is consistent with the B-8 District as discussed under Finding and Evidence 2 (above).
  - g) **SEWER/WATER/ACCESS**  
The subject site is served by an approved water system and sewer system.



- The site will have access from both Corral de Tierra and Highway 68.
- h) **RECIPROCAL ACCESS**  
A condition of approval requires that a legal instrument be recorded on both properties to require that the properties provide shared access and parking for the newly configured lots. This will allow development of both parcels without adding to the number of driveways.
  - i) As an exclusion to the Subdivision Map Act, no final map is recorded for a Lot Line Adjustment. In order to appropriately document the boundary changes, a Certificate of Compliance for each new lot is required per a standard condition of approval in **Exhibit 1**.
  - j) The project planner conducted various site inspections to verify that the project would not conflict with zoning or building ordinances.
  - k) The application, plans and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN110077 appeal of PLN020344.

11 **FINDING:** **APPEAL.** The application for a Combined Development Permit comes to the Board of Supervisors on appeal from a January 26, 2011 decision of the Monterey County Planning Commission. The applicant, Omni Resources LLC timely filed the appeal on February 3, 2011. The Board of Supervisors conducted a duly noticed public hearing on the appeal and the project application on March 29, April 12, May 17, July 12, August 30, October 4, November 8, 2011, and January 10, 2012. The Appellant/Applicant contend that: the Planning Commission's decision did not provide Fair and Impartial Hearing because the Commission failed to reach a decision; that the decision is not supported by the evidence because the applicant disagrees with Finding 2, Evidence f; that the decision is contrary to law because the Appropriate Authority failed to reach a decision on the application; and that the applicant disagrees with Finding 2. Upon consideration of the documentary information in the file, the staff report, the oral and written testimony, and all other evidence presented before the Board of Supervisors, the Board responds as follows to the Appellants' contentions:

**EVIDENCE:** a) *Appellants' Contention 1 The Lack of a Fair or Impartial Hearing because the Planning Commission failed to reach a decision on the application (Deadlock).*

Response: The facts do not support this contention because the Planning Commission did reach a decision. That decision was to adopt a resolution stating that they were deadlocked and could not develop a motion that would receive a positive vote to either approve or deny the application. This decision came about after the Planning Commission received staff's presentation and recommendation, received the applicant's presentation, and held the public hearing. A motion was made to approve the 112,000 square foot Reduced Density LEED Alternative, which did not pass on a 5-5 vote. Then the Planning Commission considered a motion to deny the project based upon Findings and Evidence, which failed with a 4-4 vote. The decision of the Planning Commission to determine that they were deadlocked came after lengthy deliberation on the Project and these two motions, neither of which passed.

b) *Appellant's Contention 2. The Findings, Decision or Conditions are not*

supported by Evidence. Evidence (f) in Finding 2 states “ half the Commission felt that the size and scale of the project was not appropriate for the site”

Response: The Commission adopted Resolution #11-004A reflecting that they were deadlocked. That resolution includes the finding that they were deadlocked and that half the commission felt the project was too large. The initial motion to approve the 112,000 Reduced Density LEED failed with a 5-5 vote. After that motion failed there was additional deliberation by the Commission. The comments from those who voted no on the motion primarily related to the size and scale of the project. The motion made to deny the project also failed with a tie vote (4-4). This again reflects a split with half the commission voting for the project and half against. The Planning Commission adopted the resolution with this evidence point.

- c) Appellant’s Contention 3. The decision is contrary to law because the Planning Commission failed to reach a decision on the application (deadlock).

Response: The Commission did reach a decision in accordance with their duly adopted Rules for the Transaction of Business. The decision was that they were deadlocked. Since the commission was unable to develop a motion with a substantive recommendation on the project that would garner an affirmative vote, the Planning Commission prepared findings documenting that they were deadlocked in accordance with the Rules for the Transaction of Business of the Planning Commission for the County of Monterey (Rule 10.1). Those Rules have been duly adopted pursuant to section 2.48.040.C of the Monterey County Code. Rule 10.1 provides that in the event of an unbreakable tie vote, the Chair of the Planning Commission is to solicit findings for both sides for the record. The Planning Commission acted in accordance with Rule 10.1 in adopting its resolution.

- d) Appellant’s Contention 4. Finding 2, Evidence f which states: “. . . half the Commission felt that the size and scale of the project was not appropriate for the site.” Although half the Commission members failed to vote to support the application, the record does not reflect that half the Commissioners felt that the size and scale of the project was not appropriate.

Response: This was the finding and evidence voted on by the Commission in their resolution; the resolution speaks for the Commission. The primary concerns articulated by Commissioners in voting to not approve the project related to size and scale, and this concern is reflected in the resolution adopted by the Commission.

In sum, because appellant’s contentions are procedural and the Planning Commission’s process was fair and compliant with law, the Board of Supervisors denies the appeal.

**12. FINDING  
EVIDENCE**

CEQA.—The County has complied with the California Environmental Quality Act.

Prior to approval of this Combined Development Permit, the Monterey County Board of Supervisors adopted Resolution \_\_\_\_\_ certifying the Final Environmental Impact Report prepared for the project, adopting Statements of Overriding Consideration, and making the required CEQA findings prior to approving the project. In addition, per this resolution, the

Board of Supervisors is adopting the Mitigation Monitoring and Reporting Plan for implementation of the Mitigation Measures contained in the EIR.

**DECISION**

**NOW, THEREFORE**, based on the above findings and evidence, the Board of Supervisors does hereby:

- A. Deny the Appeal by Omni Resources LLC from the January 26, 2011 decision of the Monterey County Planning Commission; and
- B. Approve the Combined Development Permit for the project consisting of 1) Use Permit; 2) General Development Plan; 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), as shown on the Plans included in Attachments 2 and 3, based upon the Findings and Evidence and subject to the conditions of approval contained in the attached Mitigation Monitoring and Reporting/Condition Compliance Plan attached hereto as Exhibit 1 and incorporated herein by reference;
- C. Adopt the Mitigation Monitoring and Reporting/Condition Compliance Plan (Attachment 1)

**PASSED AND ADOPTED** this 10<sup>th</sup> day of January, 2012 upon motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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 \_\_\_\_\_ for the meeting on \_\_\_\_\_.

Dated:

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