

Exhibit B
Resolution Certifying EIR
And
Adopting Statement of Overriding
Considerations

Omni Resources, LLC
PLN110077

Board of Supervisors
February 7, 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 LLC. (PLN110077 an appeal
of PLN020344)**

RESOLUTION NO. _____

Resolution by the Monterey County Board of
Supervisors:

1. Certifying the Environmental Impact Report
2. Adopting Findings, and
3. Adopting the Statement of Overriding
Considerations

(PLN110077 an Appeal of PLN020344, Omni
Resources LLC, 5 Corral de Tierra Road)

The OMNI Resources LLC (Phelps) application (PLN110077-an 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, January 10, 2012, and February 7, 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 finds and decides as follows:

FINDINGS

FINDINGS FOR CERTIFICATION OF EIR AND ADOPTION OF OVERRIDING CONSIDERATIONS

1. **FINDING:** **CEQA (EIR)** - The County of Monterey has completed an Environmental Impact Report (EIR) in compliance with CEQA, and the Final EIR reflects the County of Monterey's independent judgment and analysis.
EVIDENCE: a) The California Environmental Quality Act (CEQA) requires preparation of an environmental impact report if there is substantial evidence in light of the whole record that the project may have a significant effect on the environment.
b) The Draft Environmental Impact Report ("DEIR") for Omni Resources' Application PLN20344 was prepared in accordance with CEQA and circulated for public review from May 28, 2010 through July 16, 2010 (SCH#: 2007091137).
c) For purposes of the findings contained in this resolution, the "project" refers to the revisions submitted by the applicant which include: a 99,970 square foot commercial center, all the buildings are outside of the 100 foot building

setback, the mass and scale of the buildings have been reduced to single story except building 5 which is two story, provides increased landscaping along both Corral de Tierra and Highway 68, and a lot line adjustment to modify the property boundaries.

d) SUMMARY OF IMPACTS

Issues that were analyzed in the Draft EIR include aesthetic resources, air quality, biological resources, cultural resources, geology and soils, hazards/hazardous materials, hydrology/water quality, land use and planning, noise, population, employment and housing, public services, traffic and transportation, utilities and global climate change. The DEIR identified potential significant impacts that are either less than significant or can be mitigated to less than significant levels on aesthetics, air quality, biological resources, noise, public services and utilities. The DEIR identified significant impacts on hydrology and traffic and transportation resources that cannot be mitigated to less than significant levels.

e) All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval. A Condition Compliance and Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations and is designed to ensure compliance during project implementation and is recommended to be adopted in conjunction with project approval. The applicant must enter into an "Agreement to Implement a Mitigation Monitoring and/or Reporting Plan" as a condition of project approval (Condition of Approval No. 6)

f) Evidence that has been received and considered includes: the application, technical studies/reports, staff reports that reflect the County's independent judgment, and information and testimony presented during public hearings before the Planning Commission and Board of Supervisors. These documents are on file in the RMA-Planning Department (PLN020344) and/or Clerk of the Board of Supervisors and are hereby incorporated herein by reference.

g) RECIRCULATION of the DEIR IS NOT REQUIRED.

- While new information has been submitted by the applicant and the public as part of the comments on the DEIR, which has been included and responded to in the FEIR, no new information has been submitted that identifies a new significant environmental impact not previously disclosed, no substantial increase in the severity of the identified environmental impacts would result from implementation of the approved project or implementation of the mitigation measures, and no feasible project alternative or mitigation measures considerably different from those analyzed in the DEIR have been identified. No new information has been added to the record that deprived the public of a meaningful opportunity to comment upon a substantive adverse environmental effect of the project.
- The applicant has reduced the size of the project and proposed to modify the lot line of the two affected parcels on the site, but these changes do not pose any new impacts not already addressed in the EIR. The reduced

project size is consistent with the Environmentally Superior Alternative and thus no recirculation is necessary.

- Soil and water sampling revealed that there is contaminated soil and contaminated water on the adjacent (APN 161-571-002) gas station property (“corner parcel”). While soil and water sampling have shown that the ground water aquifer has not been contaminated under the subject site or under the corner parcel and that the location of the contamination is limited to the corner parcel, EHB is requiring assessment of the maximum extent of the soil contamination and the Regional Water Quality Control Board is requiring delineation of groundwater contamination. Both agencies are requiring remediation. This information has been fully disclosed to the public, and the public has had an opportunity to comment on the information before and during public hearings on the project. Therefore, the public has not been deprived of a meaningful opportunity to review and comment on the information. The contaminated soil and groundwater contamination will be required to be remediated regardless of the disposition of the subject project. The remediation requirement is independent of this project. The soil contamination is not an impact of the project, and the obligation to remediate the contamination is not an impact resulting from the project. Thus, this information does not require revision or recirculation of the EIR prepared for this project. In order to insure proper sequencing, a condition of approval has been added requiring the contamination be remediated prior to the County issuance of any construction permits.
- There will not be significant impacts associated with removal of the gas station because the demolition permit will require appropriate best management practices be implemented to mitigate erosion and dust control and protect air quality and a condition of this permit has been added to insure that the demolition complies with Monterey Bay Unified Air Pollution Control District requirements.

h) DEPARTMENT OF FISH AND GAME FEES.

For purposes of the Fish and Game Code, the project will have a significant adverse impact on the fish and wildlife resources upon which the wildlife depends. State Department of Fish and Game reviewed the DEIR to comment and recommended necessary mitigations to protect biological resources in this area. Therefore, the project will be required to pay the State fee in effect at the time of the recordation of the Notice of Determination to the Monterey County Clerk/Recorder for processing said fee and posting the Notice of Determination (NOD).

i) RESPONSE TO COMMENTS.

The County prepared “Responses to Comments on the Corral de Tierra Shopping Village Draft EIR”. The Responses to Comments respond to comments that were received during the Draft EIR circulation period. The Responses to Comments document was released to the public on November 24, 2010 and respond to all significant environmental points raised by persons and organizations that commented on the DEIR. The County has

considered the comments received during the public review period for the Draft EIR, and in the Responses document, provide responses to the comments received. Together, the DEIR and the Responses to Comments constitute the final EIR on the project.

j) REVISED MITIGATION MEASURES.

Mitigation Measure Nos. 4.1.4, 4.2.1, 4.3.2, 4.3.3, 4.3.4, 4.3.5, 4.7.5, 4.7.6, 4.12.2, 4.12.4, 4.13.6, 4.13.7 and 4.14.3 have been revised as described below. The revised measures are equivalent or more effective in mitigating or avoiding potential significant effects and themselves will not cause any potentially significant effect on the environment:

MM-4.1.4 has been revised to reflect that a revised site plan is being approved and additional revisions are not necessary.

MM 4.3.2: has been revised to clarify the timing of necessary vegetation removal to protect nesting birds; and to clarify the details of the required surveys of nesting birds prior to beginning of construction;

MM 4.3.3 has been revised to clarify the procedures and protocols to conduct burrowing owl presence/absence surveys;

MM 4.3.4 has been revised to clarify options to determine presence/absence of California Tiger Salamander on the site in order to provide more adequate mitigation;

MM 4.3.5 has been revised to address comments from the California Department of Fish and Game regarding surveying for and the potential take of California Red-legged frog and Western Spadefoot Toad;

MM 4.7.5 has been revised to clarify the requirements of the mitigation relative to improvements of an existing culvert under State Route 68;

MM 4.7.6 has been revised to require the Applicant to adopt Best Management Practices that may be recommended by the Central Coast Regional Water Quality Control Board for construction of drainage and flood control systems;

MM 4.7.8 has been revised to establish a different enforcement mechanism to the existing mitigation measure. The existing measure would allow the County to require the owner to modify water use on the site, including holding some tenant spaces vacant if the water use on the site exceeds the 9.0 AFY water use cap. The new mitigation will require a fine each year that the water use cap is exceeded. The fine would be progressive and the money from the fine would be used to improve water supplies within the area of the El Toro Primary Aquifer System. This approach is equally or more effective because it establishes a stiff financial deterrent, and if the fine were triggered, the fund must be used to study and develop solutions to improve water supplies in the area drawing water from the El Toro Primary Aquifer System.

MM 4.12.2 has been revised to include a requirement that the access driveway on Highway 68 be designed and constructed to preclude left-turn ingress and egress from the site;

MM 4.12.4 has been revised to eliminate the funding of the Project Study Report for the "State Route 68 Commuter Improvements Project" as an

alternative to mitigate the Project's cumulative impacts to road intersection along the Highway 68 corridor;

MM-4.13.6 has been revised to require that a transit stop be installed consistent with MST specifications and a pedestrian connection be provided between the center and the transit stop.

MM 4.13.7 has been revised to clarify that the County will not issue a building permit for the Project until the California Utility Service wastewater treatment facility has attained a revised permit from the Regional Water Quality Control Board if the project would cause the facility to exceed its capacity.

MM-4.14.3 has been modified to allow some flexibility in the location of bicycle parking facilities while maintaining the same percentage of spaces for non-motorized vehicles.

A public hearing was held on the project on March 29, April 12, May 17, June 14, July 12, October 4, November 8, 2011, January 10, 2012, and February 7, 2012 in which the revisions to the mitigation measures were addressed. The revised mitigation measures are incorporated into project approval or made a condition of project approval.

k) **ADDITIONAL MITIGATION MEASURES**

New Mitigation Measure Nos. 4.3.6 and 4.7.8 have been added as follows to better mitigate identified potentially significant impacts:

MM 4.3.6 has been added to address potential impacts on the Monterey Dusky-footed Woodrat;

MM 4.7.8 has been added to limit the amount of water used annually by the Project and to monitor water usage.

A public hearing was held on the project on March 29, April 12, May 17, July 12, October 4, November 8, 2011, January 10, 2012, and February 7, 2012 in which the new mitigation measures were addressed. The new mitigation measures are incorporated into project approval or made a condition of project approval.

l) **MITIGATION MEASURES ADDRESSED BY REDESIGN.**

The applicant has proposed a modified plan for the retail center which reduced the building square footage to 99,970 square feet, increased the setbacks of the buildings from Highway 68 and Corral de Tierra Road, increased the amount of landscaping along the frontages of both Highway 68 and Corral de Tierra Road and provides additional layers of landscaping within the parking areas. These design changes address the concerns that had been addressed by Mitigation Measures 4.1.2 (changes along Highway 68) and 4.1.3 (changes along Corral de Tierra Road). The revised plan addresses the need for additional landscaping along the scenic corridors, provides increased setbacks for the buildings, and provides for a reduction in the building mass. As a result these mitigation measures are not included in the Mitigation Monitoring/Condition Compliance Matrix.

m) The Monterey County Planning Department, located at 168 W. Alisal, Second Floor, Salinas, California, 93901, is the custodian of documents and other materials that constitute the record of proceedings upon which the

decision to certify the EIR is based. The Clerk of the Board of Supervisors, located at 168 W. Alisal, First Floor, Salinas, California 93901, is the custodian of certain documents relating to the hearings of the Board of Supervisors.

2. **FINDING:** **EIR-ENVIRONMENTAL IMPACTS MITIGATED TO LESS THAN SIGNIFICANT** – The EIR identified potentially significant impacts to aesthetics, visual resources, air quality, biological resources, noise, utilities, and impacts to groundwater resources, which could result from the project as originally submitted. Changes or alterations have been required in or incorporated into the project, which avoid or substantially lessen the potentially significant environmental effect identified in the Final EIR. The applicant’s proposed reduced size 99,970 square foot project and incorporation of mitigation measures from the EIR into the conditions of project approval will reduce these impacts to a less than significant level.

- EVIDENCE:**
- a) Potentially significant impacts on aesthetics and visual resources have been mitigated to less than significant levels by project design changes proposed by the applicant including a reduction in center size to 99,970 square feet, reduction in the building scale and mass, an increase in the landscape buffers along both Highway 68 and Corral de Tierra and removal of the old gas station on the corner parcel.
 - b) Potentially significant impacts on air quality have been mitigated to a less than significant level through conditions of approval that would limit particulate matter and diesel emissions to within the thresholds of the Air Pollution Control District.
 - c) Potentially significant impacts on biological resources have been mitigated to a less than significant level through mitigation measures which require additional surveys and avoidance or protection of listed animal species if found on site prior to initiation of any construction activities.
 - d) Potentially significant impacts on noise have been mitigated to a less than significant level through conditions of approval that limit sound emissions during construction and mitigation measures that would reduce the impacts on adjoining neighbors from the operation of the loading dock of the Market building.
 - e) Potentially significant impacts on utilities have been mitigated to a less than significant level through conditions of approval that assure the wastewater treatment facility would have adequate capacity to receive and treat wastewater generated by the project.
 - f) Potentially significant impacts on ground water have been mitigated to a less than significant level through the redesigned 99,970 square foot retail center including a storm water collection and groundwater recharge system proposed by the applicant and approved by the Board of Supervisors. This design will result in a net water balance for operation of the retail village at this location.

3. **FINDING:** **EIR-ENVIRONMENTAL IMPACTS NOT MITIGATED TO LESS THAN SIGNIFICANT** – The proposed 99,970 square foot project would

result in significant and unavoidable impacts that would not be mitigated to a less than significant level even with incorporation of mitigation measures from the EIR into the conditions of project approval, as further described in the evidence below. There are specific economic, legal, social, technological or other considerations which make infeasible mitigating these impacts to a less than significant level.

- EVIDENCE:** a) The DEIR found that direct project impacts to the intersections of Highway 68 and Laureles Grade and Highway 68 and Corral de Tierra Road could not be mitigated to less than significant level through the "State Route 68 Improvements" project component of the Transportation Agency of Monterey County Regional Development Impact Fee. The Laureles Grade intersection is not within the project improvement area. The improvements associated with Corral de Tierra will not mitigate the impacts to a less than significant level.
- b) No mitigation has been identified that would reduce these impacts to a less than significant level. The impacts to the intersections are based upon cumulative conditions, which is not the sole responsibility of the proposed project. The applicant is constructing frontage improvements on Corral de Tierra to tie into the proposed intersection improvements. Improvements beyond those identified in the TAMC Regional Development Impact Fee (RDIF) do not have a funding source, and it is beyond the applicant's responsibility to design and construct a regional improvement and such a requirement would be disproportionate to the project's impact, thus making any additional improvement financially and legally infeasible.
- c) Contributions to the RDIF will result in improvements to the functioning of the Highway 68 corridor as a whole, but will not completely fix the intersections at Highway 68/Laureles Grade or Highway 68/Corral de Tierra.

4. **FINDING:** **EIR-CEQA ALTERNATIVES TO THE PROPOSED PROJECT** - The EIR considered several alternatives to the 126,523 square foot project initially submitted by the applicant as the project, in compliance with CEQA Guidelines section 15126.6. The EIR considered the alternatives described below which are more fully described in the DEIR. The project which the County is considering for approval concurrently with Certification of the EIR is the applicant's proposed reduced density 99,970 square foot alternative which is similar to the reduced density alternative discussed in e) below. The 99,970 square foot alternative presented by the applicant is the environmentally superior alternative because as a variant of the reduced density alternative it also includes a reduction in building area and mass, a corresponding reduction in traffic and increases the landscape buffers along the street frontages of the site. In addition, specific economic, legal, social, technological or other considerations make infeasible the project alternatives identified in the EIR for reasons discussed below, except for the applicant's proposed reduced density 99,970 square foot alternative.

EVIDENCE: a) Alternative No. 1: No Project Alternative.

Under this Alternative the existing lots of record would not be subdivided and the shopping center would not be developed. Overall, the No Project Alternative would have no impacts or fewer impacts to the environmental issues and resources than the proposed project would impact. However, the No Project Alternative would not meet the basic project objective of establishing a retail neighborhood shopping village and office uses to meet the demands currently not fulfilled in this portion of the County, and would not meet the intent of the General Plan to provide a commercial use on the site.

b) Alternative No. 2: LEED Silver: Reduced Water Consumption/Full Recharge Alternative.

This alternative modifies the Project design in order to further reduce potential impacts associated with hydrology, specifically water consumption and groundwater recharge. The alternative includes LEED Silver construction standards as identified in the DEIR and includes a larger underground storm water retention/percolation system. Development of this alternative would result in a positive net water balance. This alternative to the Project would retain the same footprint, building area and circulation layout as the proposed Project, and would include the subdivision of the two existing lots of record. This alternative would have the same impacts as the Project on aesthetics, air quality, biological resources, cultural resources, land use, geology and soils, hazards and hazardous materials, population and housing, public services, utilities and traffic. The alternative would reduce impacts to groundwater supply (hydrology) to a level that is less than significant (net benefit) as opposed to the originally proposed Project, which would have a significant unavoidable impact to water resources. This alternative would meet all the nine (9) project objectives, but it does not adequately address the aesthetic or scenic viewshed concerns expressed by the Board of Supervisors. The project is still too large, has too great a mass and scale to be considered consistent with the scenic character of the area.

c) Alternative No. 3: Reduced Density/Redesigned Project

This alternative includes all the LEED and water recharge components of Alternative No. 2. In addition, the alternative includes the reduction of 8,600 square feet from the proposed Project (resulting in a 117,923 square foot center), a reduction of 34 parking spaces and other changes that would reduce identified potential impacts on visual resources and the designated scenic corridors, reduce potential impacts on vehicle circulation on Highway 68 and Corral de Tierra Road and augment accessibility to public transit in compliance with Policies of the Toro Area Plan. The reduction in square footage would also provide additional benefits with a reduction in water usage providing a better water balance and a reduction in traffic beyond what is proposed under the proposed Project and under Alternative No. 2.

d) Alternative Project Location. Per the CEQA Guidelines, Section 15126.6

(f)(2), an alternative project location need only be analyzed if the significant effects of the proposed project would be avoided or substantially lessened by putting the project in another location. No alternative project location was analyzed in the DEIR because there are no other commercially-zoned properties in the Toro Area with enough size and accessibility to develop the project. The Site is designated commercial to provide neighborhood retail uses to mainly serve residential uses in the Toro Area. Moving the Project outside of the Toro Area would not meet the objective of establishing a neighborhood retail village and offices to meet the demands not currently offered in this area of the County. The primary adverse impacts associated with the Project are water and transportation/traffic. The majority of the Highway 68 corridor has similar water and transportation constraints; developing an alternate site along the corridor would not reduce or resolve the impacts associated with water and traffic and other resources and therefore an alternative site location for the Project would not be feasible.

- e) Environmentally Superior Alternative. Each of the alternatives either avoided or minimized to a greater extent the impacts associated with the proposed project. When all the alternatives were considered, the Reduced Density/Redesigned Project Alternative is considered to be the Environmentally Superior Alternative in the EIR. The applicants reduced density project consisting of 99,970 square feet is consistent with the reduced density alternative because it is a smaller project which further addresses aesthetic concerns associated with the alternative discussed in the EIR. Therefore, the Reduced Density 99,970 square foot project is considered to be the Environmentally Superior Alternative because it meets all the project objectives with incrementally less environmental impacts to air quality, noise, traffic and transportation, and global climate change. It would further reduce the impacts to aesthetics and site circulation. It would increase consistency with land use plans and policies and reduce hydrologic impacts to less than significant levels and to a higher degree than the applicant's initially proposed project, none of which remain significant after mitigation. The Reduced Density/Redesigned Project Alternative would not change the impacts associated with biological resources, cultural resources, geology and soils, hazards and hazardous materials, population and housing, public services and utilities.

5. **FINDING: EIR-STATEMENT OF OVERRIDING CONSIDERATIONS**

In accordance with Section 15093 of the CEQA Guidelines, the County has evaluated the economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of the project against its unavoidable environmental risks in determining whether to approve the project, and has determined that the specific economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of the project outweigh its unavoidable, adverse environmental impacts so that the identified significant unavoidable impact(s) may be considered acceptable.

- EVIDENCE:**
- a) The proposed project will result in development that will provide benefits described herein to the surrounding community and the County as a whole.
 - b) The site is designated as commercial in the 2010 Monterey County General Plan. Policy LU-4.6 states: *Commercially designated areas may include provisions for professional offices as well as retail and neighborhood serving uses.* Development of the project at the site would achieve the intent of the General Plan.
 - c) Development of the project would result in a reduction of miles traveled due to the proximity of the site to a large number of residents and the distance which must currently be traveled by residents to obtain goods and services that would be provided by the project. Development of a commercial center at this location will allow local residents to shop locally rather than driving into Salinas or Monterey. The center is also placed to attract a good number of pass-by trips where people commuting between Salinas and Monterey can stop in route to purchase needed items without diverting from their normal commute path or making an additional trip.
 - d) The reduction in vehicle miles traveled would have a corresponding decrease in the production of greenhouse gases. Greenhouse gases are generated through the combustion of fossil fuels. A reduction in miles traveled will result in a reduction in fossil fuel consumption and in Greenhouse Gas emissions.

DECISION

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

1. Certify that the Final Environmental Impact Report for the Corral de Tierra Neighborhood Village (SCH#: 2007091137) has been completed in compliance with CEQA, that the Final EIR was presented to the Board of Supervisors and the Board of Supervisors has reviewed and considered the information contained in the FEIR before approving the project, and that the FEIR reflects the County's independent judgment and analysis;
2. Adopt the findings set forth in this resolution: and
3. Adopt the Statement of Overriding Considerations.

PASSED AND ADOPTED this 7th day of February, 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