

MONTEREY COUNTY PLANNING COMISSION

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| Meeting: January 26, 2011 | Agenda Item No.: 1 |
| Project Description: Combined Development Permit including: 1) Use Permit for development of a new 126,523 square foot shopping center including retail and office space, 508 parking spaces and landscaping; 2) General Development Plan; 3) Design Approval. The application requests rezoning the subject property to remove "B-8" Overlay Zoning District from the property's overall "LC-B-8-D" Zoning Designation; | |
| Project Location: 5 Corral de Tierra Road. Southeast corner of the State Highway 68/Corral de Tierra Road Intersection. | APN: 161-571-003-000 & 161-581-001-000 |
| Planning File Number: PLN020344 | Owner: OMNI Resources Inc. Agent: Brian Finegan |
| Planning Area: Toro Area Plan | Flagged and staked: Yes |
| Zoning Designation: : "LC-B-8-D" (Light Commercial with the Building Site and Design Review Overlay Districts) | |
| CEQA Action: Environmental Impact Report Prepared | |
| Department: RMA - Planning Department | |

ACTION:

Staff has prepared the following resolutions pursuant to the Planning Commission's motion of intent:

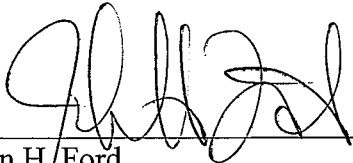
- A. A resolution (Exhibit a) with Findings and Evidence to:
 - 1. Deny the Combined Development Permit for the Combined Development Permit including: 1) Use Permit for development of a new 126,523 square foot shopping center including retail and office space, 508 parking spaces and landscaping; 2) General Development Plan 3) Design approval (Applicant's proposal
- B. A resolution (Exhibit B) recommending the Board of Supervisors deny the Applicant's request to rezone the property to remove the "B-8" Overlay Zoning District from the subject site's overall "LC-B-8-D zoning designation.

SUMMARY:

This item was heard by the Planning Commission on December 8, 2010 and January 12 2011. At those meetings, the Planning Commission received the project staff report, the applicant's presentation and received comments from public. After deliberating on the Project the motion was made to approve the Modified Reduced Density alternative proposed by staff. This motion failed with at 5-5 vote. The Planning Commission then adopted a motion of intent to deny the application (both the Combined Development Permit proposed by applicant and the staff recommended alternative (Staff Proposal) and directed staff to return with a Resolution of Denial. In making this motion, it was identified that the proposed project, the applicant's hybrid alternative and staff alternative were too large for the site. The Public Hearing was then continued to the Meeting of January 26, 2011. The motion specifically omitted action on the Environmental Impact Report.

Exhibit A to this staff report contains a draft Resolution denying the Combined Development Permit. . The Planning Commission's action on the Combined Development Permit will be final unless an appeal is made to the Board of Supervisors.

Separately staff recommends that the Planning Commission take action to recommend denying removal of the B-8 from the property, which requires final action by the Board of Supervisors. This resolution is provided in Exhibit B.

/S/ 

John H. Ford
(831) 796-6049
fordjh@co.monterey.ca.us
December 30, 2010

cc: Front Counter Copy; Monterey County Rural Fire Protection District; Public Works Department; Parks Department; Environmental Health Bureau; Water Resources Agency; John Ford, Planning Services Manager; Carl Holm Assistant Planning Director, Alan Knaster, Deputy RMA Director, Carol Allen, Senior Secretary; Eric Phelps, c/o OMNI Resources LTD, Owner; Brian Finegan, Applicant's Attorney; Mike Weaver; Marit Evans; Gerry Bolles; Law Offices of Michael Stamp c/o Molly Erickson; Planning File PLN020344.

Attachments:

Exhibit A - Draft Planning Commission Resolution Denying Approval of the Combined Development Permit.
Exhibit B - Draft Planning Commission Resolution Recommending Denial of Rezone to Remove B-8 Overlay.

This report was reviewed by Alana Knaster, Assistant Director, RMA

**EXHIBIT A
DRAFT RESOLUTION**

**Before the Planning Commission in and for the
County of Monterey, State of California**

In the matter of the application of:

Omni Resources Inc. (PLN020344)

RESOLUTION NO. [REDACTED]

Resolution by the Monterey County Planning
Commission:

Deny the Combined Development Permit
including: 1) Use Permit, 2) General
Development Plan and 3) Design Approval

(PLN020344, **Omni Resources Inc., 5 Corral de
Tierra Road, TORO AREA PLAN (APN: 161-171-
003-000 AND 161-581-001-000**

The OMNI LTD (Phelps) application (PLN020344) came on for public hearing before the Monterey County Planning Commission on December 8, 2010, January 12, 2011 and January 26, 2011. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission finds and decides as follows:

FINDINGS

**FINDINGS FOR DENIAL OF COMBINED DEVELOPMENT PERMIT AND GENERAL
DEVELOPMENT PLAN**

1. **FINDING:** **CONSISTENCY** – The Project is not consistent with the applicable plans and policies which designate this area as appropriate for development.
 - a) **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:

 - 1982 Monterey County General Plan,
 - 2010 Monterey County General Plan
 - Toro Area Plan,
 - Monterey County Zoning Ordinance (Title 21)

Several conflicts were found to exist with General Plan policies. These are itemized below in findings 2 and 4.
 - b) **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...

c) **LAND USE ADVISORY COMMITTEE**

The project was 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 Procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, the second review by the LUAC was asked to focus their review to 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 Staff's recommendation on the project.

d) 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.

Comments received from the public on the DEIR and comments received from the public in testimony before the Planning Commission on December 8, 2010 and January 12, 2011.

2. **FINDING**

The Proposed Project is not consistent with Policy T-3.1 (of the 2010 Monterey County General Plan) which 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"*

EVIDENCE: a)

The Planning Commission noted that a commercial center is appropriate in this area, However, the Planning Commission was split (5-5) as to the appropriate scale of the project. The Planning Commission feels that the project is not in scale with the rural nature of the neighborhood... This is reflected in the Economic Analysis presented by the applicant identifying this center as being more than a neighborhood center which will pull customers from a larger area. A center of such a size to serve the region is not consistent with the scenic or rural nature of the area.

b) Neither the proposed project nor the Staff Proposal has been found to not fully comply with the requirements of the zoning district which require that the scale of the proposed project be reduced in size to better address the intent of the zoning to provide commercial uses to serve the residential properties in the area.

3 **FINDING:**

CONSISTENCY – 2010 MONTEREY COUNTY GENERAL PLAN AND 1982 MONTEREY COUNTY GENERAL PLAN

The use of the subject site for a Neighborhood Commercial Centers has been determined to be consistent with both the 2010 Monterey County

General Plan and the 1982 General Plan.

EVIDENCE:

The Land Use Map for the 2010 Monterey County General Plan, and for the 1982 General Plan designates the subject site for commercial uses. The proposed shopping center is consistent with this land use designation.

4 **FINDING:**

CONSISTENCY - 2010 MONTEREY COUNTY GENERAL PLAN POLICY T-3.3

The approved project is not consistent with the provisions of Policy T-3.3, which states:” *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.*”

- EVIDENCE:** a) The proposed project includes development within a designated critical viewshed and area of visual sensitivity.
- b) Proposed Building Nos. 4 and 5, the Market building and the Office building would be located with a 100 foot yard setback on Corral de Tierra Road which would not be consistent with the policy. The buildings are set back 85, 70, 90 and 35 feet respectively. The Planning Commission supported the staff recommendations to remove the second story of the office building, and establish a 25 foot landscape buffer along Corral de Tierra. However, the height and size is not in scale with the surrounding neighborhood...

5 **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, 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:** CEQA- CEQA does not apply to the Project.
EVIDENCE: a) Pursuant to the Public Resources Code Section 21080 and CEQA Guidelines Section 15270, CEQA does not apply to projects that are disapproved.
- b) The County of Monterey prepared a Final Environmental Impact Report in compliance with CEQA, but the Planning Commission chose not to take action on the Final EIR.
 - c) See Finding 1.
- 8 **FINDING:** PUBLIC HEARING-The Planning Commission held a duly noticed public hearing on the Project on December 8, 2010 and January 12, 2011. On January 12, 2011, the Planning Commission passed a motion of intent to deny the application and directed staff to return on January 26, 2011 with a Resolution of denial.
- EVIDENCE:** a) A public hearing notice was published in the Monterey County Herald on November 25, 2010.
- b) The applicant and all members of the public who attended the hearing had the opportunity to testify and be heard.
- 9 **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors.
- EVIDENCE** a) The approval of the Combined Development Permit by the Planning Commission is appeal able to the Board of Supervisors per Section 21.80.040 D of the Monterey County Zoning Ordinance (Title 21).

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Planning Commission does hereby:

1. **Denies** the Combined Development Permit including: 1) Use Permit, 2) General Development Plan and 3) Design Approval consisting of the Reduced Density/Redesign Project Alternative (Environmentally Superior Alternative) to allow a 112,000 square foot commercial/retail center based upon the Findings and Evidence and as further modified in the conditions of approval.

PASSED AND ADOPTED this 26th day of January, 2011 upon motion of xxxx, seconded by xxxx, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mike Novo, Planning Commission Secretary

COPY OF THIS DECISION MAILED TO APPLICANT ON DATE

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE DATE

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

NOTES-NOT SURE WE NEED THESE NOTES.

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning Department and Building Services Department office in Salinas.

2. This permit expires 5 years after the above date of granting thereof unless construction or use is started within this period.

**EXHIBIT C
DRAFT RESOLUTION**

**Before the Planning Commission in and for the
County of Monterey, State of California**

In the matter of the application of:

OMNI RESOURCES INC. (PLN020344)

RESOLUTION NO. [REDACTED]

Resolution by the Monterey County Planning
Commission:

- 1) Statutorily exempt as a Project which is not approved.
- 2) Denying the Request to remove the B-8 Zoning Overlay from the property at the corner of Corral de Tierra Road and Hwy 68

(PLN020344, OMNI RESOURCES INC., 5 Corral de Tierra Road, Toro Area Plan (APN: APN161-571-003-000, 161581-001-000

The Rezone to Remove B-8 Zoning Overlay District application (PLN020344) came on for public hearing before the Monterey County Planning Commission on January 26, 2011. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission finds and makes the following recommendation to the Board of Supervisors:

FINDINGS

FINDING: Purpose of B-8 Zoning

- EVIDENCE:** e) The "B-8" District was adopted by the Board of Supervisors on November 24, 1992 (Ordinance No. 03647) for certain properties in the El Toro Creek, Corral de Tierra and Calera Canyon sub basins of the Toro Area, including the subject site. The "B-8" District was adopted because of severe water constraints in the area covered by the District identified in the *Hydro geologic Update: El Toro Area, Monterey, California* Report prepared by Staal, Garner and Dunne.
- f) . In adopting the "B-8" District the Board of Supervisors found that additional development or intensification of land use in the area placed under the "B-8" Overlay District would be detrimental to the health, safety and welfare of the residents of the area.

2 FINDING: The Project Site can be developed under the B-8 and the B-8 provides an appropriate level of protection for the Commercial site at the corner of Hwy 68 and Corral de Tierra.

- EVIDENCE:** a) On September 7, 1993 the Board of Supervisors adopted Ordinance No.3704 which amended the original provisions relative to development of commercial uses, as stated in Section 21.42.030 H (1) to state 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."

- 3 FINDING:** No rationale for removal of the B-8
EVIDENCE: a) No evidence has been submitted that supports changing the finding of Geosyntec that the area groundwater is in overdraft. Removing the B-8 would require a finding that the constraints existing at the time of the adoption of the B-8 no longer exist. In this particular case, all evidence including recent well logs show that the groundwater levels continue to decline (Page 220 of the DEIR). The circumstances under which the B-8 was imposed still exist and so the Planning Commission can not recommend removal of the B-8 zoning overlay.

DECISION

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

- A. Find that the Project is Statutorily Exempt from CEQA as a project which is not approved.
- B. Deny the Request to remove the B-8 Zoning Overlay from the property at the corner of Corral de Tierra Road and Hwy 68.

PASSED AND ADOPTED this 26th day of January 2011 upon motion of ~~xxxxx~~, seconded by ~~xxxxx~~, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Mike Novo, Planning Commission

COPY OF THIS DECISION MAILED TO APPLICANT ON _____

THIS APPLICATION WILL BE FORWARDED TO THE BOARD OF SUPERVISORS FOR FINAL ACTION.