I. CALL TO ORDER: Chairman Shaw

- Pledge of Allegiance: Commissioner Price
- Roll Call: Commissioners Krick, Briant, Price, Wallace, Chairman Shaw

II. PUBLIC COMMENTS - On Items Not on the Agenda

A five-minute limitation shall apply to each member of the public who wishes to address the Chairman and Commissioners not on the agenda. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public. (Usually, any items received under this heading are referred to staff or future study, research, completion and/or future Commissioner Action.) PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

III. CONSENT CALENDAR ITEMS:

Note: All items listed on the Consent Calendar may be enacted by a single motion without separate discussion. If a discussion or a separate vote on any item is desired by a Planning Commissioner, that item may be removed from the Consent Calendar and considered separately. All remaining items not removed from the Consent Calendar by a Planning Commissioner shall be voted on prior to discussion of the item(s) requested to be pulled.

1. Minutes of April 6, 2016 meeting.................................................................Page 1

IV. PUBLIC HEARINGS:

36586, APPROVAL OF A DEVELOPMENT AGREEMENT, AND THE ANNEXATION OF 161 ACRES

RECOMMENDATION:

That the Planning Commission adopts Resolution No. 2016-08 recommending that the City Council approves the following:

1. Resolution No. 2016-83 adopting a Statement of Overriding Considerations and CEQA Findings of Fact, certification of the Final Environmental Impact Report, adoption of the Mitigation Monitoring and Reporting Program for the Rancho San Gorgonio Specific Plan project;

2. Resolution No. 2006-88 approving General Plan Amendment (GPA) No. 13-2503 to change the General Plan Designation from Very Low Density Residential, Medium Density Residential, Very High Density Residential, Rural Residential, and Open Space-Parks to Specific Plan;

3. Ordinance No. 1501 adopting Zone Change No. 13-3501 to reflect the proposed Zoning Ordinance text and map amendments for the Rancho San Gorgonio Specific Plan;

4. Resolution No. 2016-84 approving the Water Supply Assessment for the project based upon Findings of Fact as stated in the resolution;

5. Ordinance No. 1500 approving the Rancho San Gorgonio Specific Plan to create an 831 acre master planned community composed of 44 planning areas that include a variety of residential densities, common open spaces, an elementary school site and commercial area within the City of Banning;

6. Resolution No. 2016-86 approving Master Tentative Tract Map No. 36586 and conditions of approval establishing road right-of-ways, forty-four land use planning areas, parks and open space parcels;
7. Ordinance No. 1499 approving the Development Agreement containing said provisions for financing acquisition and infrastructure construction, and land use development parameters; and

8. Resolution No. 2016-87 approving the annexation of 161 acres of property located in the County of Riverside and within the City’s adopted Sphere of Influence General Planning Area and the Rancho San Gorgonio Specific Plan.

V. PLANNING COMMISSIONER COMMENTS:

VI. COMMUNITY DEVELOPMENT DIRECTOR’S COMMENTS:

VII. ADJOURMENT:

The City of Banning Planning Commission is hereby adjourned to the regular Planning Commission meeting of October 5, 2016 starting at 6:30 p.m. in the City Council Chambers.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Division (951) 922-3125. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting [28 CFR 35.102-35.104 ADA title II].
A regular meeting of the City of Banning Planning Commission was held on Wednesday, April 6, 2016 at 6:30 p.m., in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, CA, 92220.

Commissioners Present:  Chairman Shaw  
Vice-Chairman Kick  
Commissioner Briant  
Commissioner Price  

Staff Present:  Community Development Director, Brian Guillot  
City Manager, Michael Rock  
Public Works Director/ City Engineer, Arturo Vela, P.E.  
Contract Planner, Yvonne Fanco  
Assistant City Attorney, Robert Khuu  
Recording Secretary, Sandra Calderon  

I. CALL TO ORDER  

II. SELECTION OF CHAIRMAN  

Commissioner Shaw opened the floor for selection of Chairman  
Motion and seconded that Commissioner Shaw be selected as Chairman  

ACTION (PRICE/KRICK): (Motion Carried 3-0)  

Chairman Shaw opened nominations for a Vice-Chairman  
Motion and seconded that Commissioner Krick be selected as Vice-Chairman  

ACTION (SHAW/PRICE): (Motion Carried 3-0)  

III. CONFIRMATION OF AGENDA  

Community Development Director, Guillot said there is a revision to the conditions of approval for Conditional Use Permit (CUP) No. 14-8003. He asked the Commissioners to include it as part of the staff report; it adds a condition related to Airport Land Use Commission (ALUC). Copy of the Memorandum and Conditions of Approval are incorporated hereto as (“Exhibit A”)  

IV. PUBLIC COMMENTS  


David Ellis, resident of Banning said a few months ago he was at a City Council meeting where he read a story he found in “The Banning Informer” regarding our Mayor where it seemed he wanted to retaliate against him for saying certain things. Ellis said he was removed from the Planning Commission and has noticed a big change in the City since our new City Manager, Michael Rock joined the City. A recent article in the banning informer exposes our Mayor and Mayor Pro Tem with alarming issues.

He said we just experienced an approval of low income houses on an area of land that should have not been reduced in size, and the same will happened in the south side.

He asked the Commissioners to hold the integrity and not be persuaded by other opinions, or special interest groups.

Chairman Shaw closed public hearing

V. CONSENT CALENDAR ITEMS

APPROVAL OF MINUTES: March 2, 2016.

ACTION (KRICK/BRIANT): (Motion Carried 4-0)

VI. PUBLIC HEARINGS

1. ADOPT RESOLUTION NO. 2016-04 APPROVING DESIGN REVIEW NO. 15-7006 FOR THE PROPOSED CONSTRUCTION OF A TACO BELL RESTAURANT; AND, APPROVING CONDITIONAL USE PERMIT NO. 16-8001 FOR A FREEWAY-ORIENTED FREESTANDING SIGN LOCATED AT 2034 W. RAMSEY STREET (APN 538-200-027)

Contract Planner Yvonne Franco presented the staff report; she said the first item is for a design review permit for a Taco Bell restaurant at 2034 W. Ramsey St. and an approval of Conditional Use Permit (CUP) for a freeway oriented free standing sign located in the Highway Serving Commercial (HSC) District. Restaurants with drive-thru and sit down restaurants are permitted per City Code Sec.12.030 Development Standards. The site currently has a vacant building that previously served as Carrows restaurant that will be demolished to allow for the new proposed Taco Bell restaurant. The proposed Taco Bell meets the development standards. It will include a drive-thru and indoor dining area and landscaped parking lot.

The applicant is proposing a change of the face of the sign, and the height of the sign will remain at fifty three (53) feet height.

Chairman Shaw asked for comments from the applicant

Gabriela Marks, Architect for the project introduced herself and asked Planning Commission for questions.

Commissioner Price asked about site plan AO.1 in the staff report. He asked if the drive thru exit only sign will continue to the street.
City Engineer Vela said the project was conditioned to make that a ride out only because there is currently a drive-thru and as vehicles are exiting that drive-thru they are put on the west part of the drive-way and there wouldn’t be a conflict with cars coming in and exiting through the same driveway.

Commissioner Krick said his concern is the in and out driveway. This is the only way in to this project and it’s also one of the ways out, drivers are going to tend to make a left to get back onto the freeway and tie-up traffic on Ramsey St.

City Engineer Vela said the conditions of approval restricts that drive way right in, right out only. He said people are still going to be inclined to make a left turn.

Commissioner Krick said people going west go against the traffic to get into the McDonalds parking lot instead of going to Sunset Street.

Vela said the ultimate designation for Ramsey Street shows a median to be constructed along Ramsey Street in the future.

Commissioner Krick asked if they could add the drive-thru on the other side of the building and change the driveways so this way they could go in and out.

City Engineer Vela said that is a possible solution, but Roberge Street is also coming into Ramsey Street.

Commissioner Krick said wanting to put traffic to Ramsey is worse than the other driveway.

Director Guillot suggested another solution is to add directional signs on site to show the public that they can make a right turn and get back on the I-10.

Commissioner Krick said this would be the only restaurant that would be restricted from going back onto Ramsey Street going west.

City Engineer Vela said it was easier for Carrows restaurant because the driveway they were using as an exit, was on the easterly property and the fact that the in and out driveway is on the west side of the property puts them too close to the median.

Commissioner Krick asked City Engineer Vela if something will be installed so it does not allow someone to cut across Ramsey Street and get into the turn pocket, because otherwise people will go through it.

City Engineer Vela said, that condition was not placed on the conditions of approval, but it could be a solution to deter people from making that turn and length the median about twenty (20) feet.

Commissioner Krick said that if it’s too difficult for the vehicles to enter and exit, they will not come back.
Gabriela Marks said the building cannot be flipped; drive-thru is only designed to circulate a certain way.

Director Guillot said the City Engineer has already analyzed this project, and there are a number of possible solutions over the long term. The applicant has agreed to do the signage and changes to the driveway approach.

Chairman Shaw opened public hearing
None

Chairman Shaw closed public hearing

Chairman Shaw opened for Planning Commission discussion

Commissioner Price said he wouldn’t like to see this item be continued

Commissioner Krick asked if city staff would be agreeable to widen the east driveway so that in and out would come out of this driveway.

Guillot said our code prohibits drive-thru exiting directly onto the street; they must exit onto the parking area.

Commissioner Price said that exit could be very problematic with that exit and someone coming in.

Director Guillot said that what is conditioned to this project is almost as similar as how the McDonalds parking lot operates and we might suggest that if the Planning Commission accepts them, we would allow the City Engineer to monitor the situation for the first six (6) months it’s in operation, the City could take action by extending the median temporarily, do changes to the turn pocket or other changes he seems to deem necessary.

Director Guillot said if the Commission is concerned about the applicant fair share, we could ask the City Engineer to calculate a cost to be part of this application.

Director Guillot made a suggestion to amend conditions of approval number 32 to include the City Engineer monitoring the median island and turning movements in Ramsey Street for six (6) months; then, the applicant would be required to pay their fair share for any improvements deemed necessary.

Commissioner Krick said if there was a solid median to prevent vehicles to try to get in there, but as of right now, Ramsey is configured where any one can easily turn into that parking lot.

Chairman Shaw said developing a full concrete median would be expensive, but what about a temporary asphalt median curving until the City can afford to complete the median.
City Engineer Vela said the cost will not be much of a difference, and the cost will probably be around $7,500; he said that the biggest problem is its location.

Commissioner Krick said everyone coming from the east is going to want to use the exit as an entrance because that’s how Carrows restaurant was used.

Commissioner Krick asked about the possibility of installing delineators.

Commissioner Price said that he would like to get a firm date as to when the City will do the analyzing.

Director Guillot said the conditions of approval can be listed to read six (six) months from occupancy.

Chairman Shaw listed some of the items that will included as part of the conditions of approval

1. The applicant shall add signage to the entrances indicating right in, right out at both entrances.
2. Reduce the width on the east driveway.
3. Request the City Engineer to monitor the traffic condition at the location for six (6) months following occupancy.
4. Install median delineators.

Commissioner Krick said he would like add specific language to the signs as part of the conditions of approval to read “Easy I-10 Access” on the property. He also asked to add video cameras on site and storage for thirty (30) days.

Gabriella Marks said about fifteen (15) cameras will be installed, and storage of data for thirty (30) days.

Commissioner Krick asked the Commissioners opinion on removing all the palm trees in front of this parcel because he would like to see them removed.

Commissioner Briant said he has no objection to the removal.

Gabriella Marks asked if the Commissioners would like to see a replacement with another type of tree, or just a complete removal of the palm trees.

City Engineer Vela said he recommends the palm trees remain to keep consistency on Ramsey Street.

Assistant City Attorney Robert Khuu said the understands the removal of the palm trees is in the authority of the City Engineer and the Planning Commission can make a recommendation, but this item is not part of the agenda at this time. If the Commission wishes this item can be part of a future agenda to recommend to the City Council the removal of the palm trees.
Director Guillot asked if the Planning Commission would like to make a recommendation regarding street trees to allow the City Council to make the policy decision because there are some adopted standards.

Discussion was made reading whether or not the palm trees are in the City’s right-of-way.

City Manager Michael Rock confirmed that the palm trees on Ramsey Street are in the City’s right-of-way.

Director Guillot said street trees borderline on policy issue, he asked if the Commissioners wished to bring this item back, independently from this design review project recommendations to the City Council.

The City Engineer took an informal request from Commissioner Krick to have an office discussion regarding a consideration for the removal of the trees along Ramsey Street to determine if this worth bringing this item in front of City Council.

Chairman Shaw opened the floor for a motion.

**ACTION (PRICE/KRICK): A motion was moved, seconded and carried that the Planning Commission take the following action:**

That the Planning Commission adopts Resolution No. 2016-04:

1. Adopts Categorical Exemption, pursuant to Section 15332 (In-Fill Development Project); and
2. Approving Design Review (DR) No. 15-7006 subject to the Findings and Conditions of Approval; and
3. Adopts Categorical Exemption, pursuant to Section 15301 (Existing Facilities); and
4. Approving Conditional Use Permit (CUP) No. 16-8001 subject to the Findings and Conditions of Approval with the following amendments:

   a. The applicant shall provide onsite guide signage directing customers to Interstate 10 with the following wording: “Easy I-10 Access to 8th Street.”
   b. At the direction of the City Engineer, the eastern most drive approach width shall accommodate only a single lane of traffic for a right-turn only egress.
   c. At the direction of the City Engineer, the applicant shall pay for the installation of delineators at the median island of Ramsey Street to deter illegal left turn movements into the site.
   d. The City Engineer will monitor the site access for a period of six months from the date of occupancy and make recommendations to the applicant regarding egress from the site. The applicant agrees to implement the recommendations of the City Engineer.
e. The applicant shall provide video monitoring of the premises with data storage of at least thirty (30) days. The applicant agrees to share this data with law enforcement when requested.

(Motion Carried 4 -0)

2. ADOPT RESOLUTION NO. 2016-05 APPROVING CONDITIONAL USE PERMIT NO. 14-8003 FOR A PROPOSED WIRELESS TELECOMMUNICATIONS FACILITY AND MONOPINE LOCATED AT 1170 W. RAMSEY STREET (APN 540-180-006)

Contract Planner Yvonne Franco presented the staff report and said these type of projects require a Conditional Use Permit (CUP), the aerial view and location were presented, she said the proposed facilities are proposed behind a church and this site includes two buildings; one the buildings is perpendicular to Ramsey Street on the west side and the other sets back, closer to the I-10 freeway. The facilities and the monopine will be closer to rear property line.

The applicant is proposing a sixty-five (65) foot high monopine and the facilities will be in a one hundred seventy (170) square foot enclosure which will include two macro cell cabinets and a generator, which will only operate when there’s a power outage. Franco said a letter is included in the packet that states that the church approves the result of the sound test performed.

Franco mentioned the memo attached as (Exhibit “A”) and previously stated by the Community Development Director Brian Guillot. She recommended the approval of the project with amended condition No. 29.

James Rogers a representative for Verizon Wireless said they worked on this project and agrees with the conditions of approval including the amended one to deal with the issue raised by the Airport Land Use Commission (ALUC).

Commissioner Price asked Mr. Rogers who is the current owner of the property.

Mr. Rogers said the church currently owns the property, but he stated that when they started the project it was owned by another owner.

Chairman Shaw opened public hearing

None

Chairman Shaw closed public hearing

Chairman Shaw opened Planning Commission discussion

None

Chairman Shaw opened the floor for a motion
ACTION (KRICK/PRICE): A motion was moved, seconded and carried that the Planning Commission take the following action:

That the Planning Commission adopts Resolution No. No. 2016-05:

1. Adopting a Categorical Exemption, pursuant to Section 15303 (New Construction or Conversion of Small Structures); and

2. Approving Conditional Use Permit (CUP) No. 14-8003 subject to the Findings and Conditions of Approval with the following amendment:

   a. Prior to approval of any building permit by the City for the project. The applicant shall obtain a finding of compatibility from Riverside County Airport Land Use Commission (ALUC) for Banning Municipal Airport.

   (Motion Carried 4 -0)

3. ADOPT RESOLUTION NO. 2016-06, RECOMMENDING THAT THE CITY COUNCIL APPROVE A CATEGORICAL EXEMPTION AND ZONE TEXT AMENDMENT (ZTA) NO. 16-97501 AMENDING VARIOUS SECTIONS OF THE ZONING ORDINANCE (TITLE 17 OF THE BANNING MUNICIPAL CODE) TO PROVIDE CONSISTENCY WITHIN THE TEXT

Community Development Director Brian Guillot presented the staff report and said recommendations are brought forward to the Planning Commission to amend the zoning text as issues are accumulated and other things that come forward. In this case we are looking at issues for being consistent with other parts of the text. Guillot went over briefly the item he’s recommending for change.

Chairman Shaw opened public hearing
    None
Chairman Shaw closed public hearing

Chairman Shaw opened Planning Commission discussion

Chairman Shaw said last month someone asked for an auto dealer permit and asked if this is part of this

Guillot said the applicant was proposing this in the Business Park (BP) zone, and that requires a Conditional Use Permit (CUP) and his objection was the cost of the fee.

Chairman Shaw opened the floor for a motion

ACTION (KRICK/PRICE): A motion was moved, seconded and carried that the Planning Commission take the following action:
That the Planning Commission adopts Resolution No. 2016-06:

1. Recommending to the City Council the adoption of a Categorical Exemption for the subject proposal; and

2. Recommending to the City Council the adoption of Ordinance No. 1496 approving Zone Text Amendment No. 16-97501 amending various sections of the Zoning Ordinance (Title 17 of the Banning Municipal Code) to provide consistency within the text.

(Motion Carried 4-0)

VII. PLANNING COMMISSIONER COMMENTS:
None

VIII. COMMUNITY DEVELOPMENT DIRECTOR’S COMMENTS

Community Development Director Guillot said a letter dated March 22, 2016 (Exhibit “B”) received by the department and was included as part of the Planning Commission packet will be placed as part of the record for the minutes for this meeting; it was generated as part of the City Council action only, and its related to a parcel map extension that was part of the City Council Agenda for March 22, 2016.

Director Guillot also mentioned to the Planning Commission and the public that a larger font is now used when preparing the staff reports to allow for easy reading.

IX. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:10 p.m.

Respectfully submitted,

Sandra Calderon
Recording Secretary

THE ACTION MINUTES SUMMARIZE ACTIONS TAKEN BY THE PLANNING COMMISSION. A COPY OF THE MEETING IN ITS ENTIRETY IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY CLERK’S OFFICE.
EXHIBIT “A”
DATE: APRIL 6, 2016
TO: PLANNING COMMISSION
FROM: Brian Guillot, Community Development Director
RE: ADOPT RESOLUTION NO. 2016-05
CONDITIONAL USE PERMIT 14-8003
REVISED CONDITIONS OF APPROVAL

It was brought to our attention by staff at the Riverside County Airport Land Use Commission that the monopine proposed under Conditional Use Permit 14-8003 will be in Compatibility Zone D of the Banning Municipal Airport Master Plan.

Therefore, the Conditions of Approval are amended to add Condition No. 29. Staff recommends that the Planning Commission adopt Resolution No. 2016-05 as amended.
PROJECT #: Conditional Use Permit No. 14-8003
SUBJECT: Conditions of Approval (PC Resolution No. 2016-05)
APPLICANT: Smartlink LLC. for Verizon Wireless
LOCATION: APN: 540-180-006

EXHIBIT A

* All fair share agreements, covenant agreements and agreements subject to recordation will be subject to review and approval by the City Attorney and will include appropriate enforcement provisions by the City and be properly securitized.

Community Development Department

1. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, lawsuits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively “Actions”), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City’s defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the
defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.

2. Construction shall commence within two (2) years from the date of project approval, or Conditional Use Permit approval shall become null and void. Additionally, if after commencement of construction work is discontinued for a period of one year the Conditional Use Permit shall become null and void. Project may be built in phases if pre-approved by the review authority. The Community Development Director may, upon a written application being filed 30 days prior to expiration and for good cause, grant a onetime extension not to exceed 12 months. Upon granting of an extension, the Community Development Director shall ensure that the Conditional Use Permit complies with all current Ordinance provisions.

3. A copy of the signed resolution of approval or Community Development Director's letter of approval and all conditions of approval and any applicable mitigation measures shall be reproduced in legible form on the grading plans, building and construction plans, and landscape and irrigation plans submitted for review and approval as required by the reviewing department.

4. The site shall be developed and maintained in accordance with the plans stamped approved by the City, which include site plans, architectural elevations, exterior materials and colors, landscaping, and grading on file in the Planning Division; the conditions contained herein; and, municipal code regulations.

5. Approval of this entitlement shall not waive compliance with any sections of the Development Code, other applicable City Ordinances, in effect at the time of building permit issuance.

6. The property owner shall permanently maintain the Verizon Wireless non-exclusive parking stall as identified in the plans.

7. There shall be no light spillover onto the adjacent properties from the parking lot lighting and/or exterior building lighting, including outdoor security lighting. All lighting fixtures shall not have a visible light source, must be shielded and directed downward and away from adjoining properties and public rights-of-way.

8. The project shall at all times comply with all Federal, State, County and City laws, codes, regulations and standards including those that relate to hazardous materials.

9. The site shall be developed in compliance with all current model codes. All plans shall be designed in compliance with the latest editions of the California Building Codes as adopted by the City of Banning.
10. Site development and grading shall be designed to provide access to all entrances and exterior ground floor exits and access to normal paths of travel, and where necessary to provide access. Paths of travel shall incorporate (but not limited to) exterior stairs, landing, walks, and sidewalks, pedestrian ramps, curb ramps, warning curbs, detectable warning, signage, gates lifts and walking surface material. The accessible route(s) of travel shall be the most practical direct route between accessible building entrances, site facilities, accessible parking, public sidewalks, and the accessible entrance(s) to the site. California Building Code (CBC) 11A and 11B.

   a. City of Banning enforces the State of California provisions of the California Building code disabled access requirements. The Federal ADA standards differ in some cases from the California State requirements. It is the building owner’s responsibility to be aware of those differences and comply accordingly.

   b. Disabled access parking shall be located on the shortest accessible route. Relocate parking spaces accordingly.

11. Commercial buildings on the site shall be accessible per California Building Code (CBC) 11B.

12. Site Facilities such as parking (open and covered), recreation facilities, and trash dumpsters, shall be accessible per California Building Code (CBC) 11A, 11B and 31B.

13. Separate submittals and permits are required for all accessory structures such as but not limited to, trash enclosures, patios, block walls and storage buildings.

14. Pursuant to California Business and Professions Code Section 6737, this project is required to be designed by a California licensed architect or engineer. Based on change of use and potential exiting and fire life safety improvements.

15. Prior to the issuance of building permits a copy of the signed lease with the property owner shall be filed with the City.

16. Prior to any use of the project site or business activity being commenced thereon, including any operation of the wireless telecommunications facility, all Conditions of Approval shall be completed to the satisfaction of the Community Development Director.

17. Permanent electric connections for telecommunications co-location purposes shall not commence until such time as all California Building Code and State Fire
Marshals regulations have been complied with. Prior to operation of the facility, plans shall be submitted to the City of Banning Fire Marshal and the Building and Safety Division to show compliance. All facilities shall be inspected for compliance prior to the commencement of operations of the telecommunications facility.

18. Approval of this request shall not waive compliance with all section of the Zoning Code and other applicable City Ordinances in effect at the time of building permit issuance.

19. Graffiti shall be removed within 72 hours or within 24 hours of notice from the City.

20. The entire site shall be kept free from trash and debris at all times and no event shall trash and debris remain for more than 24 hours.

21. The mono-pine structure shall completely conceal antennas and antenna structure utilizing sock and other approved camouflaging material such that the antenna and related structure are not visible from the federal highway. Quality and appearance of the mono-pine shall be of the same quality and appearance as reflected in the applicant's statements, representations and/or exhibits presented to the City's staff or Planning Commission or the Conditional Use Permit shall be revoked.

22. The applicant shall ensure that the mono-pine structure has full green foliage, realistic bark.

**Electric Utility Department**

23. A five-foot clearance from the existing underground electric utility to the proposed Telco Pull Box will be required.

24. Bollards shall be installed to protect the proposed Verizon Wireless Meter Pedestal per City of Banning Electric Utility Standards

**Fire Department**

All questions regarding the meaning of these conditions should be referred to the Fire Department Planning & Engineering staff.

25. For commercial areas, the required fire flow shall be available from 1 Super hydrant(s) (6" x 4" x 2 1/2" x 2 1/2") spaced not more than 350 apart and shall be capable of delivering the required fire flow for two hours duration at 20 psi residual operating pressure, which must be available before any combustible
material is placed on the construction site. The required fire flow will be based on the total building sq. footage per table B105.1 of the 2013 CFC. Total bldg. sq. footage will need to be provided to determine fire flow requirements.

26. Prior to building plan approval and construction, applicant/developer shall furnish two copies of the water system fire hydrant plans to Fire Department for review and approval. Plans shall be signed by a registered civil engineer, and shall confirm hydrant type, location, spacing, and minimum fire flow. Once plans are signed and approved by the local water authority, the originals shall be presented to the Fire Department for review and approval.

27. Applicant/Developer shall mount blue dot retro-reflectors pavement markers on private streets, public streets and driveways to indicated location of the fire hydrant. It should be 8 inches from centerline to the side that the fire hydrant is on, to identify fire hydrant locations.

28. Emergency gate access will be required for the equipment enclosure. A Knox box with lock key placed inside or Knox padlock will be required. Applications can be picked up at Banning City Hall.

**Airport Land Use**

29. Prior to approval of any building permit by the City for the project, the applicant shall obtain a finding of compatibility from the Riverside County Airport Land Use Commission (ALUC) for Banning Municipal Airport.

***END***
EXHIBIT “B”
March 22, 2016

To: Members of the Banning City Council

Subject: Parcel Map #33326, APN 419-140-057, located No. of Sun Lakes Blvd. and East of Highland Springs Ave.

Regarding the 12-month extension for the subject property I believe you will be approving it. Therefore, my concerns now are for any future development of the property since my backyard on Northwood Ave. backs up to the property. The residents on Northwood are concerned about our property values and quality of life for many reasons. These issues were identified and brought up in 2006 when there was a development plan (that never went forward) and these issues remain. Therefore, I am requesting that a complete EIR be prepared when a development plan is submitted (not one of those very limited negative reports). Also, very importantly, we request that in future planning there be a very large buffer zone between any development and the residential homes. Big box stores and other large commercial developments could be devastating with the trucks, noise, pollution, etc., they would bring in.

Also during the 2006 discussions of the then proposed development, it was brought out by Mr. Oscar Orci, the Community Development Director at the time, that the city had just become aware of an easement for underground electrical conduits running along the eastern boundary of the property adjacent to the residents backyard walls that had never been recorded. Mr. Orci further stated the city would investigate and it would be rectified. I am now asking the City Council if this easement has since been properly recorded?

I hope these issues will be addressed with any future developer prior to their submitting any development plans for the property. Thank you.

Sincerely,

Darleen Moxon
327 Northwood Ave.
Banning, CA 92220
(951) 845-6697

cc: Members of the Planning Commission
Community Development Director
CITY OF BANNING
Planning Commission Staff Report

DATE: September 7, 2016

TO: Planning Commission

FROM: Brian Guillot, Community Development Director
      Art Vela, Public Works Director
      Reuben J. Arceo, ROMO Planning Group (Contract)
      JoAnn Hadfield, Placeworks (Contract)
      Patty Nevins, Senior Planner


STAFF RECOMMENDATIONS:

That the Planning Commission adopts Resolution No. 2016-08 recommending that the City Council approves the following:

1. Resolution No. 2016-83 adopting a Statement of Overriding Considerations and CEQA Findings of Fact, certification of the Final Environmental Impact Report, adoption of the Mitigation Monitoring and Reporting Program for the Rancho San Gorgonio Specific Plan project;

2. Resolution No. 2006-88 approving General Plan Amendment (GPA) No. 13-2503 to change the General Plan Designation from Very Low Density Residential, Medium Density Residential, Very High Density Residential, Rural Residential, and Open Space-Parks to Specific Plan;

3. Ordinance No. 1501 adopting Zone Change No. 13-3501 to reflect the proposed Zoning Ordinance text and map amendments for the Rancho San Gorgonio Specific Plan;
4. Resolution No. 2016-84 approving the Water Supply Assessment for the project based upon Findings of Fact as stated in the resolution;

5. Ordinance No. 1500 approving the Rancho San Gorgonio Specific Plan to create an 831 acre master planned community composed of 44 planning areas that include a variety of residential densities, common open spaces, an elementary school site and commercial area within the City of Banning;

6. Resolution No. 2016-86 approving Master Tentative Tract Map No. 36586 and conditions of approval establishing road right-of-ways, forty-four land use planning areas, parks and open space parcels;

7. Ordinance No. 1499 approving the Development Agreement containing said provisions for financing acquisition and infrastructure construction, and land use development parameters; and

8. Resolution No. 2016-87 approving the annexation of 161 acres of property located in the County of Riverside and within the City’s adopted Sphere of Influence General Planning Area and the Rancho San Gorgonio Specific Plan.

**SUMMARY:**

The proposed Rancho San Gorgonio Specific Plan project is an 831-acre master-planned community, and is organized into 44 planning areas (PAs) that include a mixture of residential, commercial, open space, and recreational uses and up to 3,133 residential units; or, 3,385 residential units if the commercial site and school site are not developed. A fire station, four (4) community parks, and paseos incorporated to buffer the natural creeks are also proposed. The proposed project will foster a quality, livable community through the implementation of the Specific Plan that ensures consistent quality of design, allows for the provision and maintenance of community amenities, and creates a cohesive, well-defined neighborhood promoting a sense of place and identity.

The project represents a significant long term investment in the local community in both housing and public infrastructure (streets, fire station, parks, utilities, drainage facilities, etc.). An estimate of the investment may be calculated by estimating the Development Impact Fees (DIF) that will be collected by the City of Banning and the Regional agencies. This would represent just a portion of the local investment by the developer. Based upon the number of housing units to be constructed by the project, the local DIF fees collected would amount to $46,553,247.00; the regional transportation and environmental DIF fees collected would amount to $33,870,863.00; and, the permit fees collected would amount to $9,546,251.00. **The total aggregate of fees is $89,970,361.00 that will be utilized by the agencies for providing services and public improvements to the local and regional community.**

Additionally, there is a critical need for housing in the City of Banning. Approval of this proposal would provide for additional housing units within the City. In the past six (6) years the City has issued just six (6) permits for single family dwellings. The 2014-2021
Regional Housing Needs Assessment (RHNA) obligations as prepared by the Southern California Association of Governments (SCAG) sets forth the planning period goal of 3,792 units for the City of Banning specifically. Approval of this application would be a step towards delivering housing units in accordance with the goals and policies of the City’s Housing Element of the General Plan and RHNA.

BACKGROUND:

The applicant, Peter J. Pitassi with Diversified Pacific (Applicant) is requesting approval of an 831-acre master planned residential community within the City of Banning and the City’s Sphere Of Influence (SOI) area. The planned community, designated as the Rancho San Gorgonio Specific Plan (RSG) is organized into 44 planning areas (PAs) consisting of a variety of residential densities, lot types and housing types, common open spaces, an elementary school, and a commercial area. The RSG specific plan is a tool for the systematic implementation of the City’s General Plan and establishes a link between implementing policies of the general plan and the individual development proposals in a defined area. A specific plan may be as general as setting forth broad policy concepts, or as detailed as providing direction to every facet of development from the type, location, and intensity of uses to the design and capacity of infrastructure; to the design guidelines of a subdivision.

The RSG Specific Plan’s objective is to meet the community’s vision and housing needs by providing a high-quality planned community that integrates residential living areas, open spaces, and paseos to provide livable and quality urban village experience.

The full entitlement of the Project requires the following discretionary approvals associated with the RSG Specific Plan:

- **Environmental Impact Report (EIR):** The RSG is a discretionary project and subject to the California Environmental impacts. The draft EIR analyzes potentially significant environmental impacts, discusses feasible alternatives and includes mitigation measures in compliance with CEQA. The EIR must be considered and certified by the City prior to approval of any of the project-related entitlements. The draft EIR was posted and circulated for review and comment from June 20, 2016 through August 3, 2016. Included with the EIR is a Water Supply Assessment which analyzes the adequacy of existing and projected water supplies available to supply the project and City as a whole. The City Council will consider the Final EIR for certification and Statement of Overriding Considerations and Findings of Fact.

- **General Plan Amendment and Zone Change:** General Plan and Zoning text and map amendments are required prior to the adoption of the RSG Specific Plan to identify the Project with a designation of “Specific Plan”, as well as a General Plan Circulation Plan adjustments.

- **Specific Plan:** The RSG Specific Plan is a regulatory document that establishes zoning, land use designations, development standards, and design guidelines for
the entire Specific Plan project area. The Development Regulations of the document will be adopted by ordinance and the balance of the document will be adopted by resolution.

- **Subdivision Map:** A large lot Tentative Tract Map (TTM) will be considered by the City concurrently with the review of the Specific Plan. The TTM establishes the road right-of-ways, Planning Areas, park and open space parcels.

- **Development Agreement (DA):** The Development Agreement incorporates provisions for financing acquisition and construction infrastructure, acquisition and development of adequate levels of parkland and schools. The DA must be approved before the issuance of the first building permit for the Project.

- **Annexation:** The 161 unincorporated acres of the Project must be annexed into the City from the County of Riverside. The LAFCO approval process will be completed after project approvals by the City.

- **Subsequent Development Approvals:** Subdivision Maps, Design Review/Site Plan/Conditional Use Permit review. Development within the RSG Specific Plan will be based upon individual planning areas; each will potentially require a regulatory approval pursuant to the regulatory and development code requirements of the RSG Specific Plan. Subdivision applications will be reviewed and approved by the City for the residential components of the project area that will include information on lot layout and dimensions, roads, grading, easements and slopes. Final maps will be prepared that will become the legal recorded instrument that will establish legal parcels.

**Location**
The project as noted in Figure 1 is located within the south side of Banning, approximately 0.4 miles south of Interstate 10 and generally bounded by Sunset Avenue and Turtle Dove Land on the west, Coyote Trail and Old Idyllwild Road on the south, San Gorgonio Avenue (State Route 243) on the east, and portions of Westward Avenue to the north. The site was previously used for dry land farming and grazing. Agricultural use has resulted in ditches, berms and depressions that variously channel and contain storm runoff. The site’s elevation ranges from approximately 2,200 to 2,400 feet above mean sea level.
The Project site is currently zoned Very Low Density Residential, with a limited amount of Medium Density Residential, Rural Residential, and Open space-Parks. A 26 acre area of Very High Density Residential zoning was added to the project site in 2013 as part of the process for the Housing Element certification required by the State of California, Department of Housing and Community Development. The site is undeveloped and is leased for cattle grazing. Existing development adjacent to the project site to the north includes residential properties, residential tract housing, and two school campuses; Banning High School and Mt. San Jacinto Community College San Gorgonio Pass campus, located on the northeast and northwest respectively. The City owns approximately 20 acres on the immediate south side of Victory Avenue, formally known as Dysart Park which is used for equestrian activities and events.

**Environmental Setting**
The area is relatively level with gentle rolling topography. Four main creeks as noted in Figure 2 run through or adjacent to the Project site; Montgomery Creek runs from northwest to southeast through the eastern half of the site; Gilman Home Channel runs adjacent to the eastern boundary along Banning High School and the KOA Campground; all three drainage channels are tributary to the larger drainage, Smith Creek, which flows from southwest to northeast direction in the southeastern portion of the site. All creeks are unimproved and in their natural states. The site is not located within the boundaries of an earthquake fault zone for fault-rupture hazards as defined by the Alquist-Priolo Earthquake Fault Zoning Act. The nearest earthquake fault hazard zone is located more than a mile to the north along the San Gorgonio Pass Fault.
Figure 2
Project Site
Existing Conditions
Two previously approved Tentative Tract Maps (TTM) and one specific plan have been located within the Project area and were received/reviewed by the City as follows:

- **Stallion Estates, TTM 30744** – A proposed 144.9 acre property was approved on February 4, 2003 to create 213 lots for single-family residential development. The TTM approval has since expired.

- **Teff Project, TTM 31924** – A proposed 481 lot subdivision on 362 acres approved on May 10, 2005. The TTM received an extension but has since expired.

- **Lariat Specific Plan** – which included a master TTM, was located in the southwest corner of the RSG Specific Plan. The specific plan consisted of 63 acres and was envisioned as a new residential community integrating single-family detached homes, townhomes, and active and passive opens spaces. The Lariat Specific Plan was never finalized or approved.

The RSG Specific Plan consists of approximately 831 acres of land, which approximately 670 acres are presently located within the City’s corporate boundaries and 161 acres of unincorporated property within the City’s Sphere of Influence (SOI) area in Riverside County. The City’s SOI has been previously approved by the City and the Riverside County Local Agency Formation Commission (LAFCO). The City’s annexation of the 161 acres as noted in Exhibit 2 is predicated upon the approval the RSG Specific Plan prior to any development within the unincorporated portions of the site. The Riverside Local Area Formation Commission (LAFCO) approval process will be completed after project approvals have been executed by the City.

**Vision and Objectives**
The vision for the RSG Specific plan is to create a new master planned community. First and foremost, the specific plan represents a tool for developing a community “sense of place.” A creative and innovative specific plan may bridge the gap between monotonous urban development and a livable neighborhood. The RSG Specific Plan is regulatory in nature and serves as zoning for the properties involved. Development plans, site plans, and tentative tract and parcel maps must be consistent with both the RSG Specific Plan and the City of Banning General Plan. In keeping with regulatory provisions of the Specific Plan, the Project is designed to ensure that development occurs in a manner that is responsive to site characteristics and community goals and objectives. A number of the Project’s objectives are listed below:

- **Master Planned Community**: Design and implement the development of a creatively-designed master planned community that expresses and embodies the City’s visions as articulated in the City’s General Plan.
- **Provide a Quality, Livable Community**: Foster a quality, livable community through the implementation of Specific Plan that ensures consistent quality of design, allows for the provision and maintenance of community amenities, and creates a cohesive, well-defined neighborhood that promotes a sense of place and identity.
• Provide a Wide Range of Housing Opportunities: Offer a range of high quality housing opportunities by developing a diverse range of housing types available at a variety of price points and response to market demand and varying lifestyles.
• Promote Sustainability: Promote the concept of sustainable community development by implementing green building practices.
• Address Drainage and Water Quality Issues: Provide adequate drainage, flood control and water quality improvements that satisfy applicable local, state and federal criteria.
• Ensure Provision of Public Services: Ensure the provisions of adequate public services, utilities and infrastructure in a timely manner as development occurs.
• Encourage Alternative Transportation: Through the creation of a walkable community with well-defined pedestrian linkages between neighborhoods, amenities, schools and commercial uses.
• Promote Community Security: Promote community security and safety through appropriate outdoor design, the incorporation of “defensible space” concepts in design of residential development.

SPECIFIC PLAN PROJECT ELEMENTS:

The RSG Specific Plan provides a mix of proposed uses which make up the Project’s Master Planned Community. The proposed land uses include the following:

• Mix of up to 3,385 residential unit on up to approximately 540 acres;
• 9.3 acres for proposed Neighborhood Commercial uses, to provide a location for business and shopping needs;
• 14 acres for an elementary school site to be acquired and developed by Banning Unified School District;
• 210 acres for parks and recreational areas, varying from passive open space and trails to sports fields that includes a site for a fire station;
• 77 acres for circulation uses, including roadways, pathways and bridges for vehicles, bikes, pedestrian and equestrian use; and
• Drainage improvements for flood control purposes.

Village Plan
The RSG Specific Plan is organized into seven (7) villages as noted in Figure 3. Each of the Specific Plan’s villages are named after historically prominent Banning family or individuals to connect the RSG project with Banning’s history and growth. The villages include:

1. Jost Village – named after Christopher Jost (pronounced “Joe”) who settled in the area from Nova Scotia in the late 1870s. The Jost Village is located near the northeastern community entrance at South 8th and Westward Avenue.
2. Moore Village – named after Ransom Moore, an early settler of the area in the 1870s who was involved in local land holdings, and owned many water rights important to the town’s development.
3. Gilman Village – named after James Marshall Gilman who established the Gilman Ranch, portions of which still exist today as a park and museum.


5. Barker Village – named after C.O. Barker who arrived in Banning from Illinois in 1884 and became Banning’s second schoolteacher.

6. Robertson Village – E.L. Robertson was an early agriculturalist and first president of the Banning Cannery.

7. Fraser Village – named after Captain and Floretta Fraser who arrived in Banning in 1888 after a career in designing and constructing observatories in California.
Figure 3
RSG Village Concept
Of the 44 Planning Areas (PAs), the Residential Land Use Plan incorporates four (4) land use categories including Very Low Density, Low Density, Medium Density and Medium-High Density uses, including a Medium Density – Age Qualified use as noted in Figure 4. Twenty-eight (28) planning areas are allotted for the development of residential uses, totaling approximately 516 acres and 62% of the Specific Plan’s total land area. One PA is designated Very Low Density Residential, 21 PAs are designed Low Density Residential, 2 PAs are designated Medium Density Residential – Age Qualified, and 4 PAs are designated Medium-High Density Residential. PA 9 has a Neighborhood Commercial land use designation and alternative designation of Medium-High Density Residential (MHDR) in the event the Neighborhood Commercial site is not developed. Table 1 below summaries the list of land use categories in the Specific Plan.

Table 1: General Land Use Summary: RSG Specific Plan

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Gross Acres</th>
<th>% of Area</th>
<th>Dwelling Units (du)</th>
<th>Gross Density (du/ac)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Very Low Density (VLD) (0-2.5 du/ac)</td>
<td>47.1</td>
<td>5.7</td>
<td>94</td>
<td>2.0</td>
</tr>
<tr>
<td>Low Density (LD) (2.5-5.0 du/ac)</td>
<td>301.8</td>
<td>38.3</td>
<td>1,355</td>
<td>4.5</td>
</tr>
<tr>
<td>Medium Density (MD) Age Qualified (0.1-2.0 du/ac)</td>
<td>115.9</td>
<td>14</td>
<td>754</td>
<td>6.5</td>
</tr>
<tr>
<td>Medium-High Density (MHDR) (12.1-18.0 du/ac)</td>
<td>51.7</td>
<td>6.2</td>
<td>930</td>
<td>18.0</td>
</tr>
<tr>
<td>Residential Totals</td>
<td>516.5 acres</td>
<td>62.2%</td>
<td>3,133 du</td>
<td>6.0 du/ac</td>
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<tr>
<td>Parks/Open Space</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>RSG Community Park</td>
<td>26</td>
<td>3.2</td>
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<tr>
<td>Confluence Park</td>
<td>12.7</td>
<td>1.5</td>
<td></td>
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<tr>
<td>Neighborhood Park</td>
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<td>Entry Park</td>
<td>12.6</td>
<td>1.5</td>
<td></td>
<td></td>
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<tr>
<td>Village Paseos</td>
<td>122</td>
<td>14.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creeks/Creek Edge Linear Parks</td>
<td>25.7</td>
<td>3.1</td>
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<tr>
<td>Natural Open Space</td>
<td>104</td>
<td>12.5%</td>
<td></td>
<td></td>
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<tr>
<td>Open Space Subtotals</td>
<td>210.3 acres</td>
<td>25.2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Neighborhood Commercial</td>
<td>9.3</td>
<td>1.1</td>
<td>166*</td>
<td>18.0*</td>
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<tr>
<td>Public Facility</td>
<td>2.8</td>
<td>0.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>School</td>
<td>14</td>
<td>1.7</td>
<td>84**</td>
<td>6.0**</td>
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<tr>
<td>Backbone Roadways Right-of-Way</td>
<td>77</td>
<td>9.3</td>
<td></td>
<td></td>
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<tr>
<td>Storm Drain Easement</td>
<td>1.1</td>
<td>0.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Subtotals</td>
<td>104 acres</td>
<td>12.5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>830.8</td>
<td>100%</td>
<td>3,133 (3,385)***</td>
<td>4.0</td>
</tr>
</tbody>
</table>
Planning Area Classifications and Density

As noted in Table 1, Very Low Density Residential (0-2.5 DU/AC) comprises approximately 47 acres (5.7%) of the Specific Plan area. A total of 94 dwelling units are anticipated in this planning area at a gross density of 2 dwelling units per acre with a minimum lot size of 20,000 square feet, represented by PA 1 in Figure 4. The following is breakdown of the development density of land use districts and their designated PAs.

- **Low Density Residential (2.6-6.0 DU/AC)** – comprises 302 acres (36%) of the Specific Plan area. The category is represented in Exhibit A as (PAs) 2-A, 2-B, 2-C, 3-A, 3-B, 3-C, 3-D, 4-A, 4-B, 4-C, 4-D, 5-A, 5-B, 5-C, 5-D, 5-E, 5-F, 6-A, 6-B, 6-C AND 6-D. 1,355 dwelling units are anticipated in these planning areas at gross density of 4.5 du/ac.

- **Medium Density Residential – Age Qualified Residential (6.1 -12.0 DU/AC)** - comprises 116 acres (14%) of the Specific Plan. The density as noted in Exhibit 1 is represented by PAs 7-A and 7-B. A total of 754 dwelling units are anticipated at an average gross density of 6.5 du/ac. PA’s 7-A and 7-B are intended to be age-qualified housing designed for 55+ in age.

- **Medium-High Density Residential (MHDR)** – Medium – High Density Residential (12.1-18.0 DU/AC) comprises approximately 52 acres (6.2%) of the Specific Plan area. The density is noted by PAs 8-A, 8-B, 8-C and 8-D. A maximum of 930 dwelling units are allowed in these planning areas at a gross density of 18 du/ac.

- **Neighborhood Commercial** – comprises 9.3 acres (1.1%) of the Specific Plan area and is represented by PA 9. An alternate PA, MHDR construction would be permitted in the event commercial development does not occur.

- **Parks and Open Space** – Comprises 210 acres (25%) of the Specific Plan. Open space PAs are indicated in Exhibit 1 as PA 10, Confluence Park as PA 11, Neighborhood Park as PA 12, Entry Park as PA 13, Village Paseos as PAs 14-A, B, C and D, Creek/Creeks Edge Linear Parks as PAs 15-A and B and natural open space as PA 17.

- **Public Facility Use** – Comprises two sites, PAs 16-A and 16-B which are to be used as a potential pump station sites for potable water, recycled water, or wastewater treatment or similar use and a planned city electrical sub-station use.

- **School Facility** – Consists of a 14 acre site for a potential elementary school. The PA 16-C site would be acquired by Banning Unified School District. In the event the site is not acquired by the school district, a Residential Overlay alternative of Low Density Residential would be allowed.

**Circulation**

The major roadway servicing each of the “Village” sites and PAs is the Rancho San Gorgonio Parkway through tie-ins with interconnected streets. The planned Parkway will loop through the project site from the intersection of south 22nd Street and Westward...
Avenue, south towards Pershing Creek the north to the intersection of South 8th Street and Westward Avenue. The roadway right-of-way and adjoining landscape corridor's consist of approximately 77 acres of land dedicated to the major backbone roadway network to serve the Project. Multi-use trails (paseos), bikeways and pathways are incorporated into the project to provide additional mobility options throughout the site. A series of “roundabouts” are proposed as alternatives to signaled intersections to maintain the flow of traffic.

The vehicular circulation network for the RSG Specific Plan includes the following as noted in Figure 5.

- **Arterials:** The Rancho San Gorgonio Parkway consists of a 146’ to 156 foot wide ROW planned for 4 lanes in width at buildout extending from “A” Street to “C” Street. As a major arterial, per the City’s General Plan, the arterial connects to residential, shopping, employment and recreational nodes within the Project.

- **Modified Arterial and Modified Major:** The modified Arterial north of “C” Street is proposed to provide 146’ of ROW to include a 20’raised median, two travel lanes on each side and 8’ dual low speed electric vehicle and bike lanes per side. Other particular of the Modified Arterial are cited in the Specific Plan. The Modified Major north of “A” Street is proposed to include a 12’ median, two travel lanes on each side, 6’ bike lands on each side, a 32’ landscaped parkway on the westerly ROW side that includes a 10’ wide foot trail.

- **Collector Roadways:** Collector streets are defined by the Banning General Plan as 2 lane roads. The RSG proposed collector streets are incorporate design street modifications to allow for expanded parkways for landscaping, multi-purpose trails and water quality drainage features, as well as expanded median landscaping. Streets “A”, “B” “C” and “D” streets meet this qualification.

- **Local Streets: Public and Private:** Local streets provide access to and from residential lots. The Specific Plan proposes a 56' ROW instead of the 60' ROW used in the General Plan. The 56' RSG ROW is considered superior in design in the context of the planned community as the street provides for less pavement, less impervious surface, less drainage water runoff heat and heat generation.

- **Perimeter Roadways:** Existing roadway street systems that provide ingress and egress access.
Figure 5
RSG Vehicle Circulation
**Homeowners Association**
A permanent homeowners association (HOA) will be established for the Specific Plan area to assume ownership and maintenance responsibility for all common areas, private streets/drives, recreation areas, open space and landscaped areas not dedicated to the City/public. An area-wide or local Landscape Maintenance District will be accepted for any area dedicated to the City for public use provided that the organization is legally and financially capable of assuming the responsibilities for ownership and maintenance. Maintenance organizations will be established prior to or concurrent recordation of land division maps or issuance of building permits for construction within that land division.

**Development Regulations**
The Rancho San Gorgonio Specific Plan regulations will serve as the use and development standards applicable to the Project area. Development plans, tract or parcel maps, precise development plans or any other action regarding the subject property which requires ministerial or discretionary approval must be consistent with the Specific Plan. The Specific Plan contains development land use provisions for the following:

- **Development Intensity** – The Specific Plan allocates a targeted number of dwelling units to each planning area by residential category. Decreases or increases in allocation of residential units up to but not exceeding the maximum density allowed for a planning areas are permitted provided the total number of unit specified in the Specific Plan does not exceed 3,385 dwelling units.
- **Building Height** – Standards for building height for the various categories of residential and commercial structures.
- **Lot Width** – Minimum lot sizes based on the land use category.
- **Use Provisions** – Types of uses permitted in various zoning districts as either permitted use or subject to a conditional use permit
- **Setbacks and building Separation** – Defined distances for building structures based on zoning district.
- **Open Space** – Required set aside area for common open space areas
- **Parking** – Provisions for uses to meet the required number of parking stalls.
- **Landscaping** – Provisions for minimum landscaping requirements based on land use district.

**Design Standards**
The RSG Specific Plan is envisioned as a community with a variety of home styles where architectural massing, roof forms, detailing, walls and landscape are integrated to reflect historic, regional, and climate-appropriate styles. Four broad families of styles, of which the Santa Barbara design style is shown in Figure 6 have been chosen for the RSG Community (please refer to the Specific Plan document for the other home styles);

- Spanish Style – represented by Monterey, Spanish Colonial, Santa Barbara and Andalusian architecture.
- California Eclectic Style – represented by Ranch, Farmhouse, Prairie, Napa and Craftsman architecture.
- Mediterranean Style – represented by Tuscan architecture.
- Monterrey – represented by combination of Spanish Eclectic and Colonial Revival styles.
- Design Standards: Commercial - the objective of the commercial design standards is to create an attractive environment that is compatible in scale and aesthetics with the community. The architectural commercial theme will be similar to the blend of traditional and contemporary styles found in the City. The commercial design emphases shall be to develop visually and functionally structures that contribute to the creation of coherent, well-defined and active public realm; use of clearly defined landscape and site design elements, pedestrian connections and lighting; and articulated and clearly marked entries.

Architectural design elements that will be considered as part of the development approval process include:

- Building Form, Massing and Articulation
- Colors and Materials
- Building siting and Orientation
- Sustainable Community Design Features and Strategies
Santa Barbara

This style was established in the City of Santa Barbara. After the devastating earthquake of 1925, the City adopted the Hispanic style as its official style. The Santa Barbara style has its roots in the Spanish colonial revival style. White-washed stucco walls are inherent to the Santa Barbara style, which also features boxy, simple forms, low-pitched gable roof form, and the use of wood and tile as accent details.

Identifying Characteristics

- Stucco with light sand finish
- Boxy, simple massing
- Fully rounded arch elements
- Deeply recessed wall fenestration and asymmetrical volumes grouped about courtyards
- Dark wood exposed rafter tails
- Wrought iron accents
ANALYSIS:

Development

The proposed Rancho San Gorgonio Project would be phased to provide the orderly buildout of the community based on market demand and infrastructure availability. The Project will be developed in six (6) phases as shown in Figure 7 with Phase 1 consisting of the Jost Village area. Building of the Rancho San Gorgonio Specific Plan is estimated to occur over a twenty (20) year period although the term of the Development Agreement may be of a longer duration. Assuming construction begins in 2017, the time frame for the completion would be from 2017 to 2035, depending on market conditions, financing, and development of final construction plans.

The following are land use components of the Project most aptly considered that are associated with the buildout out characteristics and findings of the Project analyzed in the EIR.

- **Population Housing** – The Project would permit development of up to 3,385 residential dwelling units. Based on the City’s average size of 2.67 population growth due to the proposed project would be 9,038 residents.

- **Public Services** – Fire: Increasing population and residential and nonresidential development would lead to an increase in fire and paramedic service demands. According to Banning Fire Services, a fire station is needed on the south side of the I-10 Fwy near Sunset Avenue to accommodate growth and calls for service. Planning Areas (PA) 10 is designated for park use; however it allows for a potential fire station facility site on the east side of PA 10. The station would be developed by impact fees. Currently fire facilities fee is $1,335 for single-family detached units, townhouses, and multi-family units. Commercial fees are $405-579 per 1,000 square feet.

- **Public Services** – Police: Currently the Banning Police Department (BPD) has an officer-to-resident ratio of 0.87 officers per 1,000 residents. The goal is to have 1.2 officers to 1,000 residents to meet the national average. The BPD would ideally need approximately 11 additional officers to serve the 9,038 residents.

- **Public Services** – Schools: The EIR analysis determined that overall Banning Unified School District (USD) would be able to adequately serve the 1,060 additional students from the proposed project. Banning USD would continue receiving development impact fees pursuant to SB 50. In accordance with SB 50, these fees are collected by school districts at the time of the issuance of building permits. Payment of fees would offset impacts from increased demand for school service associated with development of the Project by providing an adequate financial base to construct and equip new and existing schools. Current development impact fee for residential development under SB 50 is $3.36 per square foot and $0.54 per square foot for commercial and industrial, and hotel/motel uses.

- **Recreation** – The project would permit development of a maximum amount of 3,385 residential units and generate approximately 9,038 additional residents in the Specific Plan area. The increase in population and residential units would lead to increased use of park facilities in the area. Based on the parks and recreation element, the recommended minimum parkland standard is 5 acres per
1,000 residents. Therefore, the proposed Specific Plan should provide approximately 45.2 acres of parkland to meet the City’s parkland standard for the projected project population. The 831 acre Project site provides 210 acres of parks and open space areas. Specifically, development of the four (4) proposed parks as shown in Figure 8 amount to 50 acres of new community recreation facilities that would not otherwise be provided. The parks and recreational facilities proposed within the Project site would develop in accordance to the Specific Plan requirements for each Planning areas. As noted in Exhibit 8, these parks and open space include four (4) parks, a linear park along Smith Creek, village paseos, natural open space areas, which make up the 210 acres of the entire Project site.

- **Traffic-Circulation** – Table 2 below denotes the (vehicle) trip generations estimates for each of the Project’s 6 phased development plan from opening year 2017 to building out in 2035 and estimated AM and PM peak hour trips.

<table>
<thead>
<tr>
<th>Traffic Scenario</th>
<th>Daily</th>
<th>AM Peak Hour</th>
<th>PM Peak Hour</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Inbound</td>
<td>Outbound</td>
</tr>
<tr>
<td>Opening Year 2017 - Phase 1</td>
<td>3,307</td>
<td>245</td>
<td>293</td>
</tr>
<tr>
<td>Interim Year 2019 - Phase 2</td>
<td>6,725</td>
<td>313</td>
<td>494</td>
</tr>
<tr>
<td>Interim Year 2022 - Phase 3</td>
<td>10,952</td>
<td>397</td>
<td>743</td>
</tr>
<tr>
<td>Interim Year 2025 - Phase 4</td>
<td>25,296</td>
<td>612</td>
<td>1,135</td>
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<tr>
<td>Interim Year 2029 - Phase 5</td>
<td>30,832</td>
<td>707</td>
<td>1,470</td>
</tr>
<tr>
<td>General Plan Buildout 2035 - Phase 6</td>
<td>31,696</td>
<td>724</td>
<td>1,521</td>
</tr>
</tbody>
</table>

*Source: Kuzma 2016.*

- **Utilities and Service Systems** – Water: The EIR analysis estimates that the City of Banning has sufficient existing and forecast water supplies to meet projected demands of the Specific Plan buildout. The historical low capacity of 28,754 acre feet per year (afy) exceeds the total forecast City demand of 14,125 afy in 2035. Consequently there is adequate system pumping capacity and the Specific Plan buildout would not require construction of new groundwater wells. Moreover, new water supply sources would not be required to support the project pursuant to the following:
  - Implementation of water conservation measures required under the 2020 Water Conservation Plan and accounted for in the referenced Water Supply Analysis.
  - Pending completion of the East Branch Extension Phase II project, expected to be fully operational in early 2016, will bring additional capacity for delivering imported state water program (SWP) water to the area.
  - The proposed use of recycled water for common area irrigation.
  - The proposed recharge of stormwater from the project site into the groundwater basin.
Figure 7
RSG Phasing Plan
Consistency with the General Plan
To provide consistency with the Banning General Plan, the Project requires multiple approvals of entitlements and certification of the EIR. To be consistent with the Banning General Plan, the Specific Plan must meet both the statutory requirements of the California Government Code, Section 65451 and be legally adequate. Specific Plans function as implementation documents of the General Plan. To an extent, the range of issues that is contained in a specific plan is left to the discretion of the decision making body. However, all specific plans, whether prepared by a general law city or county, must comply with Sections 65450 - 65457 of the Government Code. These provisions require that a specific plan be consistent with the adopted general plan of the jurisdiction within which it is located. In addition, specific plans must be consistent with any Airport Land Use Plan pursuant to Public Utilities Code §21676. In turn, all subsequent subdivisions, annexations, development agreements, public works projects and zoning regulations must be consistent with the Specific Plan.

Through the adoption of the Specific Plan, the Specific Plan will be consistent with the General Plan and legally adequate in that the RSG Specific Plan incorporates:

- Maps, diagrams and/or descriptions to adequately describe the distribution, location, extent, and size of the major infrastructure components needed to serve the project. Including energy, water provisions, public services and solid waste facilities.
- Discussion of the methods to be used for infrastructure financing and a program for implementation.
- A detailed statement of the relationship of the specific plan to the general plan, including consistency between both plans and a comparison of goals, objectives, and policies.
- A discussion of how the plan implements the policies of the general plan.

Environmental Impact Report: Rancho San Gorgonio Specific Plan
Adoption of a specific plan is a project subject to the California Environmental Quality Act (CEQA). As such, a specific plan given the scope and extent of the project normally requires the preparation and consideration of an environmental impact report (EIR) disclosing the potential significant environmental effects of the plan, plan alternatives, and the means by which possible environmental damage may be reduced or avoided. The City of Banning determined that an EIR would be required and issued a Notice of Preparation (NOP) and Initial Study on April 20, 2015. Seven agencies/interested parties responded to the NOP. The Comments received during the public review are cited in the Final EIR, as attached in the proposed City Council resolution. Prior to the Notice of Preparation, a public scoping meeting was held on April 29, 2015 to determine the concerns of responsible and trustee agencies and the community regarding the project. The scoping meeting was held at the City of Banning Council Chambers and was attended by a number of community members and interested parties, whose comments are also reflected in the draft EIR.

Similarly, in accordance with SB 18 and AB 52 mandating that cities and counties consult with California Native America tribes during the local planning cities process for the purpose of protecting Traditional Tribal Cultural Places, the City met and consulted...
with local Indian Tribes. Noted below are the respected dates the City and tribal officials met to discuss the project.

Date: April 2, 2015
Date: July 1, 2015

Comments received from discussions with Indian Tribes are reflected in the Project’s conditions of approval, mitigation and mitigation monitoring provisions.

The Draft EIR addresses the environmental effects associated with the RSG Specific Plan. In conformance with CEQA, the EIR includes a study of specific land use factors which a land development or construction project would have on the environment in the area. In regard to the RSG EIR, these factors include Aesthetics, Agricultural and Forestry Resources, Air Quality, Biological Resources, Cultural Resources, Geology & Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Noise, Population and, Public Services, Recreation, Transportation and Traffic and Utilities and Service Systems.

EIR Circulation and Public Response
The draft EIR was made available for review and comment on June 20, 2016, through August 3, 2016, and a Notice of Availability and Public Hearing notice was mailed to affected property owners, project stakeholders requesting to be notified, responsible and trustee agencies, and listed on the Record Gazette newspaper. The draft EIR was posted at City Hall and Banning Public Library for viewing. Comments were received in response to circulating the draft EIR from project stakeholders. The full context of comments and the City’s response to comment are incorporated in the Final EIR for review under separate cover.

Project Alternatives
Based on the analysis of each factor, the EIR must provide a range of “reasonable alternatives" to the project or to the location of the project, which could feasibly attain the basic objectives of the project, but would or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives. The project alternatives include the following:

- No Project/No Development Alternative: Under the No Project Alternative, the RSG Specific Plan would not be adopted and no development would occur on site. The Project site would remain vacant. Impacts to environmental factors would be reduced. Only transportation and traffic impacts would be greater under this alternative.
- No Project/Existing General Plan Alternative: Under this alternative, the site would be developed based on the current General Plan Land Use designation of Very Low Density Residential, with limited Medium Density Residential, High Density Residential, Rural Residential, and Open Space Parks and Open Space Resources. The remaining 161 acres off the project site would remain unincorporated. Buildout of this alternative would allow up to 1,865 dwelling units and introduce approximately 4,980 residents. The alternative would not achieve several of the project objects in that the site:
1) Would not be Master Planned
2) The City’s General Plan would not be updated based on projected market conditions.
3) Promote the concept of sustainable development through green practices.
4) Create an easily navigable community with landscaping, signage and entry.
5) Would not provide recreational amenities.
6) Would not provide safe and efficient circulation linking a planned community to the rest of the City.
7) Address drainage and water quality issues.
8) Encourage alternative transportation by creating a walkable community.

- **Reduced Density Alternative:** Under this alternative, residential development in the Project area would be reduced by 20 percent while maintaining the development footprint of the project. The 20 percent reduction would result in a buildout of 2,708 dwelling units and 7,230 residents. Commensurately, vehicle trips would decrease from 31,698 to 25,358 daily trips by 2035. While this alternative would reduce residential development, it would achieve most project objectives. However, as the City of Banning is in need of housing for future generations, the alternative would not provide as much housing opportunity or meet the City’s project housing market conditions.

- **Environmentally Superior Alternative:** CEQA requires a lead agency to identify the “environmentally superior alternative”. With regard to this Project, the environmentally superior alternative is the No Project/No Development Alternative. The next environmentally superior alternative is the Reduced Density Alternative. This alternative lessens impacts to nearly all topical sections and eliminates significant impacts to population growth. Other significant and unavoidable impacts to air quality, greenhouse gas emissions, noise, and traffic would remain.

**Statement of Overriding Considerations**

The California Environmental Quality Act provides provisions for an agency to approve a project when such a project will cause one or more significant environmental effects. In conjunction with the certification of the EIR, a statement of overriding considerations and findings of fact pursuant to Section 21081 of the Public Resources Code and Section 15091 of CEQA provide that no public agency shall approve or carry out a project for which an Environmental Impact Report (EIR) has been certified that identifies one or more significant environmental effects of the project, unless, the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding.

The possible findings are:

1. Changes or alterations have been required in, or incorporated into, the project, which avoid or substantially lessen the significant environmental effects as identified in the Final EIR.
2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

3. Specific economic, legal, social, technological, or other considerations, including provisions of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

Additionally, the Lead Agency must not approve a project that will have a significant effect on the environment unless it finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the unavoidable adverse environmental effects (PRC § 21081(b)).

Of the 16 environmental factors analyzed in the initial study, specific categories associated with these factors were determined to be less than significant and were not further analyzed in the Draft EIR. The categories in these specific factors include:

- Agriculture and Forestry Resources: (categories a, c, d and e)
- Cultural Resources: (d)
- Geology and Soils: (categories ai, aii, aiv, and e)
- Hazards and Hazardous Materials: (categories a, b, c, d, and f)
- Hydrology and Water Quality: (i)
- Land Use and Planning: (a)
- Mineral Resources: (categories a, b)
- Noise: (f)
- Population and Housing: (categories b, c)

The following factors analyzed in the draft EIR were determined to be significant, unavoidable, and adverse even after mitigation measures were applied and require approval of the Statement of Overriding Considerations.

**Air Quality**

- Impact 5.3-2. From Phase 2 onwards, operational activities of the proposed project would generate peak daily emissions in exceedance of the SCAQMD daily thresholds for reactive organic gases (ROG), nitrous oxides (NOX), carbon monoxide (CO), Respirable Coarse Particulate Matter (PM10), and Respirable Fine Particulate Matter (PM2.5). Implementation of Mitigation Measure 3-6 would reduce operation-related criteria air pollutants. However, despite adherence to mitigation, Impact 5.3-2 would remain significant and unavoidable.

- Impact 5.3-4. The Rancho San Gorgonio Specific Plan would result in a substantial increase in growth compared to what was identified in the City’s General Plan and would exceed SCAQMD’s regional operational thresholds. Mitigation measures applied for Impacts 5.3-1 and 5.3-2 and the design and regulatory standards of the Specific Plan would reduce the project’s regional construction-related and operational phase criteria air pollutant emissions to the extent feasible. However, the
potential increase in growth and associated increase in criteria air pollutant emissions, would be potentially inconsistent with the assumptions in the AQMP. Thus, Impact 5.3-4 would remain significant and unavoidable.

**Greenhouse Gas Emissions**

- Impact 5.7-1. Development in accordance with the proposed project would generate GHG emissions in exceedance of SCAQMD’s Tier 4 performance targets. Implementation of Mitigation Measures 7-1 through 7-3 and Project Design Features 7-1 through 7-5 would reduce GHG emissions from stationary and mobile sources to the extent feasible. Additionally, Mitigation Measures 3-1 through 3-6 detailed in Section 5.3, Air Quality, would also encourage and accommodate use of alternative-fueled vehicles, multimodal transportation, and energy efficient technology that would help reduce vehicle miles traveled and GHG emissions. However, due to the magnitude of GHG emissions associated with the proposed project, Impact 5.7-1 would remain significant and unavoidable.

**Noise**

- Impact 5.11-1. Noise from construction activities from implementation of projects within the Specific Plan area could result in substantial impacts to sensitive receptors. Mitigation Measure 11-1 would reduce potential noise impacts during construction to the extent feasible. However, due to the potential for construction to occur in close proximity to sensitive receptors, there would be a substantial noise increase over existing ambient noise levels. Although temporary construction barriers would reduce construction noise levels to the City’s interior noise standard (of 55 dBA for 15 minutes or below) for residences and schools within 71 feet of construction activities, there would still be the potential for a readily perceptible noise increase at sensitive receptors in the vicinity of the project over the years the project is constructed. Therefore, impacts would be significant and unavoidable.

- Impact 5.11-3. Noise-sensitive uses would be exposed to elevated traffic noise levels that would result in substantial impacts. No individual mitigation measure and no combination of feasible or practical mitigation measures are available to reduce project-generated traffic noise to less than significant levels. Thus, traffic noise impacts are significant and unavoidable.

**Population and Housing**

- Impact 5.12-1. Buildout of the proposed Specific Plan would introduce up to 9,038 residents, which would exceed SCAG’s population projections for the City in 2040 by approximately 1,041 residents. There are no feasible mitigation measures to reduce impacts of population growth. Thus, Impact 5.12-1 would be significant and unavoidable.

**Transportation and Traffic**

- Impact 5.15-1. The project in combination with cumulative development would cause a significant impact at intersections under the jurisdiction of the cities of Banning and Beaumont and Caltrans. With implementation of program improvements combined with the improvements listed in Mitigation Measures 15-1 to 15-7 at impacted study area intersections, the intersections would operate within acceptable levels of
service. However, the primary responsibility for approving and/or completing certain improvements outside of Banning lies with agencies other than the City of Banning (i.e., City of Beaumont, Caltrans). Thus, there is potential that significant impacts may not be fully mitigated if such improvements are not completed for reasons beyond the City of Banning’s control (e.g., the City cannot undertake or require improvements outside of Banning’s jurisdiction). Therefore, this impact would remain significant and unavoidable.

- Impact 5.15-2. The project in combination cumulative development would cause a significant impact at several freeway mainline segments and on freeway off-ramps on the I-10 freeway. High occupancy vehicle (HOV) lanes and general use lanes would be required to improve freeway mainline operations. However, these improvements would require approval from Caltrans as the owner/operator of I-10. Caltrans currently does not have a funding mechanism for development projects to contribute to fair share fees to implement improvements on Caltrans facilities. Therefore, the City of Banning or the property owner/developer would not be able to guarantee the implementation of these measures. Thus, impacts would be significant and unavoidable.

- Mitigation would also be required at several freeway ramps—No. 21, Sunset Avenue (NS) at I-10 EB Ramps (EW); No. 33, 8th Street (NS) at I-10 WB Ramps (EW); and No. 34, 8th Street (NS) at I-10 EB Ramps (EW). However, the improvements would require approval from Caltrans as the owner/operator of these freeway ramps. Caltrans currently does not have a funding mechanism for development projects to contribute fair share fees to implement improvements on Caltrans facilities. Therefore, the City of Banning or the property owner/developer would not be able to guarantee the implementation of these measures. Therefore, impacts would be significant and unavoidable.

- Impact 5.15-3. The project in combination with cumulative development would result in freeway segments and intersections in the CMP network exceeding LOS standards. Similar to Impact 5.15-1, several roadway improvements would be required outside the City’s jurisdiction. Thus, there is potential that significant impacts may not be fully mitigated. Impacts would therefore be significant and unavoidable.

PLANNING COMMISSION CONSIDERATION:

The following information delineates each of the entitlements associated with the Rancho San Gorgonio Specific Plan the Planning Commission must consider in recommending that the City Council adopt each ordinance and resolution associated with its specific entitlement.

1. The environmental process for the project involves adopting a Statement of Overriding Considerations and CEQA Findings of Fact, certification of the Final Environmental Impact Report, and adoption of the Mitigation Monitoring and Reporting Program by resolution.
2. Adoption by the City Council of the General Plan Amendment occurs by resolution. The Banning General Plan consists of twenty-one (21) elements. The Land Use Element of the General Plan functions as a guide for decision makers as to the ultimate pattern of development for the city at build-out. The element plays a central role in correlating all land use issues, including specific plans into a set of coherent development polices in that a specific plan is a tool for the systematic implementation of the general plan. By reference, the General Plan Amendment will incorporate the Rancho San Gorgonio Specific Plan as an extension of the Banning General Plan’s long term land use policies, goals and objectives once amended. Approving General Plan Amendment (GPA) No. 13-2503 will change the General Plan Designation from Very Low Density Residential, Medium Density Residential, Very High Density Residential, Rural Residential, and Open Space-Parks to the Rancho San Gorgonio Specific Plan.

3. The adoption by the City Council of the Zoning Ordinance text and Zoning Map occurs by ordinance. The Design Guidelines and Development Regulations of the Specific Plan will be adopted. The Land Use Map will be amended to reflect the new Specific Plan designation for the Project site. The site’s current zoning designation on the Land Use Map is listed as Very Low Density Residential, Medium Density Residential, Very High Density Residential, Rural Residential, and Open Space-Parks and will be changed to the Rancho San Gorgonio Specific Plan.

4. Approving the Water Supply Assessment for the project based upon Findings of Fact as stated in the resolution. The City Council acting under its authority as the Board for the Banning Utility Authority may also approve the WSA by resolution.

5. Adoption by the City Council of the Rancho San Gorgonio Specific Plan occurs by ordinance. The Design Guidelines section of the Specific Plan, referenced as Section 3 will be approved to facilitate the processing and approval of future text or design amendments to the design guideline chapter of the Specific Plan. Approving the Rancho San Gorgonio Specific Plan will create an 831 acre master planned community composed of 44 planning areas that include a variety of residential densities, common open spaces, an elementary school site and commercial area within the City of Banning.

6. Adoption by the City Council of the Master TTM No. 36586 occurs by resolution. The Large Lot TTM No. 36586 establishes the Project area’s road right-of-ways, the 44 Planning Areas, parks, and open space parcels. The City will consider future project-by-project builder level subdivision maps during each of the six (6) Project phases of the Specific Plan. Each of the builder level maps will be reviewed and approved by the City of Banning for the residential components of the project that include information on lot layout and dimensions, roads, grading, easements and slopes. Final maps will be prepared and become the legal recorded instrument after approval by the City to establish legal parcels.

7. Adoption by the City Council of the Development Agreement (DA) occurs by ordinance. The agreement sets the standards and conditions that govern the development of the property. It provides certainty to the developer that his or her
project will be isolated from changes in the jurisdiction’s zoning laws over the course of development, but it also contracts the developer to provide benefits to the city, such as infrastructure improvements, public open space, or monetary payment into funds, such as “in lieu” fees, in exchange for that certainty.

The Development Agreement between the City of Banning and Rancho San Gorgonio, LLC (Developer) provides for the following:

- Right to Develop. Developer shall have a vested right to develop the site to the full extent permitted by the Development Plan and the Development Agreement (DA)
- Provisions for Financing and the City’s Obligation through such mechanisms as the Community Facilities Districts to levy special taxes and issue bonds secured by the Facilities Special Tax.
- Timing for Construction and Completion of Project. Good faith effort to achieve certain goals and development objects in terms of the Project Development.
- Fees, Taxes and Assessments.
- Dedication and Conveyances of Property Interests
- Processing of Requests and Applications: Other Government Permits
- Amendment and Modification of Development Agreement

8. Adoption by the City Council of the Annexation proposal occurs by Ordinance. Prior to any development within the unincorporated portions of the site, the 161 acres in the City’s sphere of influence (SOI) must be formally annexed into the City. The City must work with Riverside County Local Agency Formation Committee (LAFCO) to initiate the annexation of the property.

LAFCO’s planning function is exercised through the establishment and amendment of SOI’s. LAFCO is required to designate and periodically review a SOI for each local agency in the County. A SOI is defined as “a plan for the probable physical boundaries and service area of a local agency, as determined by the commission”. The SOI delineates the area that an agency could be expected to “grow in to” in the future. A SOI that is the same as the current boundaries indicates that the agency should be considered in its ultimate configuration. LAFCOs prepare Municipal Service Reviews (MSRs) as an aid in reviewing SOIs. An MSR will include information relevant to a specific service, an agency or a geographic region. Based on the MSR, the Commission will make determinations with respect to several factors including expected growth, service and facility capacity, the financial ability of agencies to provide services, opportunities for shared facilities and improved efficiency, and governmental structure alternatives.

PUBLIC NOTICE:

The Planning Division mailed notices to surrounding property owners within 1,500 feet of the project site in compliance with the City of Banning standard noticing requirements.
for public hearings. The public hearing scheduled for September 7, 2016, is intended for the Planning Commission to discuss the findings of the Draft EIR and to consider and make recommendations to the City Council on the project applications.

Additionally, on August 26, 2016, legal advertisements were published in the Record Gazette and Press Enterprise newspapers. In that the City of Banning determined that the Project required the preparation of an Environmental Impact Report (EIR), a Notice of Preparation (NOP) and an initial study was prepared for review and comment by responsible and trustee agencies, the public, and other concerned parties. The NOP was posted for public review from April 20, 2015 to May 19, 2015. A copy of the draft EIR was also available for viewing on the City’s website, Banning City Hall and Banning Public Library. The comment period for the draft EIR was June 20, 2016, through August 3, 2016. Comments received regarding the draft EIR are attached in the Final EIR, provided under separate cover.

The City also delivered CDs (compact disk) responding to comments provided by public agencies, groups/organizations, and interested members of the public.

As of the writing of this report the City received copies of three resolutions of support from the Mt. San Jacinto Community College District, as Resolution No. 2015/16-077; the Banning Unified School District, as Resolution No.15-16-26; and, the Banning Chamber of Commerce as shown in Appendix D. Additionally, the City received 26 letters of support as shown in Appendix E.

Prepared and Recommended By:

Brian Guillot
Community Development Director

Reviewed By:

Art Vela
Public Works Director
Attachments:

Planning Commission Resolution No. 2016-08 that includes the following City Council items:

1. Resolution No. 2016-83 adopting a Statement of Overriding Considerations and CEQA Findings of Fact, certification of the Final Environmental Impact Report, adoption of the Mitigation Monitoring and Reporting Program for the Rancho San Gorgonio Specific Plan project;

   Exhibit A – Final Environmental Impact Report (FEIR)
   Exhibit B – Statement of Overriding Considerations
   Exhibit C – Mitigation Monitoring and Reporting Program (MMRP)
   Exhibit D – CEQA Findings of Fact

2. Resolution No. 2006-88 approving General Plan Amendment (GPA) No. 13-2503 to change the General Plan Designation from Very Low Density Residential, Medium Density Residential, Very High Density Residential, Rural Residential, and Open Space-Parks to Specific Plan;

   Exhibit A – Land Use Map

3. Ordinance No. 1501 adopting Zone Change No. 13-3501 to reflect the proposed Zoning Ordinance text and map amendments for the Rancho San Gorgonio Specific Plan; and

   Exhibit A – Zoning Map
   Exhibit B – Specific Plan as contained in Appendix A

4. Resolution No. 2016-84 approving the Water Supply Assessment for the project based upon Findings of Fact as stated in the resolution;

   Exhibit A – Water Supply Assessment

5. Ordinance No. 1500 approving the Rancho San Gorgonio Specific Plan to create an 831 acre master planned community composed of 44 planning areas that include a variety of residential densities, common open spaces, an elementary school site and commercial area within the City of Banning;

   Exhibit A – Rancho San Gorgonio Specific Plan (under a separate cover)

6. Resolution No. 2016-86 approving Master Tentative Tract Map No. 36586 and conditions of approval establishing road right-of-ways, forty-four land use planning areas, parks and open space parcels;

   Exhibit A – Tentative Tract Map 36585
7. Ordinance No. 1499 approving the Development Agreement containing said provisions for financing acquisition and infrastructure construction, and land use development parameters;

   Exhibit A – Development Agreement

8. Resolution No. 2016-87 approving the annexation of 161 acres of property located in the County of Riverside and within the City’s adopted Sphere of Influence General Planning Area and the Rancho San Gorgonio Specific Plan.

   Exhibit A - Legal Description
   Exhibit B - Plat Map

Appendix:

A. Rancho San Gorgonio Specific Plan dated January 26, 2015 (under separate cover)
B. Draft Environmental Impact Report (DEIR) dated June 2016 (under separate cover)
C. Advertisement
D. Notice of Preparation
E. Resolutions of Support (3)
F. Letters of Support (26)
G. Large print copy of TTM No. 36586 (under separate cover)
H. Consistency Finding, Riverside County Airport Land Use Commission dated January 21, 2014
Planning Commission Resolution No. 2016-08
RESOLUTION NO. 2016-08

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA RECOMMENDING THAT THE CITY COUNCIL APPROVE GENERAL PLAN AMENDMENT NO. 13-2503 TO AMEND THE GENERAL PLAN LAND USE DESIGNATION FROM VERY LOW DENSITY RESIDENTIAL, MEDIUM DENSITY RESIDENTIAL, VERY HIGH DENSITY RESIDENTIAL, RURAL RESIDENTIAL AND OPEN SPACE-PARKS TO SPECIFIC PLAN, AND ZONE CHANGE NO. 13-3501 TO AMEND THE ZONING ORDINANCE TEXT AND MAP; CERTIFY THE FINAL ENVIRONMENTAL IMPACT REPORT AND ADOPT THE STATEMENT OF OVERRIDING CONSIDERATIONS AND FINDINGS OF FACT; APPROVE A WATER SUPPLY ASSESSMENT; ADOPT THE RANCHO SAN GORGONIO SPECIFIC PLAN; APPROVE TENTATIVE TRACT MAP NO. 36586 AND CONDITIONS OF APPROVAL; ADOPT THE DEVELOPMENT AGREEMENT; AND APPROVE THE CITY ANNEXATION ON PROPERTY LOCATED SOUTH OF INTERSTATE 10 AND BOUNDED BY SUNSET AVENUE AND TURTLE DOVE LANE ON THE WEST, COYOTE TRAIL AND OLD IDYLLWILD ROAD ON THE SOUTH, SAN GORGONIO AVENUE (STATE ROUTE 243) ON THE EAST, AND PORTIONS OF WESTWARD AVENUE TO THE NORTH, APN#’s 537-150-005 – 007; 537-170-002 – 004; 537-190-001 – 005, 018 – 022; 537-220-031 – 038; 543-020-001, 002, 021, 023; 543-030-001; 543-040-001, 002; 543-050-001 – 003

WHEREAS, an application for a General Plan Amendment regarding the Rancho San Gorgonio Specific Plan has been duly filed by:

Applicant / Owner: Diversified Pacific
Authorized Agent: Peter J. Pitassi
Project Location: Noted Above
APN Number: Noted Above
Lot Area: 831 acres

WHEREAS, the Planning Commission has the authority to review and make recommendations to the City Council concerning General Plan Amendment No. 13-2503, Zone Change No. 13-3501, the Final Environmental Impact Report (EIR), SCH # 201504106, and Mitigation Monitoring Reporting Program (MMRP), including the EIR’s Statement of Overriding Considerations, a Water Supply Assessment, the Rancho San
WHEREAS, in accordance with Government Code Sections 65353, 65355 and 65090, on August 26, 2016 the City gave public notice by advertisement in the Press Enterprise and Record Gazette newspapers of a public hearing concerning the project, which included the General Plan Amendment No. 13-2503, Zone Change No. 13-3501, Final Environmental Impact Report (EIR), a Water Supply Assessment, Rancho San Gorgonio Specific Plan, Tentative Tract Map No. 36586, Development Agreement and City Annexation. The public hearing notice was also mailed to property owners within 1,200 feet of the Project site. Likewise, in accordance with State of California Public Resources Code Section 21165, a Notice of Availability and Public Hearing Notice was advertised in the Record Gazette Newspaper announcing the 45 day circulation for public review and comment of the Draft Environmental Impact Report (EIR) for the proposed Rancho San Gorgonio Specific Plan and Planning Commission hearing scheduled for September 7, 2016. Copies of the Draft EIR were made available at Banning City Hall and Banning Public Library and were also transmitted to the State Clearinghouse Office of Planning & Research for review and comment by responsible and trustee agencies. Comments received during the 45 day review period are incorporated into the Final EIR, along with the City’s responses to each comment for review and consideration by the Planning Commission.

WHEREAS, in accordance with Government Code Section 65353, on September 7, 2016, the Planning Commission held the public hearing at which interested parties had an opportunity to testify in support of, or opposition to, the General Plan Amendment No. 13-2503, Zone Change No. 13-3501, Final EIR, Water Supply Assessment, Rancho San Gorgonio Specific Plan, Tentative Tract Map No. 36586, Development Agreement, and proposed Annexation, and at which the Planning Commission considered each of the proposed entitlements and Final EIR.

WHEREAS, at this public hearing on September 7, 2016, the Planning Commission heard public comments on, and adopted the Resolution recommending that the City Council certify the Final Environmental Impact Report (FEIR) and adopt the Statement of Overriding Considerations and Statement of Fact, the Water Supply Assessment, the General Plan Amendment No. 13-2503 and Zone Change No. 13-3501, the Rancho San Gorgonio Specific Plan, Tentative Tract Map No. 36586, Development Agreement and Annexation for the project.

NOW THEREFORE, the Planning Commission of the City of Banning does resolve, determine, find and order as follows:

SECTION 1: That the Final Environmental Impact Report has been completed in compliance with the requirements of CEQA in accordance with Public Resources Code Section 21000 et seq., CEQA Guidelines (14 California Code of Regulations § 15000 et
seq.) and the City’s local CEQA Guidelines and that the Planning Commission has reviewed and considered the information in the FEIR.

SECTION 2: The City has complied with CEQA Guidelines § 15085 and § 15087 by providing a Notice of Completion of the Draft EIR to Office of Planning and Research and a Notice of Availability to responsible and trustee agencies, including the Riverside County Clerk, and other persons and agencies. Moreover, the City has complied with CEQA Guidelines §15087 and 15105 by making the Draft EIR available to the public for review and comment for the required 45-day period commencing June 20, 2016, ending August 3, 2016.

SECTION 3: That the FEIR represents the independent judgement and analysis of the City.

SECTION 4: That the City Council certify the FEIR and recommended mitigation contained in the Mitigation Monitoring and Reporting Program (MMRP) (City Council Resolution No. 2016-83, Exhibit C) attached hereto and incorporated herein by this reference based on the following findings pursuant to CEQA and the CEQA Guidelines Section 15091,

Findings:

1. Changes or alterations have been required of or incorporated into the project which avoid or substantially lessen the significant environmental impacts identified in the FEIR. The Final EIR meets the requirements of this finding pursuant to Public Resources Code Section 21081.6 in that a Mitigation Monitoring Reporting Program (MMRP) has been prepared listing the environmental impacts intended to substantially reduce impacts to less than significant levels. All Mitigation measures in the MMRP shall be included in any future resolutions approving the project, made fully enforceable as future planning permit conditions of approval, and incorporated herein in their entirety by this reference.

2. The FEIR provides a program wherein the City can monitor changes made to the project in order to mitigate or avoid significant effects on the environment. The Final EIR meets the requirements of this finding in that a Mitigation Monitoring and Reporting Program (MMRP) has been prepared, which lists all of the mitigation measures and identifies the parties responsible to monitor and report/track compliance of the mitigation measures. The MMRP will ensure compliance during future project implementation and provide the timing for implementation.

3. The documents and other materials constituting the record of the proceedings upon which the City’s decision and its findings are based will be located at the City of Banning Community Development Department, Planning Division. The Final EIR meets the requirements of this finding in
that document and other material constituting the record of the proceedings upon which the City’s decision and findings are located at the Planning Division of the City of Banning, 99 East Ramsey Street, CA, 92220 in the custody of the Banning Community Development Department as part of the public record.

4. Adopt the Statement of Overriding Considerations based on the information presented that the Rancho San Gorgonio Specific Plan provides for the establishment of a Master Plan Community on property that is currently vacant and undeveloped. The project site is located within an existing residentially developed area and will be consistent with existing residentially zoned properties and consequently consistent with the City’s adopted General Plan developmental polices goals and objectives. Moreover that the economic, social, planning and other benefits of the Project outweigh the significant and unavoidable impact and consequently adopt the Findings of Fact.

SECTION 5: Approve General Plan Amendment and Zone Change based on the following findings and as shown in the General Plan Amendment Map and Zone Change Map (City Council Resolution 2016-88 Exhibit A and City Council Ordinance 1501 Exhibit A, respectively) attached hereto and incorporated herein:

Finding No. 1: The proposed General Plan Amendment No. 13-2503 and Zone Change No. 13-3501 are internally consistent with the General Plan.

Findings of Fact: The current General Plan Land Use and Zoning Overlay Map depicts the 670 acre site that is located in the City of Banning as zoned Very Low Density Residential, Medium Density Residential, Very High Density Residential, Rural Residential and Open Space Parks. The 161 acre portion of the project proposed to be annexed is located within the project’s sphere of influence (SOI) and is zoned Ranch/Agriculture. The proposed General Plan Amendment and Zone Change will amend the General Plan’s land use designations and Zoning Map to “Specific Plan” for properties south of Interstate 10 and bounded by Sunset Avenue and Turtle Dove Lane on the west, Coyote Trail and Old Idyllwild road on the south, San Gorgonio Avenue (State Route 242) on the east, and portions of Westward Avenue to the north, encompassing APN#’s 537-150-005 – 007; 537-170-002 – 004; 537-190-001 – 005, 018 – 022; 537-220-031 – 038; 543-020-001, 002, 021, 023; 543-030-001; 543-040-001, and 002; 543-050-001 – 003.

The project will be internally consistent with the General Plan and legally adequate in that the RSG Specific Plan, pursuant to Sections 65450 – 65457 of the California Government Code
incorporates maps diagrams and descriptions to adequately describe the distribution, extent and size of major infrastructure components needed to serve the project; discussion of the methods to be used for infrastructure financing and a program for implementation; detailed statement of the relationship of the specific plan to the general plan; including consistency between both plans and comparison of goals, objectives and policies; and discussion of how the plan implements the polices of the general plan.

The proposed specific plan zoning districts consisting of 44 planning areas (PA’s) incorporates four (4) land use categories including Very Low Density, Low Density, Medium Density and Medium-High Density uses, including a Medium Density – Age Qualified use. Twenty-eight (28) planning areas are allotted for the development of residential uses, totaling approximately 516 acres and 62% of the Specific Plan’s total land area. One PA is designated Very Low Density Residential, 21 PAs are designed Low Density Residential, 2 PAs are designated Medium Density Residential – Age Qualified, and 4 PAs are designated Medium-High Density Residential. PA 9 has a Neighborhood Commercial land use designation and alternative designation of Medium-High Density Residential (MHDR) in the event the Neighborhood Commercial site is not developed.

The proposed Rancho San Gorgonio Specific Plan Land Use Districts and Planning Areas have been reviewed against the provisions and policies, goals and objectives of the City’s General Plan, and development standards and requirements of the City’s Zoning Code for internal consistency with all of the General Plan’s element’s text and diagrams. The proposed PA and Specific Plan zoning districts in conjunction with the associated development standards will not create any conflicts among the various General Plan elements’ goals, policies and objectives, including the maps and diagrams of all the elements in the City’s General Plan. Therefore, the proposed General Plan Amendment No. 13-2503 and Zone Change No. 13-3501 will make the land uses for the Rancho San Gorgonio Specific Plan consistent with the City’s General Plan, Zoning Map and Zoning Ordinance.

**Finding No. 2:** The proposed General Plan Amendment No. 13-2503 and Zone Change No. 13-3501 would not be detrimental to the public interest, health, safety, convenience, or welfare of the community.

**Findings of Fact:** The project meets the requirements of this finding in that the Draft EIR identified significant or potentially significant effects arising
from the project. Potentially significant impacts have been identified and conditions of approval have been included or changes or alterations have been required in, or incorporated into the project which mitigate impacts to a level which will not cause a significant impact on the environment, public interest, health, safety or welfare of the community. Of the 16 environmental factors analyzed in the initial study, specific categories associated with these factors were determined to be less than significant and were not further analyzed in the Draft EIR. With implementation of mitigation measures, those factors found to be significant would be reduced to less than significant levels with mitigation incorporated. Elements remaining significant such as Air Quality, Greenhouse Gas Emissions, Noise, Population and Housing and Transportation and Traffic would remain significant and unavoidable long-term environmental factors associated with the Specific Plan’s development. The impacts that remain significant and unavoidable require the City to adopt a Statement of Overriding Considerations: attached as City Council Resolution 2016-83, Exhibit B. There are economic, social and other benefits of the proposed project as identified in the FEIR, and Rancho San Gorgonio Specific Plan which outweigh the project’s unavoidable significant environmental impacts. With adoption of the Statement of Overriding Considerations, the proposed Specific Plan land use and zoning classifications for the Rancho San Gorgonio Specific Plan will make the properties consistent and compatible with existing surrounding land uses and neighborhoods Consequently, the proposed General Plan Amendment and Zone Change would not be detrimental to the public interest, health, safety, convenience, or welfare of the community.

Finding No. 3: The proposed General Plan Amendment No. 13-2503 and Zone Change No. 13-501 would maintain the appropriate balance of land uses within the City.

Findings of Fact: The Rancho San Gorgonio Specific Plan 831 acre master plan embodies the City of Banning’s growth objects by creating a development that responds to the planning needs of the area, incorporates existing natural features and park amenities, and provides a variety of residential land use densities that provide a level of housing choices and styles that are consistent with the City of Banning’s General Plan goals, policies and objectives. The RSG Specific Plan provides a variety of small, medium and larger lot single-family detached homes of various configurations and potential multi-family housing dwellings at different affordable price levels. Through a master plan, the RSG Specific Plan responds to the community’s vision and objectives by providing a desirable
high-quality planned community that integrates residential living areas, open space and parks, commercial development, paseos and pedestrian corridors throughout the RSG property. The proposed General Plan Amendment No. 13-2503 and Zone Change No. 13-3501 is intended to reflect the project’s consistency in meeting the appropriate balance of land uses relative to existing uses in the city, thereby ensuring conformity with the City’s General Plan Land Use and Zoning maps.

**Finding No. 4**

With regard to the General Plan Amendment No. 13-2503 and Zone Change No. 13-3501 to the General Plan Land Use, the subject properties are physically suitable for the requested land use designation(s) and the anticipated land use development(s).

**Findings of Fact:**

The Rancho San Gorgonio Specific Plan provides a mix of up to 3,385 residential units on up to approximately 540 acres; 9.3 acres for Neighborhood Commercial uses, 14 acres for an elementary school site, 210 acres for parks and recreational areas, with varying passive open space trails and sports fields, and 77 acres for circulation uses, including roadways, pathways and bridges for vehicles, bikes, pedestrian and equestrian use. Upon adoption of the Specific Plan, the existing five zoning districts will be superimposed by a Land Use Plan that establishes 44 planning areas that incorporates a land use mix offering Very Low Density Residential, Low Density, Medium Density, Medium High Density, including a Medium Density-Age Qualified use, Parks and Open Space Land Use classification, Public Facility Use, School Facility Use and Neighborhood Commercial District. With adoption of the Master Large Lot Tentative Tract Map 36586 which establishes the Project area’s road right-of-ways, the 44 Planning Areas, parks, and open space parcels, the project and future development is physically suitable to accommodate the requested land use designations and the anticipated land use development which both the Specific Plan, and FEIR have accounted for with regard to the site’s configuration, physical characteristics, topography, and existing and proposed infrastructure improvements. Based on the facts indicated in this subsection and subsections above, the subject properties are suitable for the Land Use Classifications proposed in the Rancho San Gorgonio Specific Plan and by reference consistent with General Plan Amendment No. 13-2503 and Zone Change No. 13-3501.

**SECTION 6:** Approve the Land Division based on the following findings, and as shown on the Master Tentative Tract Map No. 36586, subject to the Conditions of Approval (City Council Resolution 2016-86, Exhibit B) attached hereto and incorporated herein:
Finding No. 5: Tentative Tract Map No. 36586 is consistent and compatible with the objectives, policies, general land uses, and programs specified in the City’s General Plan in that:

Findings of Fact: The City’s General Plan land use designation and Zoning Map will indicate the designation of the project site as “Specific Plan”. Through the adoption of the Rancho San Gorgonio Specific Plan, the proposed Map provides for the accommodation of forty-four (44) planning areas, consisting of a variety of residential densities, lot types and housing types, common open spaces, an elementary school, and a commercial area. The proposed development Specific Plan will result in the development mix of up to 3,385 residential on approximately 540 acres. The density level and number of units for each housing type will be commensurate with each residential zoning classification. The Project’s density meets the objectives and policies of the General Plan Housing Element in meeting the City’s Regional Housing Needs Assessment (RHNA) objectives. The proposed TTM furthers the objectives and policies of the General Plan in that 540 acres of the project area is dedicated to housing.

Finding No. 6: Together with the physical, residential, parks and open space design of the Rancho San Gorgonio Specific Plan, the Project is consistent with and compatible with the objectives, policies, general land uses, and programs specified in the Rancho San Gorgonio Specific Plan in that:

Finding of Fact: The subdivision plan promotes the creation of a Village concept that is uniquely intended to create a sense of identity and place. The Village concept supports a collection of distinct walkable neighborhoods and variety of housing choices located within natural landforms designed to avoid harsh grading practices while providing opportunities for visual and physical connectivity throughout the community. The map’s design considers the connectivity between the public realm and the pedestrian experience utilizing the Village Paseo, the RSG Community Park, neighborhood parks, and Pershing and Smith Creek linear parks as the framework for integration and walkability. Through this framework, paseos, and creek/linear park provide east/west connections while providing a safe and enjoyable experience for pedestrians, equestrians and bicyclists.

Finding No. 7: The site is physically suitable for the type of development proposed under TTM No. 36586, in that:
Finding of Fact: The Project 831 acre site is currently vacant and undeveloped. The site’s elevation ranges from approximately 2,200–2,420 feet above mean sea level (amsl). The topography is fairly level with low, rolling hills. The subject site encompasses 831 acres, including the 161 acres presently outside of the current Banning City limits, but within the City’s Sphere of Influence. The 161 acres will be annexed to the City of Banning upon approval of the RSG Specific Plan. The TTM as conditioned, including the mitigation measures contained within the Final Environmental Impact Report and the Mitigation Monitoring Reporting Program will ensure that the Project’s development is in accordance with and will implement the public improvements and mechanisms whereby the necessary facilities and resources will be available for future residents.

Finding No. 8: The design of the subdivision and improvements under Tentative Map No. 36586 is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat in that:

Finding of Fact: With the exception of the significant and unavoidable environmental effects of the project identified in the FEIR and the MMRP, the design of the subdivision and proposed improvements are not expected to cause substantial environmental damage or to substantially injure fish or wildlife or their habitat. The project site is not in a linkage designated under the MSHCP that is a connection between substantial habitat blocks with adequate size, configuration, and vegetation characteristics to generally provide for “live-in” habitat and/or provide for genetic flow for identified covered species. Significant cumulative effects of the project on the MSHCP-covered plans and wildlife, wildlife movement, riparian/riverine areas and habitat connectivity are fully mitigated by the City of Banning’s signatory status under the MSHCP and the requisite measures for mitigation of project-specific impacts to the burrowing owl, Los Angeles pocket mouse and Stephens’ kangaroo rat and these species' habitat. Cumulative effects not specially covered under the MSHCP are nevertheless mitigated to less than significant levels by the broad range of habitats covered by the MSHCP and project design features and mitigation measures required for the proposed project.

Finding No. 9: The design of the subdivision and improvements under Tentative Tract Map No. 36586, is not likely to cause serious public health problems in that:

Finding of Fact: The design of the subdivision is in conformance with the City's General Plan, Zoning Ordinance and Subdivision Ordinance.
Moreover, the construction of all units on the site will comply with all applicable City of Banning Ordinances, codes, and standards including but not limited to the California Uniform Building Code, the City’s Ordinances relating to Stormwater runoff management and controls. The design and construction of all improvements for the subdivision will be in conformance with the Rancho San Gorgonio Circulation Plan which establishes the general layout and design standards or the major vehicular roadways and non-vehicular paths within the project area. The Specific Plan codes and standards have been created based on currently accepted standards and practices for the preservation of the public health, safety and welfare. By means of the project’s circulation design, the proposed street system throughout the Project area will not impede emergency vehicle access and response times throughout the neighborhoods.

Finding No. 10: The design of the subdivision and improvements proposed under Tentative Map 36586 will not conflict with easements, acquired by the public at large, for access through or use of property, within the proposed subdivision in that:

Finding of Fact: The subdivision design contained within Tentative Tract Map No. 36586 will not conflict with any easements acquired by the public at large for access through or use of the property. The design of the subdivision and type of improvements will maintain or reconfigure easements when necessary for public access and services, abandon those easements no longer needed for public purposes, and dedicate new easements as needed to provide for public access and services through the property within the proposed subdivision.

Finding No. 11: The design of the subdivision proposed by Tentative Tract Map 36586 adequately provides for future passive or natural heating and cooling opportunities in that:

Finding of Fact: Taking into consideration local climate and the existing contour and configuration of the site and its surroundings, the size and configuration of the master plan Tentative Tract Map lots within the proposed subdivision have been arranged, to the greatest extent feasible to permit the orientation of structures to maximize natural shade, sunlight, prevailing breezes minimize and reduce the utility and power dependence.

SECTION 7: Approve the Development Agreement based on the following findings included herein which would provide the Applicant with a vested right to
develop their property consistent with the Rancho San Gorgonio Specific Plan in exchange for the public benefits to the city.

**Finding No. 12:** The proposed Development Agreement via adoption of the General Plan Amendment and Zone Change will be consistent with the General Plan and Zoning Map.

**Findings of Fact:** In conjunction with approval of the Development Agreement, the City has approved the Specific Plan, which contemplates very low, low, medium and medium-high density residential development, to a maximum total of 3,385 dwelling units, 9.3 acres of neighborhood commercial development, parks and other public uses, a Tentative Tract Map No. 36586, and an Annexation to incorporate 161 acres of property within the Project Sphere of Influence and has also certified a Final Environmental Impact Report, State Clearinghouse No. 2015041064 and adopted a Statement of Overriding Considerations and Findings of Fact. The findings and declarations underlying the Development Agreement Statute and the provisions governing contents of development agreements state, in Government Code §§ 65864(c) and 65865.2, that the lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities is a serious impediment to the development of new housing subdivisions and infrastructure, and that applicants and local governments may include provisions in development agreements relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

**Finding No. 13:** The proposed Development Agreement would promote the welfare and the interest of the city. The development of the Rancho San Gorgonio Specific Plan requires an up-front and substantial investment in public infrastructure costs. The infrastructure to be developed includes streets, sewer, water, storm drain and flood control. The City of Banning and Developer therefore desire to define the parameters within which the obligations of the Developer for infrastructure and public improvements and facilities will be met and to provide for the orderly development of the Developer's Property, assist in attaining the most effective utilization of resources within the City and otherwise achieve the goals of the Development Agreement Statute. In consideration of these benefits to the City, the Developer will receive assurances that the City shall grant all permits and approvals required for total development of the Developer’s Property and will provide for the assistance called for in this Agreement in accordance with the terms of this Agreement.
With the vested right to develop the property, the City will receive the following benefits that promote the general welfare and interest of the City:

- The term of the Development Agreement shall commence on the Effective Date and shall continue for a period of thirty (30) years plus two 5 year extensions, subject to review, to determine whether the Development Goals have been met.

- A substantial investment in infrastructure as mentioned above.

- New master planned community that provides a cohesive, well-coordinated development that would provide a sense of place.

- A mix of up to 3,385 residential units and variety of home types that includes single-family homes with lot sizes, homes sizes and design, Neighborhood Commercial uses intended to provide a location for businesses and day-to-day shopping, 14 acres for an elementary school site, 210 acres for parks and recreational areas and 77 acres for circulation uses.

- Revenue from property tax, sales tax, and development impact fees as the property will be developed and improved from the current vacant state.

- The developer will provide the City with fully improved parks as part of the development that include approximately 50 acres of community and neighborhood parks and 160 acres of paseos, trails and other open space.

- The Rancho San Gorgonio Specific Plan will be developed in six (6) phases. Through the phasing plan, the project will provide construction jobs for the construction of the homes and for the various trades that are associated with home building which include draftsman, architects engineers, electricians, plumbing, roofing, interior design and home furnishing.

- Increase home construction provides incentives for future retailers and other commercial services to locate in Banning once the homes are occupied. The project would incentivize the local economy.
SECTION 8: Approve the Annexation based on the following findings included herein for the City Council to initiate the annexation of 161 acres of unincorporated property located within the City’s Sphere of Influence and which is intended to be incorporated as part of the Rancho San Gorgonio Specific Plan Master Plan Development.

Finding No. 14: That the annexation has been considered and analyzed in accordance with CEQA as part of the Rancho San Gorgonio Specific Plan Final Environmental Impact Report.

Finding of Fact: The annexation area has been evaluated and analyzed in accordance with CEQA. Changes and/or alterations have been required and incorporated in the Final Environmental Impact Report (FEIR) to avoid or substantially lessen the significant environmental effects as identified in the Final EIR within both the annexation and Project Area. Where significant project impacts cannot be mitigated below a level of insignificance, a Statement of Overriding Considerations provides that the economic, social, planning and other benefits of the Project outweigh the significant and unavoidable impacts that could not be mitigated below a level of significance. Consequently, the Statement of Overriding Considerations and adoption of the Findings of Fact is required.

Finding No. 15 The proposed annexation is consistent with the Rancho San Gorgonio Specific Master Plan Development.

Finding of Fact: The 161 acres of unincorporated area is an integral component of the Rancho San Gorgonio Specific Plan Master Development in that the area upon annexation will incorporate Very Low Density Residential and Low Density Residential zoning districts. Moreover, the 161 acres interconnects the vehicle circulation and open space park system of the Combs Village and Moore Village districts. The annexed area combines seven Planning Areas that altogether will provide approximately 418 single family developments, representing 12 percent of the residential component of the Rancho San Gorgonio Specific Plan.

Finding No. 16 Adequate public utilities, infrastructure and public services will be available upon annexation of the area.

Finding of Fact: The development of major utility facilities within the RSG Specific Plan area will follow the City’s technical requirements. Drainage, sewer, and Public Services Plans will be phased in line with each of the six development phases planned for the project to facilitate the timely and cost effective extension of services within the project area. Both water and sewer service is provided by the City. The City
intends to assure and assist in facilitating the timely and cost-effective extension and expansion of services that support community development and improve quality of life. Utility facilities, including power and other transmission towers, cellular communication towers will be sited to ensure minimal environmental impacts.

SECTION 9: PLANNING COMMISSION ACTION.

The Planning Commission hereby takes the following action:

Adopt Planning Commission Resolution No. 2016-08 recommending that the City Council approve General Plan Amendment No. 13-2503, to amend the General Plan Land Use Designation from Very Low Density Residential, Medium Density Residential, Rural Residential and Open Space Parks to Specific Plan and Zone Change No. 13-3501 amending the Zoning Map, certify the Final Environmental Impact, Mitigation Monitoring and Reporting Program, and adopt the Statement of Overriding Consideration and Findings of Fact, approve the Water Supply Assessment, adopt the Rancho San Gorgonio Specific Plan, approve Tentative Tract Map No. 36586 and Conditions of Approval, adopt the Development Agreement, and approve the Annexation.

PASSED, APPROVED AND ADOPTED this 7th day of September, 2016.

________________________________________
Eric Shaw, Chairman
Banning Planning Commission

ATTEST:

________________________________________
Sandra Calderon, Recording Secretary
City of Banning, California

APPROVED AS TO FORM
AND LEGAL CONTENT:

________________________________________
John C. Cotti
Interim City Attorney
City of Banning, California
CERTIFICATION:

I, Sandra Calderon, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2016-08, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 7th day of September 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

______________________________
Sandra Calderon, Recording Secretary
City of Banning, California
Attachment 1
City Council Resolution No. 2016-83
RESOLUTION NO. 2016-83

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE RANCHO SAN GORGONIO SPECIFIC PLAN (SCH NO. 2015041064) AND ADOPTING FINDINGS OF FACT, A STATEMENT OF OVERRIDING CONSIDERATIONS, AND A MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, Diversified Pacific filed an application with the City on May 16, 2013 General Plan Amendment No. 13-2503, Zone Change No. 11-3501, Tentative Tract Map 36586, Specific Plan, Development Agreement, Annexation, and Water Supply Assessment as the Parties desire to develop an 831 acre vacant site for residential development purposes. The project requires the establishment and adoption of the Rancho San Gorgonio Specific Plan and approval of an EIR to allow the development mix of up to 3,385 residential units on up to approximately 540 acres; including 9.3 acres for Neighborhood Commercial uses, 14 acres for an elementary school site, 210 acres for parks and recreational areas, with varying passive open space trails and sports fields, and 77 acres for circulation uses, including roadways, pathways and bridges for vehicles, bikes, pedestrian and equestrian use. The total 831 acre master plan includes 161 acres annexation to be annexed from the County of Riverside. The 161 acres of property is situated within the City’s Sphere of Influence and zoned Ranch/Agriculture.

Project Applicant: Peter J. Pitassi

Property Owners: Diversified Pacific

Project Location: South of Interstate 10 and bounded by Sunset Avenue and Turtle Dove Lane on the west, Coyote Trail and Old Idyllwild Road on the south, San Gorgonio Avenue (State Route 243) on the east, and portions of Westward Avenue to the north.

APN: The Project includes the following APNs: 537-150-005 – 007; 537-170-002 – 004; 537-190-001 – 005, 018 – 022; 537-220-031 – 038; 543-020-001, 002, 021, 023; 543-030-001; 543-040-001, 002; 543-050-001 – 003

Specific Plan Size: 831 Acres

WHEREAS, applications for General Plan Amendment No. 13-2503, Zone Change No. 11-3501, Water Supply Assessment, Specific Plan, Tentative Tract Map 36586, a Development Agreement, and Annexation were submitted on May 16, 2013 and are considered a “project” pursuant to the California Environmental Quality Act ("CEQA") Guideline Section 15378 (Public Resources Code Section 21065).

WHEREAS, the City determined that there was substantial evidence that the Rancho San Gorgonio Specific Plan and associated applications as referenced herein
may have one or more significant effects of the environment and that the preparation of the Environmental Impact Report (EIR) was therefore warranted under CEQA Guidelines Sections 15002, 15382, 15384.

WHEREAS, the City of Banning is the lead agency for the preparation and consideration of environmental documents for the Project, as defined by CEQA Sections 15051 and 15367.

WHEREAS, consistent with Section 15083 of CEQA and prior to completing the draft Environmental Impact Report ("EIR"), the City held an early consultation or scoping meeting regarding the environmental issue areas to be considered in the EIR. The City of Banning determined that an EIR would be required and issued a Notice of Preparation (NOP) and Initial Study on April 20, 2015. Seven agencies/interested parties responded to the NOP. The Comments received during the public review are cited in the Final EIR. Prior to the Notice of Preparation, a public scoping meeting was held on April 29, 2015 to determine the concerns of responsible and trustee agencies and the community regarding the project. The scoping meeting was held at the City of Banning Council Chambers and was attended by a number of community members and interested parties, whose comments are also reflected in the draft EIR. The City also mailed the NOP to members of the public, organizations/groups, public agencies and persons who have requested to be on the mailing lists.

WHEREAS, an EIR (SCH No. 2015041064) and Mitigation Monitoring and Reporting Program were prepared in accordance with the California Environmental Quality Act Sections 15000-15387 (Title 14, Chapter 3 of California Code of Regulations), the State CEQA Guidelines, and the City of Banning Environmental Review Guidelines.

WHEREAS, consistent with Sections 15086 and 15087 of CEQA, the City published the Notice of Availability ("NOA") of the Draft EIR and made the Draft EIR available for a 45-day public review period from June 20, 2016 through August 3, 2016. The NOA was published in the Press Enterprise, the Record Gazette and on the City’s website. The City also mailed the NOA to the State Clearinghouse for distribution to State Agencies. Also, the City mailed the NOA to groups, organizations, public agencies, and members of the public who requested to be on the mailing list of the Project.

WHEREAS, the City received comment letters from members of the public, public agencies, groups/organizations, and persons who requested to be a part of the mailing list of the Project regarding the Draft EIR and the impacts of the Rancho San Gorgonio Specific Plan, including its associated applications as referenced herein.

WHEREAS, consistent with Section 15088 of CEQA, the City evaluated the responses received from members of the public, public agencies, groups/organizations, and persons who requested to be a part of the mailing list of the Project and prepared written responses, which culminated in a Final EIR for the Project and is referenced herein. The Final EIR was made available for 10-day public review on _________,
2016. The Final EIR was made available at City Hall Community Development Counter, 
the Banning Public Library, and on the City’s website.

WHEREAS, the Final EIR (Exhibit “A”) consists of the following documents, all of 
which are incorporated herein by reference: the Draft EIR, the Mitigation Monitoring 
and Reporting Program attached hereto, Statement of Findings of Fact attached hereto, 
Statement of Overriding Considerations attached hereto, Technical Appendices, and 
written comments and responses regarding the Draft, and Draft EIR Errata Sheet.

WHEREAS, Section 10911(b) of the Water Code and Section 15155 of CEQA 
requires that the environmental document for a project that falls within the definition of a 
“water demand project” or 500 residential units must include an assessment of the 
adequacy of the public water system to serve the project (“Water Supply Assessment” 
or "WSA"). The Rancho San Gorgonio Specific Plan meets the definition of a “water 
demand project” pursuant to CEQA Guidelines Section 15155.

WHEREAS, a Water Supply Assessment was prepared for the Project and is 
consistent with the 2010 City of Banning Urban Water Management Plan (UWMP), 
which was adopted by the City Council on June 28, 2011. The adopted UWMP 
specifically identified the Rancho San Gorgonio Specific Plan as planned for 
development and concluded that the City is anticipated to have a surplus of water to 
meet its customers’ demands. The WSA for the Rancho San Gorgonio Specific Plan 
analyzed the Project water demand for the build-out of the Project, which is 20 years as 
required by State law. The WSA analyzed the City’s existing water and future supplies, 
and the reliability of those supplies under varying hydrologic conditions, and compared 
them to the water demand at Project build out, in addition to the City’s existing and 
planned for future demands. As detailed in the Water Supply Assessment, made a part 
of the Project’s Draft EIR, the City’s total projected water supplies available during 
normal, single dry, and multiple dry water years will meet the 20 year build-out scenario 
projected water demand associated with the Project, in addition to the City’s existing 
and planned future uses.

WHEREAS, on September 7, 2016, the Banning Planning Commission held a 
duly-noticed public hearing, at which time the Commission considered the public 
testimony, staff report, full documentation of the Final EIR, and all other documentation 
relating to the Project, and the Commission recommended approval of the Project and 
certification of the Final EIR to the City Council.

WHEREAS, on ________, 2016, the City gave public notice by advertisement in 
the Record Gazette newspaper of a public hearing concerning the Project to be held 
before the City Council. On ________, 2016, the City Council held its public hearing 
on the Project and Final EIR to consider public testimony, the staff reports and 
presentations, full copy of the Final EIR and all other documentation relating to the 
Project.

NOW THEREFORE, the City Council of the City of Banning does hereby resolve, 
determine, find, and order as follows:
SECTION 1. FINDINGS.

The Recitals prefacing this Resolution are hereby incorporated herein by this reference and in factual support of all findings. The City Council, in light of the whole record before it, including but not limited to, the Final EIR (the Mitigation Monitoring and Reporting Program, Statement of Findings of Fact attached hereto, Statement of Overriding Considerations attached hereto, Technical Appendices, Written Comments and Responses regarding the Draft, and Draft EIR Errata Sheet), all documents incorporated by reference herein, and other substantial evidence (within the meaning of Public Resources Code Section 21080(e) and 21082.2), hereby recommends the City Council make the following findings:

Finding No. 1  

**EIR Prepared.** That an Environmental Impact Report for the Project was prepared in compliance with the California Environmental Quality Act Sections 15000-15387 (Title 14, Chapter 3 of California Code of Regulations), and the local CEQA Guidelines and Thresholds of Significance adopted by the City of Banning.

Findings of Fact: **NOP Prepared.** The City of Banning prepared a Notice of Preparation (NOP) in accordance with Section 15082 of CEQA in that:

1. The NOP as incorporated herein by reference included: (a) detailed description of the Project; (b) location of the Project; and, (c) probable environmental effects of the Project.

2. The NOP was distributed to the State Clearinghouse on April 20, 2015 and noticed from April 20, 2015 through May 19, 2015 for review and comment. A scoping meeting was held on April 29, 2015 to determine the concerns of responsible and trustee agencies and the community regarding the project. The scoping meeting was held at the City of Banning Council Chambers, 99 East Ramsey Street, Banning California. The State Clearinghouse issued a state identification number in June 2016 (SCH No. 2007091149), according to the CEQA Guidelines Sections 15082(a), 15103, and 15375 indicating that an EIR was being prepared. The City circulated the NOP to responsible and trustee state agencies, local organizations, interested individuals, and owners of property who lives within 300" of the Project boundaries, to identify issues to be addressed in the EIR.

Finding No. 2  

**Early Public Consultation.** The City held an early public consultation pursuant to Section 15085 of the CEQA Guidelines.
Findings of Fact: The City held an early consultation or scoping meeting regarding the environmental issue areas to be considered in the EIR. The City published the Notice of Preparation (NOP) including the Scoping meeting in the Record Gazette and on the City’s website. The City also mailed the NOP to members of the public, organizations/groups, public agencies and persons who have requested to be on the mailing lists. As indicated previously, as part of early consultation, the City held a public scoping meeting on April 29, 2015 at the City of Banning Council Chambers, 99 East Ramsey Street, Banning, California.

Finding No. 3 Notice of Completion. The City has complied with CEQA Guidelines Sections 15085, 15086, 15087, and 15105 by providing a Notice of Completion of the Draft EIR to the State Clearinghouse and a Notice of Availability to responsible and trustee agencies and other persons and agencies as required.

Findings of Fact: Upon completion of the Draft EIR, the City filed a Notice of Availability as hereby incorporated by reference (NOA) with State Clearinghouse. The Notice of Availability includes: (1) a brief description of the Project; (2) the location of the Project and address where copies of the EIR are available, and comment period for the Draft EIR. Additionally, the City provided copies of the Draft EIR to the State Clearing house for distribution to the responsible and trustee agencies for a 45-day public review. The Notice of Availability was also posted on the City’s website at www.ci.banning.ca.us.

The City also published a Notice of Availability of the Draft EIR in the Press Enterprise and Record Gazette newspapers and made the DRAFT EIR available on the City’s website, at City Hall Community Development Department Counter, and at the Banning Public Library. In addition, the City mailed the NOA to members of the public who requested to be on the mailing list of the Project; groups and organizations, public agencies, and the South Coast Air Quality Management District.

Finding No. 4 Written Comments. The City has evaluated and responded to all written comments received during the public review period and included both comments and responses as part of the Final EIR pursuant to CEQA Guidelines Section 15088.

Findings of Fact: The City provided written response to comments received from the commenting agencies/individuals pursuant to CEQA Guidelines Section 15088. The Responses to Comments document includes the verbatim comments received on the Draft EIR, a list of those commenting, and the City’s response to the significant
environmental points raised in the review and consultation process. The Final EIR (Exhibit “A”) for the Project consists of the Draft EIR (incorporated by reference and hereinafter referred to as the “EIR”), the Responses to Comments document, and changes to the EIR which clarify, supplement, or update the information provided in the EIR. None of the changes or supplemental information in the Final EIR constitutes significant new information as defined by CEQA Guidelines Section 15088.5. Therefore, CEQA does not require recirculation of the EIR.

Finding No. 5  Less than Significant Impacts. In the course of Draft EIR evaluation, certain environmental impacts of the Project were found not to be significant.

Findings of Fact  See Section 8.0 of the Final Environmental Impact Report. There exists no fair argument that the environmental conditions identified in Section 8 will pose a significant environmental impact, due to the inability of the Project to create such impacts or the absence of Project characteristics producing significant effects of this nature.

Finding No. 6  Potentially Significant Impacts That May Be Mitigated. The Final EIR identifies potentially significant effects on the environment that could result if the Project were adopted without changes or alterations in the Project and imposition of mitigation measures and further finds that changes, alterations, and mitigation measures have been incorporated into, or imposed as conditions of approval on, the Project. These changes, alterations, and mitigation measures will avoid the significant environmental effects identified in the Final EIR or lessen their impact to the maximum extent feasible. These changes, alterations, and mitigation measures are fully enforceable because they have either resulted in an actual change to the Project as proposed or they have been imposed as conditions of approval on the Project. The Final EIR also identifies significant unavoidable effects even after mitigation and Project changes.

Findings of Fact: The proposed Project would have potentially significant impacts to air quality resources, biological resources, cultural resources and greenhouse gases and transportation; however, mitigation measures can be implemented to reduce these impacts to a level that is less than significant. The Final EIR identified potentially significant effects on the environment and identified mitigation measures that shall be incorporated into the Project to avoid or substantially lessen impacts. The City has incorporated design features into the Project, adopted conditions of approval, and prepared a Mitigation Monitoring and Reporting Program to track compliance with the mitigation measures. In certain instances
incorporation of mitigation measures were unable to reduce impacts to less than significant. For that reason, the City has prepared a Statement of Overriding Considerations (Exhibit "B") hereby incorporated by reference.

Finding No. 6  
Mitigation Monitoring and Reporting Program. The City as lead agency has prepared and adopts a Mitigation Monitoring and Reporting Program for the changes made to the Project that it has adopted in order to mitigate or avoid significant effects on the environment.

Findings of Fact  
A Mitigation Monitoring and Reporting Program (Exhibit “C”) has been prepared and is recommended for adoption by the City Council concurrently with the adoption of these findings to ensure compliance with mitigation measures during Project implementation. As required by Public Resources Code Section 21081.6, the Mitigation Monitoring and Reporting Program designates responsibility and anticipated timing for the implementation of the mitigation measures recommended in the Final EIR. The Mitigation Monitoring and Reporting Program will remain available for public review during the compliance period. The City Council hereby adopts the MMRP for the Project attached hereto and incorporated by reference, and finds, determines, and declares that adoption of the Mitigation Monitoring and Reporting Program will ensure enforcement and continued imposition of the mitigation measures recommended in the Final EIR.

Finding No. 7  
Unavoidable Significant Impacts & Infeasible Mitigation Measures. The City Council finds that even though adopting the Project with mitigation measures and a Mitigation Monitoring and Reporting Program has avoided or significantly lessened significant effects on the environment, certain other environmental impacts, and cumulative environmental impacts, may remain significant and unavoidable (“Unavoidable Significant Impacts”).

Findings of Fact:  
Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible certain mitigation measures or alternatives identified in the environmental impact report. The Final EIR identifies the following areas where, after the implementation of feasible mitigation measures and consideration of Project design features and existing regulations, the Project would result in impacts which cannot be fully mitigated; significant and unavoidable impacts would occur with regard to air quality, greenhouse gas emission noise, population and housing and transportation/traffic (cumulative). See Sections 6.0 of the Final EIR. Certain mitigation
measures for these impacts are infeasible because they lie outside the jurisdiction of the lead agency (or mitigation is the responsibility of another agency), right-of-way acquisitions, commercial and residential impacts, and structural or parking takes.

**Finding No. 8**  
*Statement of Overriding Considerations.* The City Council finds, pursuant to CEQA Section 21081(b) and CEQA Guidelines Section 15093, that the specific economic, legal, social, technological and other benefits of the Project outweigh the Project's unavoidable adverse environmental impacts, and therefore, the impacts are acceptable.

**Findings of Fact:** The Final EIR describes the significant and unavoidable impacts, alternatives analysis, infeasibility analysis and the Project with mitigation alternatives for the purpose of providing supporting evidence for the City’s adoption of statements of overriding considerations at Exhibit "B" hereto.

**Finding No. 9**  
*Alternatives.* The City finds, pursuant to CEQA Section 21081 and CEQA Guidelines Section 15091(a)(3), that environmentally superior alternatives identified in the EIR are infeasible.

**Findings of Fact** In the EIR, potential environmental impacts of three separate alternatives are compared to impacts from the proposed Project. These alternatives were selected based upon their ability to avoid or lessen the significant effects of the proposed Project, while still achieving the primary Project objectives (to develop the site in a manner generally consistent with the currently approved Rancho San Gorgonio Specific Plan. The analyzed Project alternatives are: (i) No Project/No Development Alternative (ii) No Project/Existing General Plan Alternative, (iii) Reduced Density Alternative (20%) (iv) Environmentally Superior Alternative. Alternatives rejected from further consideration were: (i) No Project/No Development Alternative and (ii) No Project/Existing General Plan Alternative. Most alternatives are hereby found infeasible due to lack of alternative site availability, failure to meet basic Project objectives, or the fact that some alternatives would still have the same types of significant and unavoidable impacts as the Project.

**Finding No. 10**  
*Independent Judgment.* The Final EIR reflects the independent judgment and analysis of the City.

**Finding of Fact:** Prior to taking action on the Project, the City was presented with, heard, reviewed and considered all of the information and data in the administrative record including, but not limited to, the Final EIR, and all oral and written testimony presented to it during meetings and hearings. The City also contracted with Placeworks of Santa
Ana, California to peer review the draft EIR prior to its release for public review. The Final EIR reflects the independent judgment of the City and is deemed adequate for purposes of making decisions on the merits of the Project and its related actions.

In making the findings in this Resolution, the City Council recognizes that the environmental analysis of the Project raises several controversial environmental issues, and that a range of technical and personal opinion exists with respect to those issues and that there are differing and conflicting opinions regarding the Project, its impacts, and the feasibility of reducing or avoiding those impacts. These differences of opinion relate to the methodologies the EIR employed, the historical significance of resources on the Project site, the feasibility of mitigating impacts to traffic, air quality and views, among other issues. The City Council has, by its review of the evidence and analysis presented in the Final EIR, and other evidence in the record, acquired an understanding of the breadth of this technical opinion and of the scope of the environmental issues presented by the Project. In turn, this understanding has enabled the City to make informed, carefully considered decisions after taking account of the various viewpoints on these important issues. The findings herein are based on full consideration of all viewpoints expressed in the Final EIR and in the record as well as other relevant evidence in the record of proceedings for the Project.

SECTION 2. MULTIPLE SPECIES HABITAT CONSERVATION PLAN (MSHCP)

The Project is found to be consistent with the MSHCP. The Project site is not located within an MSHCP Criteria Cell or Conservation Area. With implementation of mitigation measures BIO 4-1 through BIO 4-11, which require avoidance and compensatory mitigation of Project impacts to jurisdictional riparian/riverine areas, impacts during bird breeding seasons, native landscaping, burrowing owls, and Stephens Kangaroo Rat, through follow through requirements and regulations of the U.S. Army Corps of Engineers, the California Department of Fish and Game, and the Regional Water Quality Control Board, the Project will have less than significant impacts on sensitive habitats and species and will be consistent with the MSHCP.

SECTION 3. WATER SUPPLY

Based on the entire administrative record, including but not limited to the 2010 Urban Water Management Plan and the Water Supply Assessment prepared for the Project, and responses to comments incorporated into the EIR, it is determined that City’s total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the existing and planned future uses.
SECTION 4. CITY COUNCIL ACTION.

Based on the foregoing findings, and on substantial evidence in the whole of the record, the City Council takes the following actions:

1. **Certifies EIR:** The City Council certifies the Final Environmental Impact Report (SCH No. 2015041064) for the Rancho San Gorgonio Specific Plan and related Applications (Exhibit “A”)

2. **Adopts Findings of Fact:** The City Council adopts the Findings of Facts prepared for the EIR (Exhibit “D”).


4. **Adopts Mitigation Monitoring and Reporting Program:** The City Council approves and adopts the Mitigation Monitoring and Reporting Program (Exhibit “C”)

5. **Location:** The Final Environmental Impact Report (SCH NO. 2015041064) for the Rancho San Gorgonio Specific Plan and all documents incorporated herein shall be filed with the Banning Planning Division at the Banning City Hall, 99 East Ramsey Street, Banning, California, 92220 and be made available for public review upon request.

PASSED, APPROVED AND ADOPTED this ___ day of ________, 2016.

_________________________________
Art Welch, Mayor
City of Banning

ATTEST:

_________________________________
Marie Calderon, City Clerk
City of Banning
CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2016-83 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the _____day of_______, 2016 by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

________________________________
Marie Calderon, City Clerk
City of Banning, California
Rancho San Gorgonio Specific Plan Final Environmental Impact Report
RANCHO SAN GORGONIO SPECIFIC PLAN
City of Banning

Prepared for:
City of Banning
Contact: Brian Guillot, Community Development Director
99 E. Ramsey Street
Banning, California 92220
951.922.3131
bguillot@ci.banning.ca.us

Prepared by:
PlaceWorks
Contact: JoAnn Hadfield, Principal, Environmental Services
3 MacArthur Place, Suite 1100
Santa Ana, California 92707
714.966.9220
info@placeworks.com
www.placeworks.com
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1. Introduction

1.1 INTRODUCTION

This Final Environmental Impact Report (Final EIR) has been prepared in accordance with the California Environmental Quality Act (CEQA) as amended (Public Resources Code Section 21000 et seq.) and CEQA Guidelines (California Administrative Code Section 15000 et seq.).

According to CEQA Guidelines, Section 15132, the FEIR shall consist of:

(a) The Draft Environmental Impact Report (DEIR) or a revision of the Draft;
(b) Comments and recommendations received on the DEIR either verbatim or in summary;
(c) A list of persons, organizations, and public agencies comments on the DEIR;
(d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process; and
(e) Any other information added by the Lead Agency.

This document contains responses to comments received on the DEIR for the Rancho San Gorgonio Specific Plan during the public review period, which began June 20, 2016, and closed August 3, 2016. This document has been prepared in accordance with CEQA and the CEQA Guidelines and represents the independent judgment of the Lead Agency (Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162-15163). This document and the circulated DEIR comprise the Final EIR, in accordance with CEQA Guidelines, Section 15132.

1.2 FORMAT OF THE FINAL EIR

This document is organized as follows:

Section 1, Introduction. This section describes CEQA requirements and content of this Final EIR.

Section 2, Response to Comments. This section provides a list of agencies and interested persons commenting on the DEIR; copies of comment letters received during the public review period, and individual responses to written comments. To facilitate review of the responses, each comment letter has been reproduced and assigned a number (A-1 through A-6 for letters received from agencies, O-1 through O-2 for letters received from organizations, and I-1 through I-2 for letters received from individuals). Individual comments have been numbered for each letter, and the letter is followed by responses with references to the corresponding comment number.
1. Introduction

Section 3. Revisions to the Draft EIR. This section contains revisions to the DEIR text and figures as a result of the comments received by agencies and interested persons as described in Section 2, and/or errors and omissions discovered subsequent to release of the DEIR for public review.

The responses to comments contain material and revisions that will be added to the text of the Final EIR. City of Banning staff has reviewed this material and determined that none of this material constitutes the type of significant new information that requires recirculation of the DEIR for further public comment under CEQA Guidelines Section 15088.5. None of this new material indicates that the project will result in a significant new environmental impact not previously disclosed in the DEIR. Additionally, none of this material indicates that there would be a substantial increase in the severity of a previously identified environmental impact that will not be mitigated, or that there would be any of the other circumstances requiring recirculation described in Section 15088.5.

1.3 CEQA REQUIREMENTS REGARDING COMMENTS AND RESPONSES

CEQA Guidelines Section 15204 (a) outlines parameters for submitting comments and reminds persons and public agencies that the focus of review and comment of DEIRs should be “on the sufficiency of the document in identifying and analyzing possible impacts on the environment and ways in which significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible. …CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.”

CEQA Guidelines Section 15204 (c) further advises, “Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.” Section 15204 (d) also states, “Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency’s statutory responsibility.” Section 15204 (e) states, “This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.”

In accordance with CEQA, Public Resources Code Section 21092.5, copies of the written responses to public agencies will be forwarded to those agencies at least 10 days prior to certifying the environmental impact report. The responses will be forwarded with copies of this Final EIR, as permitted by CEQA, and will conform to the legal standards established for response to comments on DEIRs.
2. Response to Comments

Section 15088 of the CEQA Guidelines requires the lead agency (City of Banning) to evaluate comments on environmental issues received from public agencies and interested parties who reviewed the DEIR and prepared written responses. This section provides all written responses received on the DEIR and the City of Banning’s responses to each comment.

Comment letters and specific comments are given letters and numbers for reference purposes. Introductory material in the letters that does not include a substantive comment requiring a response is noted as “Intro.” Where sections of the DEIR are excerpted in this document, the sections are shown indented. Changes to the DEIR text are shown in underlined text for additions and strikeout for deletions.

The following is a list of agencies, organizations, and persons that submitted comments on the DEIR during the public review period.

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3. Revisions to the Draft EIR

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LETTER A1 – Federal Emergency Management Agency (2 pages)

June 22, 2016

Brian Guillot, Community Development Director
City of Banning, Community Development Department
99 East Ramsey Street
Banning, California 92220

Dear Mr. Guillot:

This is in response to your request for comments regarding the City of Banning Notice of Availability and Public Hearing Notice, Project Title: Rancho San Gorgonio Specific Plan State Clearinghouse #2015041064.

Please review the current effective countywide Flood Insurance Rate Maps (FIRMs) for the County of Riverside (Community Number 060245) and City of Banning (Community Number 060246), Maps revised August 28, 2008. Please note that the City of Banning, Riverside County, California is a participant in the National Flood Insurance Program (NFIP). The minimum, basic NFIP floodplain management building requirements are described in Vol. 44 Code of Federal Regulations (44 CFR), Sections 59 through 65.

A summary of these NFIP floodplain management building requirements are as follows:

- All buildings constructed within a riverine floodplain, (i.e., Flood Zones A, AO, AH, AE, and A1 through A30 as delineated on the FIRM), must be elevated so that the lowest floor is at or above the Base Flood Elevation level in accordance with the effective Flood Insurance Rate Map.

- If the area of construction is located within a Regulatory Floodway as delineated on the FIRM, any development must not increase base flood elevation levels. The term development means any man-made change to improved or unimproved real estate, including but not limited to buildings, other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, and storage of equipment or materials. A hydrologic and hydraulic analysis must be performed prior to the start of development, and must demonstrate that the development would not cause any rise in base flood levels. No rise is permitted within regulatory floodways.

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3. Revisions to the Draft EIR

Brian Guillot, Community Development Director
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- Upon completion of any development that changes existing Special Flood Hazard Areas, the NFIP directs all participating communities to submit the appropriate hydrologic and hydraulic data to FEMA for a FIRM revision. In accordance with 44 CFR, Section 65.3, as soon as practicable, but not later than six months after such data becomes available, a community shall notify FEMA of the changes by submitting technical data for a flood map revision. To obtain copies of FEMA’s Flood Map Revision Application Packages, please refer to the FEMA website at http://www.fema.gov/business/nfip/forms.shtml.

Please Note:

Many NFIP participating communities have adopted floodplain management building requirements which are more restrictive than the minimum federal standards described in 44 CFR. Please contact the local community’s floodplain manager for more information on local floodplain management building requirements. The Banning floodplain manager can be reached by calling Andy Takata, City Manager, at (951) 922-3104. The Riverside County floodplain manager can be reached by calling Deborah de Chambeau, Senior Civil Engineer, at (951) 955-1265.

If you have any questions or concerns, please do not hesitate to call Frank Mansell of the Mitigation staff at (510) 627-7191.

Sincerely,

Gregor Blackburn, CFM, Branch Chief
Floodplain Management and Insurance Branch

cc:
Andy Takata, City Manager, City of Banning
Deborah de Chambeau, Senior Civil Engineer, Riverside County
Garret Tam Sing/Salomon Miranda, State of California, Department of Water Resources, Southern Region Office
Frank Mansell, NFIP Planner, DHS/FEMA Region IX
Alessandro Amaglio, Environmental Officer, DHS/FEMA Region IX

www.fema.gov
2. Response to Comments


A1-1 Comment acknowledged. The current countywide Flood Insurance Rate Maps (FIRMs) for the County of Riverside and City of Banning, revised August 28, 2008, were reviewed and reproduced as Figure 5.9-5, Existing Flood Zones, in Section 5.9, Hydrology and Water Quality, of the DEIR. Exhibit 3.6, Limits of Flood Plain with Current FEMA Flood Zones, in the Master Plan of Drainage (MPD) (Appendix I of the DEIR) also reproduces the current FIRM overlain on the proposed site plan.

A1-2 Comment noted. The requirement that buildings constructed within a riverine floodplain must be elevated at or above the base flood elevation level is discussed in Section 3.1 of the MPD and under Impact 5.9-1 of Section 5.9, Hydrology and Water Quality, of the DEIR. Additionally, no residences are proposed within riverine floodplains.

A1-3 The MPD includes a hydrologic and hydraulic analysis of the proposed project. Proposed changes to the creeks onsite would remove the existing 100-year flood zone along Montgomery Creek due to the proposed undergrounding of the creek, and remove the existing 100-year flood zone along a segment of Gilman Home Channel extending north about 700 feet from Smith Creek due to the proposed undergrounding of that channel segment. These changes to Montgomery Creek and Gilman Home Channel would result in minor changes to 100-year flood zones on Smith Creek, increasing floodwater height during a 100-year flood by approximately two inches on a small stretch of Smith Creek. Therefore, the project applicant would be required to submit a Letter of Map Revision (LOMR) to FEMA for review and approval to address these changes in flood zone mapping.

A1-4 Comment noted. The project applicant will be required to submit a LOMR to FEMA for review and approval. This will occur separately from the certification of the Rancho San Gorgonio Specific Plan Environmental Impact Report.

A1-5 Comment acknowledged.
3. Revisions to the Draft EIR

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2. Response to Comments

LETTER A2 – California Department of Transportation (2 pages)

July 8, 2016

City of Banning
Community Development Department
Planning Division
Brian Guillot
99 E. Ramsey Street
P.O. Box 998
Banning, CA 92220

Rancho San Gorgonio Specific Plan, Traffic Impact Analysis (RIV10 PM 13.36 and RIV 243 PM 28.95)

Mr. Guillot

We have completed our review for the above mentioned proposal for the development of a master planned community on 849 acres of property. The proposed project consists of 42 planning areas, including 1,584 Dwelling Units (DU) single-family detached residential, 142,245 square feet neighborhood commercial area and 30 acres of Community Park. One hundred sixty one acres (161) are located within the City’s Sphere of Influence area in the County of Riverside and will be required to be annexed to the City of Banning’s corporate boundaries.

As the owner and operator of the State Highway System (SHS), it is our responsibility to coordinate and consult with local jurisdictions when proposed development may impact our facilities. As the responsible agency under the California Environmental Quality Act (CEQA), it is also our responsibility to make recommendations to offset associated impacts with the proposed project. Although the project is under the jurisdiction of the City of Banning due to the Project’s potential impact to State facilities it is also subject to the policies and regulations that govern the SHS.

The project proposes improvements to SR-243, due to direct project impacts. Table 25 indicates that one east bound through lane is required at the intersection of SR-243 and C Street for all study scenarios, including Existing Year Plus Project. The City of Banning must ensure that the development implements the proposed improvements a project opening.

Traffic Operations

- The Level of Service (LOS) and delay for the following conditions do not match (Please see the following Tables):
  - Existing Year Plus Project (Draft Environment Impact (DEIR) Table 5.15-4 and Appendix N Table 9)

  “Provide a safe, sustainable, integrated and efficient transportation system to enhance California’s economy and livability.”
3. Revisions to the Draft EIR

Mr. Guillot
July 8, 2016

Page 2

- Opening Year (2017) DEIR Table 5.15-5 and Appendix n Table 11 and 12
- Interim Year (2022) DEIR Table 5.15-7 Appendix N Table 17 and 18
- Interim Year (2025) DEIR Table 5.15-8 and Appendix N Table 20 and 21
- General Plan Buildout Year (2035) DEIR Table 5.15-10 and Appendix Table 26 and 27

- The left-turn pocket queue analysis for the following Table does not match. DEIR Table 5.15-14 and Appendix N Table 29
- DEIR Impact 5.15.2: How were these improvements (i.e. HOV lanes and General use lanes) determined and analyzed? Are these improvements consistent with Caltrans Transportation Concept Report’s (TCR) Ultimate Transportation Corridor for this segment of RIV Interstate-10?
- SR-243 (NS) at C Street (EW) to construct one EB through lane

Encroachment Permit Requirements

Issuance of a Caltrans Encroachment Permit will be required prior to any construction within State R/W. In addition, all work undertaken within SR 243 shall be in compliance to all current design standards, applicable policies, and construction practices. Detailed information regarding permit application and submittal requirements is available at:

Office of Encroachment Permits
California Department of Transportation
464 West Fourth Street, 6th Floor, MS 619
San Bernardino, CA 92401-1400
(909) 383-4526

You will need to go through a Streamline Oversight Review process for the areas concerning widening and the addition of the eastbound lane along the SR-243. A separate CEQA environmental approval will also likely be needed to widen the SR-243 and may take some time to complete this matter.

We appreciate the opportunity to offer comments concerning this project. If you have any questions regarding this letter, please contact Talvin Dennis at (909) 806-3957 or myself at (909) 383-7017 for assistance.

Sincerely,

MARK ROBERTS
Office Chief
Intergovernmental Review, Community and Regional Planning

"Provide a safe, sustainable, integrated and efficient transportation system to enhance California’s economy and livability."
2. Response to Comments


A2-1 Mitigation Measure 15-2 is revised to require that the identified improvements be constructed prior to Phase 5 construction so that it is operational and in place for Phase 5 traffic conditions (see Section 3, Revisions to the DEIR). Conditions of Approval 49 of the proposed project requires that the traffic improvements identified in the traffic impact analysis and DEIR for each development phase be constructed prior to issuance of a certificate of occupancy for any tract or development phase.

A2-2 Tables 5.15-4, 5.15-5, 5.15-7, 5.15-8, and 5.15-10 in the DEIR have been revised to match the respective tables in the traffic impact analysis (TIA) for the proposed project. See Section 3.2, Draft EIR Revisions in Response to Written Comments, of this Final EIR for the corrections. The analysis and conclusions in the DEIR do not change.

A2-3 Table 5.15-14 of the DEIR has been revised to match Table 29 of the TIA. See Section 3.2, Draft EIR Revisions in Response to Written Comments, of this Final EIR for the correction. The analysis and conclusions in the DEIR do not change.

A2-4 Appropriate mitigation for freeway main lines relies on the construction of additional freeway lanes. The analysis and mitigation are based upon the typical standards of practices for freeway main-line analysis in traffic impact analyses throughout Southern California. The California Department of Transportation Concept Report for Interstate 10 Freeway is currently being updated (see the California Department of Transportation website), and the March 2000 report available states that the document should only be used for historical purposes. The traffic impact analysis adheres to the guidelines regarding mitigation measures as set forth in The Guide for the Preparation of Traffic Impact Studies by the California Department of Transportation (2002).

A2-5 The comment does not raise an environmental concern. Comment noted.

A2-6 Comment acknowledged. As stated under “Summary of NOP Comments” in Section 5.15, Transportation and Traffic, of the DEIR, “Caltrans noted that the proposed project would have a direct effect on State Route 243. Caltrans also stated that intersection improvements must be implemented within the proposed time schedule and that all traffic study issues need to be addressed prior to submittal for encroachment permits (i.e. for construction within State right-of-ways). Development within State Route 243 (SR-243) would be required to comply with current design standards, applicable policies, and construction practices.” Therefore, prior to any construction within State right-of-way, the project applicant would be required to obtain a Caltrans Encroachment Permit and all work undertaken must be in compliance with all current design standards, applicable policies, and construction practices. The encroachment permit has been added to the list of agency actions (see Section 3, Revisions to the DEIR). It is expected that Caltrans would comply with CEQA prior to issuing any such approvals.
3. Revisions to the Draft EIR

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2. Response to Comments

LETTER A3– Southern California Gas Company (3 pages)

July 26, 2016

City of Banning
99 E. Ramsey Street
Banning CA 92220

Email: Brian Guillot - bguillot@ci.banning.ca.us

Subject: Rancho San Gorgonio Specific Plan State Clearinghouse #2015041064

DCF: 1155-16-5000

Southern California Gas Company (SoCalGas), Gas Transmission Department, operates and maintains high-pressure natural gas transmission pipeline 5000 in the vicinity of your project. The pipeline is shown on the attached atlas prints. Please note: only the high-pressure transmission pipeline information is current on these atlas prints.

Our Gas Distribution Department may have other gas facilities within your project area. To assure no conflict with the SoCalGas' distribution pipeline system, please call (714) 634-5067.

This is only a response to a gas facility map request; a review of potential conflicts associated with your request has not been conducted. Consequently, this letter does not constitute clearance for any construction work near or around SoCalGas' pipeline(s). As your project plans are developed, you must notify SoCalGas - Gas Transmission Department regarding the improvements that are proposed near our pipeline(s) and within our easement(s) before you begin any construction, including potholing. In doing so, please allow sufficient time as there may be certain requirements that need to be incorporated into your project's design and could significantly affect your project construction schedule.

Sincerely,

Estefania Sanchez
Program Assistant 3
ESanchez5@semprautilities.com

July 26, 2016
3. Revisions to the Draft EIR
2. Response to Comments
3. Revisions to the Draft EIR

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A3-1 Comment acknowledged. A similar comment was received from the Southern California Gas Company (SCGC) during the public commenting period for the NOP.

The DEIR addresses the existing SCGC high-pressure natural gas transmission pipeline in Section 5.16, Utilities and Service Systems. As stated in the DEIR, the transmission line is located within Bob Cat Road and goes directly through the site from Sunset Avenue to San Gorgonio Avenue. Prior to any construction activities, future project applicants will be required to notify SCGC’s Gas Transmission Department if development requires improvements near the pipeline or within SCGC’s easement.
3. Revisions to the Draft EIR

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LETTER A4 – South Coast Air Quality Management District (3 pages)

South Coast Air Quality Management District
21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

July 29, 2016

Mr. Brian Guillot, Community Development Director
City of Banning – Community Development Department
99 E. Ramsey St.,
Banning, CA 92220

Draft Environmental Impact Report (EIR) for the Rancho San Gorgonio Specific Plan

The South Coast Air Quality Management District (SCAQMD) appreciates the opportunity to comment on the above-mentioned document. The following comments are meant as guidance for the Lead Agency and should be incorporated into the Final EIR.

In the project description, the Lead Agency proposes to develop an 831-acre master-planned community consisting of residential, commercial, open space, and recreational areas. Approximately 3,385 residential units are proposed to be constructed over six phases. The proposed Project will take 18 years to construct. In the Air Quality Section, the Lead Agency quantified the Project’s construction and operation air quality impacts and compared those impacts with the SCAQMD’s recommended regional and localized daily significance thresholds. Based on its analyses, the Lead Agency has determined that construction and operational emissions of the Project would exceed regional ROG, NOx, PM10, and PM2.5 thresholds. Even with the proposed mitigation measures, the regional and localized impacts from construction emissions associated with the Project would be significant and unavoidable. The SCAQMD staff recommends that the proposed Project include all feasible mitigation measures in the Final EIR to further reduce the projected significant construction impacts. Details are included in the attachment.

Furthermore, with construction lasting 18 years, construction and operation activities begin overlapping in 2019. The air quality analysis does not account for the overlapping construction and operational phases, and therefore, under-estimate the project’s air quality impacts during those years. For example, total project regional emissions in year 2019 should include emissions from the operation during Phase 1, operation during Phase 2 and construction emissions occurring in Phase 3. SCAQMD staff recommend revising the air quality analysis in the Final EIR to account for the overlapping construction and operational phases and comparing the total project regional emissions estimates with the SCAQMD long-term operational thresholds of significance.
3. Revisions to the Draft EIR

Brian Guillot                                      July 29, 2016

Pursuant to Public Resources Code Section 21092.5, SCAQMD staff requests that the Lead Agency provide the SCAQMD with written responses to all comments contained herein prior to the adoption of the Final EIR. Further, staff is available to work with the Lead Agency to address these issues and any other questions that may arise. Please contact Jack Cheng, Air Quality Specialist, at (909) 396-2448, if you have any questions regarding the enclosed comments.

Sincerely

Jillian Wong
Jillian Wong Ph.D.
Planning & Rules Manager
Planning, Rule Development & Area Sources

JW-JC
RVC160621-07
Control Number
Additional Construction Mitigation Measures

- Since the Project is considered a large operation (50 acre sites or more of disturbed surface area; or daily earth-moving operations of 3,850 cubic yards or more on three days in any year) in the South Coast Air Basin, the Lead Agency is required to comply with all SCAQMD Rule 403(e) – Additional Requirements for Large Operations. This may include but not limited to Large Operation Notification, appropriate signage, additional dust control measures, and employment of a dust control supervisor that has successfully completed the Dust Control in the South Coast Air Basin training class. Therefore, the Final EIR should contain a detailed description of how the Project will comply with Rule 403(e). Please contact dustcontrol@aqmd.gov for more information.

Additional requirements include but are not limited to:
- Implementation of Table 2 of Rule 403 at all times and implementation of the actions specified in Table 3 of Rule 403 when applicable.
- Submittal of a fully executed Large Operation Notification to the Executive Officer.
- Maintenance of daily records to document the specific dust control actions taken.
- Installation and maintenance of project signage with project contact person that meets the minimum standards of Rule 403 Implementation Handbook.
- Identification of a dust control supervisor that has completed the AQMD Fugitive Dust Control Class.

- Require the use of 2010 and newer diesel haul trucks (e.g., material delivery trucks and import/export) and if the Lead Agency determines that 2010 model year or newer diesel trucks cannot be obtained the Lead Agency shall use trucks that meet EPA 2007 model year NOx emissions requirements.

- Encourage construction contractors to apply for SCAQMD “SOON” funds. Incentives could be provided for those construction contractors who apply for SCAQMD “SOON” funds. The “SOON” program provides funds to accelerate cleanup of off-road diesel vehicles, such as heavy duty construction equipment. More information on this program can be found at the following website: http://www.aqmd.gov/tao/Implementation/SOONProgram.htm.

For additional measures to reduce off-road construction equipment, refer to the mitigation measure tables located at the following website: www.aqmd.gov/ceqa/handbook/mitigation/MM_introt.html.
3. Revisions to the Draft EIR

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2. Response to Comments


A4-1 SCAQMD is requesting that all feasible mitigation measures to minimize construction emissions be included in the DEIR. See response to Comment A4-4, below.

A4-2 In the footnotes for Tables G through L and Z through AE of the air quality impact analysis (Appendix C of the DEIR), the air quality construction analysis conservatively assumed that, “The peak daily emissions assume that all of the phases could overlap to occur all on 1 day.” This assumption analyzes a very conservation peak daily emissions rate for individual construction phases and also accounts for the probability that construction of different phases would overlap. For example, the peak daily construction emissions shown for Phase 1 in Table G is the sum of all five construction phases (site preparation, grading, building construction, architectural coating, and paving). This accounts for the likely probability that grading of Phase 1 might occur at the same time as site preparation of Phase 2. Therefore, the air quality impact analysis does conservatively analyze overlapping construction operations.

A4-3 Comment acknowledged. Per Public Resources Code Section 21092.5, the City’s responses to SCAQMD’s comments will be provided at least 10 days prior to certifying the EIR.

A4-4 The suggested mitigation measures have been added to Section 3, Revisions to the Draft EIR, of this FEIR.
3. Revisions to the Draft EIR

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2. Response to Comments

LETTER A5 – County of Riverside Transportation and Land Management Agency (3 pages)

COUNTY OF RIVERSIDE
TRANSPORTATION AND
LAND MANAGEMENT AGENCY

August 3, 2016

Brian Guillot, Community Development Director
City of Banning
Community Development Department
99 East Ramsey Street
Banning, CA 92220

RE: Notice of Availability of the Draft Environmental Impact Report for the Rancho San Gorgonio Specific Plan

Dear Mr. Guillot:

The Riverside County Transportation Department (County) appreciates the opportunity to review the Draft Environmental Impact Report (DEIR) for the Rancho San Gorgonio Specific Plan. The project is generally located north of Old Banning Idyllwild Road, south of Westward Avenue, west of State Route 243, and east of Sunset Avenue. The project proposes 3,133 residential dwelling units, 9.3 acres of neighborhood commercial use, 2.6 acres of public facilities, and a 14 acre school site. The County continues to have concerns with the project and provides the following comments.

In the County’s previous comment letter on the project traffic study, there were concerns regarding the discrepancies between the traffic volumes shown in the specific plan’s traffic study and the volumes from the traffic analysis for the County’s I-10 Bypass project. The traffic volumes in the specific plan traffic study dated April 20, 2016 prepared by Kunzman Associates, Inc. are significantly lower. It should be noted, at the time of preparation, the traffic analysis for the County project did not include the specific plan since the City indicated it was on hold, affording larger discrepancies were it to be added. The City attempted to address this issue by indicating LSA Associates, Inc. was contracted by Kunzman Associates, Inc. to prepare the future forecasts volumes for the specific plan and including the I-10 Bypass project in its network assumption. Although LSA Associates, Inc. used the traffic model to prepare traffic volumes, the discrepancies still remain and needs to be resolved. The results between the specific plan traffic study and the I-10 Bypass project should yield similar results.
3. Revisions to the Draft EIR

Mitigation Measure 15-7 indicates the project is responsible for the construction of Old Banning Idywild Road from C Street to the project’s southern boundary as well as extension of C Street to State Route 243. This mitigation would create substandard intersection spacing with the existing roads and creates hazardous conditions due to the existing skewed intersection between Old Banning Idywild Road and State Route 243, therefore Impact 5.15-4 should not be considered less than significant. Further, the specific plan proposes an alignment of D Street adjacent to the intersection of Bobcat Road and Turtle Dove Lane which also creates a hazardous condition. Additionally, Mitigation Measure 15-7 rejects the improvements to the Interstate 10 Freeway on the basis it would require approval and/or implementation from Caltrans. This is an inadequate reason to reject an improvement.

In the DEIR, Chapter 5-15 Transportation and Traffic references the previously approved 2003 County General Plan, but neglects to reference the recently approved County General Plan from December 2015. In the County’s 2015 General Plan, it introduces a new road designated as a Major Highway to represent the I-10 Bypass.

Since a portion of the specific plan lies within the County, the DEIR should also reference, under Local Regulations, the County Development Impact Fees per County Ordinance No. 059.

The proposed Circulation Plan shown on Figure 3-6 is substantially different from the Banning General Plan Existing General Plan Street System shown on Exhibit III-4 of the City’s General Plan. The EIR includes Exhibit III-4 in Appendix N on page N-40, but makes no attempt to describe how the proposed project would modify or integrate with the roads depicted on that Exhibit. The EIR should include Exhibit III-4 from the General Plan and depict the modifications to that Exhibit that would result from the approval of the Specific Plan.

It appears from the network evaluated in Appendix N that all road classifications of the City’s general plan that are south of Sun Lakes Blvd/Western Ave and between Highland Home Rd and State Route 243 are being eliminated and replaced with the Specific Plan roads only, therefore a circulation amendment should be associated with the project.

Sunset Ave, which is half in the City and half in the County, is not designated on the Figure 3-6 with any specific classification, but it is still depicted on the exhibit. We show this road as a Secondary, so the EIR should explicitly state that this road is being reduced to a local road if that is the case.

A portion of Bobcat Rd will remain half in the City and half in the County. It is not designated on the Figure 3-6, and only its name is shown without any depiction of any actual road being constructed. Given that half of the width of this road is in the project it should be stated whether or not the project intends to vacate the right-of-way currently dedicated or retain it and make improvements to this road for the future. It seems clear that the County’s Secondary designation of this road would have to be removed.
Thank you again for the opportunity to review the DEIR. Please contact me at (951) 955-2016 with questions or comments.

Sincerely,

[Signature]

Russell Williams
Development Review Manager

RUW:KKT

cc: Juan C. Perez, Director of Transportation and Land Management
    Patricia Romo, Assistant Director of Transportation
    Mojahed Salama, Deputy Director of Transportation
A5. Response to Comments from the County of Riverside Transportation and Land Management Agency, Transportation Department, Russell Williams, Development Review Manager, dated August 3, 2016.

A5-1 A previous letter dated June 18, 2015, was received from the County of Riverside Transportation and Land Management Agency with a similar comment related to the discrepancy between traffic volumes shown in the project’s traffic impact analysis (TIA) and those shown in the County’s TIA for the County of Riverside I-10 Bypass project.

The response to that letter, dated July 2, 2015, stated that the basis for the project’s TIA, like that of the I-10 Bypass project, was the RivTAM 2035 traffic model. The RivTAM traffic model was utilized at the request of the City of Banning and County of Riverside Transportation Department staffs. LSA Associates, Inc. (LSA), as a subconsultant to Kunzman Associates, Inc. (Kunzman), ran the RivTAM traffic model with the Rancho San Gorgonio Specific Plan project and I-10 Bypass project (with and without conditions) and provided its data at the request of the City of Banning and Riverside County Transportation Department staffs. The traffic volumes along San Gorgonio Avenue and all other roadways are the product of this analysis.

Any discrepancies between the two reports are a product of changes, modifications, etc., made to the RivTAM 2035 traffic model between the times when the TIAs for the I-10 Bypass project and Rancho San Gorgonio Specific Plan were prepared.

A5-2 The existing skewed intersection at Old Idyllwild Road and State Route 243 (SR-243) is proposed to be vacated. The proposed improvement of Old Idyllwild Road would intersect C Street at the newly proposed C Street/SR-243 intersection. Thus, it would provide connection to SR-243 in lieu of the existing connection and would not create a hazardous condition from inadequate intersection spacing or the existing skewed intersection.

D Street is proposed to run adjacent to the intersection of Bobcat Road and Turtle Dove Lane but would not provide connectivity to this intersection. Therefore, it would not create a hazardous condition.

Commenter mischaracterizes the discussion of Mitigation Measure 15-7. The DEIR does not reject Mitigation Measure 15-7, or any portion thereof, but states that to the degree that Caltrans’ approval of the recommended improvements is required, the City cannot ensure that mitigation would be implemented prior to the occurrence of the impact. CEQA and the CEQA Guidelines authorize an agency to determine that mitigation measures are infeasible for technological and legal factors, among others. CEQA also authorizes lead agencies to find that feasible mitigation measures are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
3. Revisions to the Draft EIR

A5-3 The DEIR is revised to reference the recently approved 2015 County of Riverside General Plan Circulation Element and the new designation for the I-10 Bypass as a Major Highway. The designation of the I-10 Bypass as a Major Highway does not change the conclusions in the traffic impact analysis.

A5-4 The DEIR is revised to include a reference to the County Development Impact Fees per County Ordinance No. 659 under “Local Regulations” of Section 5.15.1.1, Regulatory Background.

A5-5 As stated in Section III.F.1 of the traffic impact analysis:

“It should be noted that the proposed project requires a City of Banning General Plan Amendment to remove Porter Road extending through the project site including the County of Riverside in this process as part of the project site is located within the County. Porter Road is shown as an east-west Secondary Highway on the City of Banning General Plan Circulation Element (see Figure 7). The analysis presented in this report has assumed that Porter Road would not extend through the project and the intersection improvements recommended for General Plan Buildout Year (2035) With Project traffic conditions ensure that any subsequent impacts are mitigated.

It should be noted that according to Resolution No. 2008-16, the City Council for the City of Banning approved General Plan Amendment No. 07-2503 (January 22, 2008) to delete Porter Road between Sunset Avenue and 22nd Street from the General Plan system. The Resolution notes that ‘the development occurring in the area will use an alternative route, Bobcat Road, for east west access between 22nd Street and Sunset Avenue that is equivalent to and serves the same purpose as the portion of roadway that is being deleted.’

It should also be noted that one of the purposes of the traffic impact analysis was to determine the mitigation necessary for Westward Avenue and other east-west connections with the removal of Bobcat Road.”

The project description in the DEIR is revised to identify the proposed circulation system changes to the City of Banning General Plan Circulation Element (see Section 3, Revisions to the DEIR).

A5-6 See response to Comment A5-5.

A5-7 In the Traffic Impact Analysis (Appendix N of the DEIR), the segment of Sunset Avenue south of I-10 is designated a Secondary Highway (88-foot right-of-way) and is analyzed as such. This segment of Sunset Avenue is not being reduced to a local road.

A5-8 See response to Comment A5-5.
2. Response to Comments

LETTER A6 – U.S. Fish and Wildlife Services/California Department of Fish and Wildlife (19 pages)

In Reply Refer To:
FWS/CDFW-WRIV/ERIV-16D0356-16CPA0350

August 5, 2016
Sent by Email

Mr. Brian Guillot
Community Development Director
City of Banning
99 E. Ramsey Street
Banning, CA 92220

Subject: Draft EIR for the Rancho San Gorgonio Specific Plan, City of Banning, Riverside County, California

Dear Mr. Guillot:

The U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (Department), hereafter collectively referred to as the Wildlife Agencies, have reviewed the draft Environmental Impact Report (DEIR) for the proposed Rancho San Gorgonio Specific Plan residential and commercial project (project) [State Clearinghouse No. 2015041064] received June 20, 2016. The DEIR was prepared to identify the proposed project’s direct, indirect, and cumulative environmental impacts, to discuss alternatives, and to propose mitigation measures that avoid, minimize, or offset significant environmental impacts.

The primary concern and mandate of the Service is the protection of public fish and wildlife resources and their habitats. The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and endangered animals and plants occurring in the United States. The Service is also responsible for administering the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.). The Department is a trustee agency under the California Environmental Quality Act (CEQA) and is responsible for ensuring appropriate conservation of fish and wildlife resources including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act, and administers the Natural Community Conservation Planning Program (NCCP).

On June 22, 2004, the Service issued a section 10(a)(1)(B) permit for the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). The Department also issued Natural Community Conservation Plan Approval and Take Authorization for the MSHCP as per Section 2800, et seq., of the California Fish and Game Code. The MSHCP established a multiple species conservation program to minimize and mitigate habitat loss and the incidental take of covered species in association with activities covered under the permit. The City of Banning is an MSHCP permittee.

The Wildlife Agencies are providing the following comments on the proposed project as it relates to the MSHCP, the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), and the biological resources and ecological processes that would be affected by the proposed project. We are particularly concerned about project-related effects to burrowing owls, the Los Angeles pocket mouse, white-tailed kites, California spadefoot toads, bobcats, golden eagles, MSHCP riparian/rarine resources and the sediment supply for the various sand-dependent species protected by the CVMSHCP, including the federally endangered Coachella Valley milk-vetch (milk-vetch) and the Coachella Valley fringe-toed lizard (lizard). Our ability to fully understand and analyze the projects impacts was limited by lack of clarity and detail in the project description, and biological resource assessment as discussed below. Additionally the identification of mitigation measures for impacts to biological resources is deferred. We
3. Revisions to the Draft EIR

Mr. Brian Guillot (FWS/CDFW-WRIV-16B0336-16CPA0350)

therefore request that the Biological Resources subchapter of the DEIR be revised and included in a recirculated DEIR.

The proposed project is a master-planned community on an 831-acre site, organized into 44 planning areas (PAs) that include a mixture of residential, commercial, open space, and recreational uses. The Specific Plan includes about 517 acres of residential development; 185 acres of parks and paseos, including creek-edge linear parks; 26 acres for natural open space; and 104 acres for other uses including neighborhood commercial, public facilities, a school, roadway rights of way, and storm drain easements. The project site covers approximately 831 acres, 670 acres in the southern portion of the City of Banning and 161 acres in unincorporated Riverside County, California. The Rancho San Gorgonio Specific Plan site is an irregularly shaped area on the southern edge of the City, about 0.4 miles south of Interstate 10 (I-10), which runs east–west through the City and provides regional access to the site. The entire site is undeveloped and leased for cattle grazing.

The project site is not located within the MSHCP Criteria Area. It is however, within the MSHCP Survey Areas for the burrowing owl, the Los Angeles pocket mouse, the Yucaipa onion, and subject to the MSHCP Riparian/Riverine Policy (Sections 6.1.3 and 6.3.2).

**Burrowing Owls**

The Rancho San Gorgonio Specific Plan (RSGSP) property contains 700.5 acres of burrowing owl habitat (grassland and grazed shrubland); burrowing owls and suitable burrows are distributed throughout the project site; eleven owls and multiple active owl burrows were identified during burrowing owl surveys. The project proposes to convert 655.2 acres of burrowing owl habitat to residential, commercial, and circulation uses and avoid 45.2 acres of grassland incidental to creating 50-foot buffer strips around the undeveloped creek channels. The 50-foot buffer strips would be part of linear park system with recreational activities and trails that allow leashed dogs. The proposed 50-foot wide strips inside the creek buffers are too narrow to provide foraging territories of adequate size for burrowing owls embedded in a developed landscape. Furthermore, recreational activities inside the natural open-space recreation parks such as dog walking (even if dogs were leashed) will discourage burrowing owls from remaining in these areas, and will subject owl nestlings to potential predation by domestic dogs during the vulnerable period when they sometimes move about aboveground but are not yet able to fly. Therefore all 700.5 acres of burrowing owl habitat in the Specific Plan will be permanently lost to the proposed project, not just the 655.3 acres identified.

The project proposes to mitigate the loss of burrowing owl nests and the potential crushing/entombing of eleven burrowing owls inside their burrows by re-surveying for burrowing owl presence onsite 120 and 30 days before commencing construction, and, if owls are detected, only then (in the days remaining before ground-breaking) would the project develop a Burrowing Owl Protection and Relocation Plan with the Wildlife Agencies and the Western Riverside County Regional Conservation Agency (RCA). We note that surveys are not mitigation and that the presence of burrowing owls on the project site has been established. The City and project applicant have not adequately address MSHCP implementation requirements for burrowing owl.

MSHCP burrowing owl species objectives (MSHCP Volume II, Section B) require that when a project site that is not contiguous with the MSHCP conservation area supports more than three pairs of owls on more than 35 acres of suitable habitat, then at least 90 percent of the area with long-term conservation value for burrowing owls be conserved onsite. (This requirement is also discussed in
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MSHCP Section 6.3.2. The site has approximately 700 acres of burrowing owl habitat with long term conservation value. Two pairs, 1 individual and a group of 6 owls were recorded in August 2016. Therefore, the project should either avoid at least 90 percent of the suitable burrowing owl habitat or if it is determined that the 90 percent threshold cannot be met, the MSHCP Permittee (the City of Banning) or their applicant must prepare a Determination of Biologically Equivalent or Superior Preservation (DBESP) and provide it to the Wildlife Agencies for review.

The purpose of a DBESP is to provide a mitigation strategy and analysis demonstrating that the although the proposed project description does not achieve the required 90 percent conservation, it will result in an overall MSHCP conservation area design and configuration that is biologically equivalent or superior to avoiding 90 percent of the burrowing owl habitat on the project site. Appendix E of the DEIR contains a document identified as a DBESP, but the mitigation strategy identified is speculative and without commitments. Further, none of the analysis required to demonstrate that any of the speculative mitigation strategies would be equivalent or superior to avoidance and on-site conservation of owls is provided.

To reiterate, the DEIR does not contain an analysis or commitment to replacing the value (mitigating the loss) of 700.5 acres of burrowing owl habitat which would be permanently lost to the project. Such and analysis and mitigation strategy is required by Section 6.3.2 of the MSHCP and the MSHCP burrowing owl Species Objectives. The DEIR provides no firm commitment to mitigating the loss of the impacted habitat and no analysis demonstrating that any of the optional mitigation strategies could work, or as required for MSHCP implementation, are equivalent or superior to avoiding the burrowing owl habitat on-site. We strongly disagree with the conclusion in the DEIR that the project’s proposed impacts to burrowing owl habitat have not been mitigated to “Less than significant, with mitigation.”

We are also concerned about the implication in the DEIR that burrowing owl surveys conducted 120 days or 30 days prior to ground disturbance can be expected to have negative results. The Wildlife Agencies would like to remind the City that Section 6.1.5 of the MSHCP is intended to ensure that resources that may be conveyed to the MSHCP Conservation Area are maintained in their existing condition prior to Reserve Assembly. The City should regulate clearing, grubbing, and grading activities on site through their existing grading ordinances. Destruction of nests may also constitute violations of the California Fish and Game Code (Section 3503, 3503.5, and 3513) and or federal law (the Migratory Bird Treaty Act).

The DEIR also states that “Costs for the management associated with relocation, tracking to establish [the relocated owls in the relocation area], and for monitoring shall be discussed between the Applicant and the Agencies.” (Mitigation Measure 4-1, p. 1-2). While it does not explicitly say so, the Wildlife Agencies interpret this language to mean that the developer hopes to place the cost of avoiding unauthorized take of the owls and mitigating this impact onto the Wildlife Agencies. Our agencies’ budgets do not include funding to relocate wildlife displaced by development projects or to assume the burden of mitigating impacts to California’s natural resources. The City should make it clear to project applicant that, if after MSHCP implementation is complete, translocation of burrowing owls is contemplated, the developer will bear the costs involved in translocation and monitoring.

Please revise the DEIR and DBESP to provide an identified mitigation strategy and an analysis of that strategy which demonstrates that it is biologically equivalent or superior to conservation of 90 percent
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of the burrowing owl habitat on-site. The project’s burrowing owl mitigation strategy and analysis should be included in the recirculated DEIR for evaluation by the public. The revised DBESP should be prepared by the wildlife Agencies, prior to revising the DEIR. The project should complete all of its MSHCP implementation before the FEIR is certified.

Los Angeles Pocket Mouse

The DEIR states that the Rancho San Gorgonio Specific Plan (RSGSP) property contains 480 acres of habitats (grasslands, streambeds, Riverside alluvial fan scrub, and Riverside sage scrub) suitable for the Los Angeles pocket mouse (LAPM) within the MSHCP’s LAPM Survey Area, which overlaps the southern half of the project site. The project proposes to convert 403 acres of LAPM habitat inside the LAPM Survey Area to residential, commercial, and circulation uses and to largely avoid the LAPM habitat in Pershing Creek and Smith Creek plus a 50-foot upland grassland setback surrounding those two creeks. The DEIR contradicts itself about how much LAPM habitat will be avoided by the project: the third paragraph on page E-57 (and p. 5.5-39) states that the project will preserve 77.6 acres of LAPM habitat inside Pershing Creek, while, in contrast, the first bullet under the subheading “project Design Features and Mitigation measures for Los Angeles project Mouse” states that the project will conserve 62 acres project-wide for this species. Please rectify the discrepancies in numbers and identify the correct acres if impact for the LAPM. Please revise the EIR text accordingly, and send our two agencies GIS shapefiles for the project boundary and the proposed LAPM avoidance areas.

In order for LAPM populations to persist in and adjacent to floodplains, they must have refugia habitat during high flow events. Refugia habitat is not high ground to which animals flee during storms. Its suitable occupied habitat where LAPM persist in the presence of storm events. Refugia habitat above the 100-year floodplain is critical to the long-term viability of the population along Smith and Pershing Creeks. We are uncertain that the avoided LAPM habitat will continue to provide long-term conservation value for LAPM because only a 50 feet of floodplain would remain and that areas would be subject to recreational use. The Wildlife Agencies request that the project avoid the 100-year floodplain and provide an adequate buffer of 100 meters to ensure there is sufficient refugia habitat. We request a hydrologic analysis be conducted to identify viable refugia habitat outside the floodplain to ensure persistence of the species on-site.

The DEIR proposes that the onsite LAPM avoidance areas (mainly Pershing Creek and Smith Creek) would be managed as natural open space recreation parks for use by the residents of the RSGSP community, including pet owners walking leashed dogs. The Wildlife Agencies anticipate that the proximity of the fully-built RSGSP community will result in increased levels of predation on the Los Angeles pocket mice and destruction of burrows that are inside the linear preservation areas, mainly due to the increased presence of people, domestic cats and human-associated predators like raccoons, crows, and ravens. We anticipate that the increased predation levels will, at a minimum, diminish the number of LAPM remaining inside the linear preservation areas, and may, over time, result in the loss of the species in the parks through gradual attrition. Thus, for the purpose of accurately assessing and disclosing impacts to LAPM, the revised recirculated DEIR should disclose, analyze and mitigate these indirect effects.

The LAPM habitat found on the RSGSP site is the largest such block of undeveloped LAPM habitat that has been identified in some years, making the project site of unusual and exceptional value for conserving this declining species. Like the burrowing owl, the MSHCP states that LAPM found as a
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result of survey efforts shall be conserved in accordance with the procedures described in Section 6.3.2. The site is large enough to contribute to MSHCP reserve assembly. We would prefer that the most of the project site come into permanent conservation, perhaps through acquisition by the RCA. However, there is a high demand among developers in the County for LAPM-occupied habitat that can be used for compensatory mitigation to offset development projects’ impacts accompanied by a severe shortage of LAPM habitat available for mitigation use, so, alternatively, we would not be opposed to the owner “developing” the RSGSP property as a mitigation bank that would sell mitigation credits to other developers. A mitigation bank embracing the entire RSGSP property could potentially sell mitigation credits for development impacts to LAPM, burrowing owls, stream beds, alluvial fan scrub, and Riversidesea sage scrub.

The project proposes to mitigate the loss of 403 acres of LAPM habitat inside the LAPM Survey Area by avoiding onsite impacts to Smith Creek and most of Parshing Creek (62 acres or 77.6 acres of avoidance) and like the Burrowing owl, the mitigation strategy is still undefined and unanalyzed. The acquisition and of LAPM habitat offsets to placement into conservation or the contribution of funds to the RCA for the purchase or management of LAPM habitat are both identified as possibilities.

The Best Management Practices for avoiding direct impacts to the LAPM habitat in Mitigation Measure 4-3 should be more specific and enforceable. For example, the distance away from the sandy washes should be specific, such as 100 meters, and the area should be clearly marked. The project should use construction fencing to identify sensitive habitat that is avoided.

The DEIR lacks a site-specific proposal for replacing the 403 acres of LAPM Survey Area habitat which will be permanently impacted by the project; such replacement is required by Section 6.3.2 of the MSHCP and the MSHCP’s Goals and Objectives for conserving LAPM. Without a site-specific proposal, the Wildlife Agencies, other permitting agencies, and the public cannot evaluate whether the mitigation which will actually take place will fully offset the loss of the LAPM habitat on the project site. Since the mitigation that will occur is purely hypothetical at this point in time and lacks the most fundamental details (e.g., location, quantity of occupied LAPM habitat at the proposed mitigation locations, ownership, long-term habitat management, etc.) necessary to evaluate a proposal, it is premature to conclude that the (hypothetical, unknown) compensatory mitigation will mitigate the project’s impacts to a level of “less than significant, with mitigation”. In order to reach such a conclusion and make it defensible, the project needs to identify and propose placing into conservation one or more properties containing enough occupied LAPM habitat in order to fully offset the project’s proposed impacts to this species. The mitigation strategies should be concrete and contain basic but crucial details such as the property’s location (including maps), surrounding land uses, how the Applicant will acquire the mitigation land, onsite LAPM distribution and abundance data, and the legal and financial mechanisms that the Applicant will implement to ensure that the mitigation property is conserved permanently and that the habitat is managed (by a qualified habitat management organization) in such a way as to maintain its quality for the LAPM.

Like for burrowing owl discussed above, the DBESP document appended to the DEIR did not commit to an LAPM mitigation strategy or provide any analysis to support a determination that the proposed project and its mitigation strategy are biologically equivalent or superior to conservation of 90 percent of the LAPM habitat in the MSHCP survey area. Please revise the DEIR and DBESP to provide an identified mitigation strategy and an analysis of that strategy which demonstrates that it is biologically equivalent or superior to conservation of 90 percent of the LAPM habitat in the MSHCP survey area.
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The project’s LAPM mitigation strategy and analysis should be included in the recirculated DEIR for evaluation by the public.

MSHCP Riparian and Riverine Impacts and Mitigation

The DEIR reports that the project site contains 74.3 acres of streambeds that are potentially subject to the jurisdiction of the Department and 26.3 acres of those would be impacted. The DEIR failed to parse out how much of this acreage is composed of riparian habitat (water-dependent trees, shrubs, and herbaceous plants) and how much is composed of unvegetated stream beds (riverine habitat). The only riparian habitat which is clearly identified and quantified in the DEIR (Table G on page D-45 of the Biological Resources Report) is mule fat scrub (also called southern riparian scrub); only 0.06 acres of this riparian habitat was found by the project’s surveys.

However, a careful reading of the DEIR shows that there is significantly more riparian vegetation onsite than was acknowledged in the habitat impacts table. The discussion of the City’s tree removal ordinance reports that the project would remove 0.39 acres of native and nonnative trees and shrubs from the stream beds that would be affected by project development, including Fremont cottonwoods, willows, and elderberry shrubs. Thus, it’s clear that the amount of riparian vegetation onsite is not merely 0.06 acres, but rather, is more than 0.39 acres. The Wildlife Agencies request that the DEIR be amended to clarify the quantity of riparian habitat on the project site (in contrast to stream beds which are unvegetated or covered only by upland vegetation such as Riverside sage scrub or non-hydrophytic grasses), its distribution (please provide one or more maps at sufficient scale to be easily read), how much will be impacted, and the amount and locations of what will be preserved onsite.

The project proponent proposes to mitigate for fill placed into waters of the U.S. or streambeds under CDFW jurisdiction, and for removal of associated alluvial fan sage scrub and other riparian/riverine wildlife habitat, shall include any combination of the following measures: (1) contribution of land at 2:1 ratio containing similar habitat and jurisdictional areas to the Reserve; or (2) land dedicated at 2:1 mitigation ratio in fee titled toward conservation and managed by third-party conservation entity; or (3) fee payment made to mitigation bank of in-lieu fee program at 2:1 mitigation ratio; or (4) through creation and enhancement of riparian habitat at 2:1 mitigation ratio within the project area using the improved stormwater outlets expected to be received via the storm drain outlets into Smith and Peshang Creeks. Mitigation for impacts to riparian and riverine resources subject to the MSHCP Riparian and Riverine Policy (Section 6.1.2) must occur within the MSHCP Plan area, therefore, proposals to mitigate outside the plan area are not acceptable. The lack of specificity in the type of mitigation proposed for the stream impacts makes it impossible to evaluate whether the proposed mitigation is adequate. The proposed 2:1 mitigation ratio is low and is generally only appropriate for degraded, low-quality stream habitat such as a channelized v-ditch. Given that this area is an intact, functioning stream that is an important sand source, supports LAPM and other wildlife, contributes to ground water recharge, and is functional wildlife corridor further explanation is needed from the project applicant as to why a 2:1 replacement ratio would be appropriate. Finally, the area of mitigation required is extremely large and we are skeptical the ability of the needed mitigation.

The DEIR does not address the long-term conservation of the avoided on-site riparian riverine resources as required by the MSHCP Riparian and Riverine Policy. The Riparian and Riverine Policy states that, "If an avoidance alternative is selected, measures shall be incorporated into the project design to ensure the long-term Conservation of the areas to be avoided, and associated functions and values, through the
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use of deed restrictions, conservation easements, or other appropriate mechanisms.” We request that the on-site avoided riparian and riverine areas be conserved (protected with a legal instrument) and a long-term manager be identified.

We recommend that the DEIR be revised to address these issues, including such measures as the use of a conservation easement to ensure conservation in perpetuity, the use of signage and fencing or other appropriate barriers to limit public access, and the designation of an appropriate management entity for the conserved area. The conservation easement should conserve the avoided areas in perpetuity, should follow the template specified in the MSHCP (Volume I, Part 2, Appendix D), and should be with a qualified land management organization experienced in managing land for the purpose of maintaining wildlife habitat quality. This information and an analysis that demonstrates that the proposed mitigation is biologically equivalent or superior to avoiding on-site riparian and riverine resources should be included in the revised DBESP.

Project Alternative Analysis

We request that the revised and recirculated DEIR include a project alternative that avoids Montgomery Creek. The DEIR states that “The CEQA Guidelines (Section 15126.6(a)) state that an EIR must address a range of reasonable alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives.” The avoidance of Montgomery Creek through preserving the stream and buffering it with a linear park is not analyzed as a project alternative. Avoidance of Montgomery Creek would significantly reduce the impacts to biological resources and possibly also hydrology (groundwater recharge). We surmise that this lack is for reasons discussed in the DBESP Section 5.1.6 where it is stated that “Reducing numerous lots or entire planning areas in the Specific Plan would create gaps in developable land adjacent to existing road access and built out residential areas, which would greatly limit the accessibility to the remainder of the project area and function of the entire community plan. The use of an open channel within the proposed storm drain easement will reduce some land availability and require construction of one or two road crossings.” This seems to oversimplified and exaggerated. Even if Montgomery Creek was undergrounded on the northern portion of the site to address the mentioned issues, the southern portion of Montgomery Creek already primarily goes through two park areas. This would cut impacts to LAPM habitat and wildlife corridor impacts by more than half with very little (<5%) in reduction in the number of dwelling units. Even, if all the area of Montgomery Creek was preserved with a buffer area, at a rough estimate it appears that it would be a less than 9% reduction in the number of units.

DEIR Lacks an Effects Analysis for impact to the CVMSHCP Conservation Strategy

The Rancho San Gorgonio Specific Plan Project proposes to permanently impact all of Montgomery Creek, part of the Gilman Home Channel, and tributary drainages of the site’s creeks, to install a road crossing and wildlife underpass across Pershing Creek, and to install approximately 36 retention and infiltration basins in the Specific Plan area. The project site is located in the San Gorgonio River Watershed and its creeks drain east into the San Gorgonio River. The San Gorgonio River and its tributaries provide the sand which is a crucial component of the habitat for multiple declining special-status species protected by the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), which is an adopted regional habitat conservation plan. CVMSHCP special-status species which are restricted to seven of the HCP’s habitats (such as active desert dunes, ephemeral
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sand fields, and stabilized sand fields, etc.) have been declining due to a combination of habitat fragmentation and the decrease in sand supply due to development projects upstream cutting off the former delivery of sand by floodwaters and wind.

Project effects to or compliance with approved habitat plans, such as the MSHCP, must be discussed under CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. The Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) is an “adopted regional Habitat Conservation Plan” which lies immediately downstream of the RSGSP project site and receives water and sediment flows from the creeks on the project site. The CVMSHCP protects a number of special-status species, including a guild of species which depend on and are restricted to seven types of sand habitats in the CVMSHCP Plan Area (CVMSHCP, Section 10).

The CVMSHCP seeks to maintain the survival of the following sand-specialist species:

- Coachella Valley fringe-toed lizard (*Uma inornata*), federally threatened/state endangered
- Flat-tailed horned lizard (*Phrynosoma mcallii*), state candidate
- Giant sand-treader cricket (*Macrocanestes volgum*)
- Coachella Valley Jerusalem cricket (*Stenopelmatus caulisauris*)
- Coachella Valley round-tailed ground squirrel (*Spermophilus tereticaudus*) [now known as the Palm Springs round-tailed ground squirrel (*Xeroperomyscus tereticaudus chloront*)], California species of concern
- Coachella Valley milk-vetch (*Astragalus lentiginosus var. coachelae*), federally endangered

The sand source for the CVMSHCP’s sand habitats is the mountains surrounding the San Gorgonio Valley and the northern Coachella Valley. During most years and months, sand is transported downstream (“down valley”) by aeolian (wind) processes. However, in rare years of prolonged heavy rainfall, flash floods move large volumes of sand down the tributaries, the rivers, and the two floodplains. This fluvial transport of sediment down the San Gorgonio and upper Whitewater Rivers is the principal source of sand replenishment for the sand field and sand dune habitats in the CVMSHCP. Sand deposited on the San Gorgonio floodplain and the upper Whitewater River floodplain (on the valley floors) is subsequently transported down the Coachella Valley by aeolian processes which distribute the sand to the various dunes and sand sheets, including those located in the CVMSHCP Conservation Areas located in the central and southern parts of the Coachella Valley (USGS 2002).

One of the most important ecological goals of the CVMSHCP is to protect the fluvial sand transport Essential Ecological Process in the Cabazon, Long Canyon, and West Deception Conservation Areas to ensure no net reduction in fluvial sand transport in these areas … water-borne sediments and floodwaters shall not be artificially retained onsite. Concentration of flows and increase in flow velocity offsite shall be minimized to avoid downstream erosion and scour. Alternatively, a flood control structure for the area that is designed to ensure no net reduction of sediment transport from the sand source area to the [natural / historic] sand deposition area where aeolian sand transport processes are active may
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be used to achieve the Conservation Objective of fluvial sand transport.” (CVMSHCP Section 4.2.2.2.4).

This goal is reiterated in the NCCP portion of the CVMSHCP, wherein the state program highlights the following goal for natural communities:

“Conserve the sand source/transport systems to ensure sustainability of the sand dunes and sand fields. Maintain and enhance aeolian (wind-blown) and fluvial (water-borne) sand transport systems and existing hydrological regimes.” (CVMSHCP, Section 10.2).

The CVMSHCP’s Cabazon Conservation Area lies immediately downstream of the Rancho San Gorgonio Specific Plan project site and receives the flows from the project site’s creeks. The Cabazon Conservation Area overlaps the Essential Ecological Process Area mapped by the CVMSHCP as essential to maintaining the fluvial sand transport ecological process (CVMSHCP, Figure 4-6d) which keeps the CVMSHCP’s seven sand habitats (and their dependent plant and wildlife species) from disappearing.

An assessment of the impacts to the CVMSHCP as a result of the proposed project is necessary to address CEQA requirements. The DEIR did not evaluate the potential offsite impacts of the project to the species and habitats which the CVMSHCP aims to conserve and to the ecological processes which maintain those habitats. The CVMSHCP’s seven sand habitats receive water and sediment flows from floods traversing the RSGSP’s creeks. The Wildlife Agencies request that a fluvial and aeolian sediment transport study which describes the existing conditions and models post-project sediment transport from and through the project site and into the CVMSHCP’s Fluvial Sand Transport Essential Ecological Process Area be included in the revised and recirculated DEIR. The report should evaluate how the proposed project would affect the long-term ability of the San Gorgonio River and its tributaries to provide essential ecological processes in the Cabazon Fluvial Sand Transport Area, and the delivery of sand to the CVMSHCP sand deposition areas in the Cabazon Conservation Area, Snow Creek/Windy Point Conservation Area, and Whitewater Floodplain Conservation Area. The study should employ the methods used by the 2002 USGS study which estimated sand transport changes to the Whitewater Floodplain Conservation Area and the Willow Hole – Edom Conservation Area. If the proposed project’s sediment transport study finds that the project may reduce the volume of sand delivered to the CVMSHCP, then this would constitute an adverse effect to the CVMSHCP’s sand-specialist species, and would require federal Endangered Species Act (ESA) coverage for project impacts to the federally threatened Coachella Valley fringe-toed lizard (CVFTL), the federally endangered Coachella Valley milk-vetch, and California Endangered Species Act (CESA) coverage for impacts to the state endangered CVFTL and the fat-tailed horned lizard (which currently enjoys emergency provisional listing while it is a Candidate for formal listing as endangered by the State of California). If the sediment transport study finds that the project, as currently designed, may reduce the volume of sand delivered to the CVMSHCP over the short and long term, then the project would need to either develop engineering solutions to maintain the current levels of flood-borne sand transport to the CVMSHCP, or, alternatively, to develop a detailed, site-specific mitigation plan to ensure the permanent replacement of the lost sand to the CVMSHCP by artificial means. We recommend that the project applicant seek the input of the Coachella Valley Conservation Commission (CVCC) regarding the potential adverse impacts of the project to the CVMSHCP’s covered species and natural communities. Additional information regarding the CVMSHCP is available on the internet at: http://www.cvmshcp.org.
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Fully Protected Species

Two species identified in the project site are classified as Fully Protected: white-tailed kite and golden eagle. Fully Protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research and relocation of the bird species for the protection of livestock (California Fish and Game Code Section 3511). Although fully protected species are included in the list of Covered Species under the MSHCP, Take of these species is not authorized in the NCCP Permit and is prohibited by the California Fish and Game Code. The golden eagle and white-tailed kite are a fully protected species and take cannot be provided under the MSHCP, however, the Department has acknowledged and agreed that if the measures set forth in the MSHCP are fully complied with, the Covered Activities are not likely to result in Take of these species. It is critical that to receive coverage for potential take of these species that the project is properly implement the MSHCP.

White-tailed Kite

The DEIR reports that white-tailed kites (state Fully Protected) have been seen on the project site and may also be using a large cottonwood tree in as a nest site/rookery or as a communal roosting site. Although the white-tailed kite enjoys stronger legal protection than species listed as threatened or endangered, the DEIR did not specifically evaluate potential impacts to this particular species nor develop protective measures specifically for it. Please note that, under state law, any impacts which would meet the California Fish and Game Code’s definition of “take” of a Fully Protected Species – even if due to temporary (i.e., construction) or indirect or “operations” effects (such as those from RSGSP residents or barking dogs approaching the nest/rookery/communal roosting tree and flushing kites or causing abandonment of the nest/rookery/communal roost) would constitute a violation of state law and would render the Applicant vulnerable to legal penalties. Depending on the circumstances, the federal Migratory Bird Treaty Act might also come into play. This federal statute (while narrower in scope) is similar to the state Fully Protected Species Act in that both are “absolute liability statutes”, meaning that only the outcome (whether “take” of the protected species or its nest occurred) is relevant to determining liability under the statute; i.e., it is not necessary for a prosecutor to demonstrate either “intent to take” nor negligence on the part of the defendant in order for a court to render a finding of legal liability under either statute.

The preservation and continued use of a white-tailed kite nesting site, rookery, or communal roosting site is not consistent with human recreational use of the project’s proposed linear “natural open space” recreation park surrounding the reach of the creek containing the large cottonwood tree being used by the kites. The Wildlife Agencies request that the recirculated DEIR include detailed information regarding the number of white-tailed kites seen on the site, the dates and locations of the observations (including maps in relation to the project’s existing resources and post-development features), and measures to preserve a biologically-defensible buffer zone around the potential nesting/rookery/communal roosting site to prevent the kites from being disturbed by human movements, noises, and recreational activities. The buffer zone should be developed by qualified raptor biologists and include signage, dog-proof fences or walls, barriers to entry by domestic cats, and if needed, sound barriers.

Golden Eagle

The DEIR indicates that golden eagle are likely to be present and were observed foraging (DEIR, Appendix D). The golden eagle is a state fully protected species and protected by the Bald and Golden
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Eagle Protection Act (BGPEPA, 16 U.S.C. 668-668c) which prohibits anyone, without a permit issued by the Secretary of the Interior, from “taking” bald or golden eagles, including their parts, nests, or eggs. The Act provides criminal penalties for persons who take any bald or golden eagle. The BGPEPA defines take as pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb. Disturb means: to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.

The project site is predominately grasslands and supports burrowing owl and white-tailed kite indicating there is high probability that the site could also serve as an important foraging area for golden eagles. The revised and recirculated DEIR should provide an assessment of site use by golden eagle, identify if there are any recent or historical nests in the area, and acknowledge and mitigate the loss of golden eagle foraging habitat.

California Spadefoot Toads

The DEIR indicates that the California spadefoot toad is present in the project area, however, exactly where is difficult to discern. It was described as found in Feature 1 (stock pond or borrow pit) and the “ephemeral ponds and puddles” located in the northwest corner of the project site. It appears from the proposed project description that both locations would be impacted. However, clarification is needed as to whether those are the only two locations where spadefoot was found in the project site. Please amend the DEIR to clearly identify the locations for the spadefoot toad. In the Biological Report, impacts were described as less than significant (Section 6.2.2 of the Biological Report) even though it appears all identified habitat for the toad would be removed.

This declining species has a spotty occurrence across its overall range (California) and the reasons why it is found at some sites while being absent from similar sites are not well understood. The Wildlife Agencies would recommend that the project preserve the spadefoot toads in their small area of existing habitat. If pool used by spadefoot are not avoided, we request that the revised DEIR include the creation of a replacement pond complex for the toads somewhere in the project’s planned avoidance/open space area. The pond should be engineered to have depths and surrounding vegetation suitable for California spadefoot toads, to have a hydroperiod that is equal to or superior to that of the ponds currently inhabited by the toads.

Bats

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1 Less Than Significant Impact: Wetlands (Threshold B-3). Species associated with nonjurisdictional seasonal aquatic habitat, such as spadefoot toad and fairy shrimp, occur on the project site, since this biological resource is present within the project area. Impacts will not occur to wetlands or permanent water habitat types, for species requiring larger water bodies, flow water, or longer duration of a water source for breeding, such as the arroyo toad (FE) or Riverside fairy shrimp (FE), since they do not occur in the project area. The 0.2 acre of wetland in the pasture, adjacent to an agricultural ditch and supported by storm water, is not habitat important to long-term conservation of a special interest species [Mitigation Measure BIO-9]
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The Wildlife Agencies appreciate that the DEIR has addressed potential impacts to bats. To increase the specificity and enforceability of MM BIO 4-7 the Wildlife Agencies recommend that the City condition MM BIO 4-7 to include the following additional text and edits. Note that the first bullet below includes text from Mitigation Measures of the Biological Resources Section of the DEIR, with edits incorporated by the Wildlife Agencies.

The Wildlife Agencies recommended that the City condition MM BIO 4-7 to include this new bullet point:

1. Prior to site preparation or ground-disturbing activities by a project developed pursuant to the Specific Plan, a qualified bat biologist shall conduct a focused bat roosting habitat suitability assessment of all structures (including, but not limited to, bridges, culverts, and buildings) and trees that may be removed, altered, or indirectly impacted by the proposed project. Any locations with potential for roosting or suitable as a maternity roost will be surveyed by the qualified bat biologist using an appropriate combination of structure inspection, exit counts, and acoustic surveys. Surveys shall be conducted during the appropriate season and time of day/night to ensure detection of bats. If bats are found using any structures or trees within the project area, the qualified bat biologist shall identify the bats to the species level, and evaluate the colony to determine its size and significance. The bat survey shall include: 1) the exact location of all roosting sites (location shall be adequately described and drawn on a map); 2) the number of bats present at the time of visit (count or estimate); 3) each species of bat present shall be named (include how the species was identified); and 4) the type of roost, i.e., a night roost (rest at night while out feeding) versus a day roost (resting during the day). An aerial report containing the bat survey findings shall be submitted to the City and to the Department, at the following address: 5602 Inland Empire Blvd., Suite C-220, Ontario, CA 91764.

2. If a roosting site and/or maternity colony(s) is detected, and the qualified bat biologist determines that impacts (either direct or indirect, including disturbance from noise, vibration, dust, exhaust) from project-related activities may occur, the Applicant shall consult with the Department to determine the most appropriate type of avoidance, minimization, and mitigation measures to implement. Examples of avoidance and minimization strategies may include daily work timing restrictions and buffer distances. Work timing restrictions and buffer distances will be determined based on the expert opinion of the qualified bat biologist, as approved by the Department. Mitigation measures may include replacement of impacted roosting sites with alternate roosting structures, such as those described California Bat Mitigation Techniques, Solutions, and Effectiveness (H. T. Harvey and Associates, 2004). Alternate roosting structures shall be designed to ensure use by bats impacted by the project. For example, designs will take into consideration the thermal and crevice/structure roosting requirements of the impacted bats.

Because some species of bats roost amongst foliage as well as under bark, surveying for “roost cavities” will not identify all bats using trees. Therefore the Wildlife Agencies recommend revising the second bullet point as follows:

The qualified bat biologist, in consultation with the Department, shall oversee and direct the trimming and/or removal of all trees, including snags from the project site.

To ensure ample time for pups to become fully independent, the Wildlife Agencies recommend using September 15, as opposed to August 31, as a surrogate for the end of the bat maternity season.
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However, we do further recommend that the qualified bat biologist inspect all trees hosting roosting bats, regardless of time of year to reduce project-related impacts to bats. The Wildlife Agencies recommend revising the third bullet point as follows:

To avoid direct impacts to flightless young, tree trimming/removal activities shall be performed outside of the bat maternity season, which coincides with the bird nesting season of March 15 through September 15, thereby reducing impacts to nesting birds. To further reduce impacts to all age classes of bats, all trees will be inspected by the qualified bat biologist, regardless of time of year.

Regarding the fourth bullet point, the Wildlife Agencies recommend replacing "crevice or cavity" with "roosting" habitat.

Regarding the fifth bullet, and the City’s proposal to incorporate roosting structures in new bridge designs, the Wildlife Agencies applaud this inclusion. The Wildlife Agencies recommend early consultation with a bat biologist experienced in the ecology of bats using man-made structures to assist with this proposal. Small changes to the bridge design can accommodate suitable bat roosting structures in the concrete pour itself, negating the need to add additional structures (such as lightweight concrete panels) after the bridge is constructed. The Wildlife Agencies encourage the City to accommodate such designs where feasible to provide roosting habitat for these beneficial predators (some bat species will eat their body weight in insects on a nightly basis).

Native Tree Replacement: Recommended Adjustment

Mitigation Measure 4-9 in the DEIR requires (to achieve compliance with the City’s General Plan and its tree removal policy) that any project site trees 50 years old or older which will be removed for development or due to poor health must be replaced. The measure currently requires that “Each identified tree removed shall be replaced with at least one 36-inch box specimen tree, in addition to any other required landscaping.”

The Wildlife Agencies commend the City for requiring the replacement of native trees that cannot be preserved in place by the project. We assume that the use of the wording “36-inch boxed specimens” was intended by the City to minimize the amount of time needed to replace potentially large, mature trees onsite with cultivated saplings obtained from a plant nursery. Cultivated boxed trees may be suitable for planting in well-watered landscaped areas where their already-stunted and devitalized root systems will benefit from the abundant water provided by irrigation systems. However, most cultivated tree root systems become root-bound (roots coiled around the inside of the box or pot, directed horizontally and/or upward rather than downward to achieve drought-resistance) by the time that the cultivated specimen is in a container of 5-gallon size or larger.

In locations which will not be afforded permanent irrigation the success rate of this measure could be improved (and the acquisition costs substantially reduced) by adjusting it to require that each removed tree be replaced by the installation of 15 one-gallon-size saplings. Any native riparian trees removed (cottonwoods, willows, coast live oaks, etc.) should be replaced by saplings of native riparian species which occur naturally in the San Gorgonio Pass. One-gallon-size saplings typically have root systems which are more vigorous, less stunted and root-bound, and more in balance with the existing tree shoot than the root systems of larger cultivated saplings. Thus, the survival rates and long-term growth rates of the one-gallon plantings will be higher than those of large planted specimens,
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particularly in areas which will not be well-watered (if irrigated at all). For specimens planted in areas that will receive no permanent irrigation, temporary moderate irrigation during the saplings' first two or three dry seasons (May - November) would further improve the survival and establishment rate, thus helping the City to achieve its goal.

Migratory Bird Treaty Act and Nesting Birds

Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et seq.). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code prohibit the take of all birds and their nests. Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto; Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto; and Section 3513 states that it is unlawful to take or possess any migratory non-game bird designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

The Wildlife Agencies are concerned about the adequacy of the nesting and bat measures. Measure 4-7 in the bio section: “To mitigate impacts to nesting birds including raptors: Within 30 days prior to the commencement of construction (if between January 15 and August 31), a qualified biologist shall perform a raptor nesting survey that will consist of a single visit…” Please clarify if surveys for non-raptor birds will be conducted as well. Because some species of raptors may commence nesting activities in January, the Wildlife Agencies encourage the City to complete nesting bird surveys regardless of time of year to ensure compliance with all applicable laws related to nesting birds and birds of prey. Surveys should generally be conducted within three days, not 30 days, prior to initiating project activities, as many bird species build nests extremely quickly and nesting may otherwise be missed. Furthermore, please note that not all bird species nest in vegetation; some species nest directly on the ground. It is the Lead Agency’s responsibility to ensure that the project complies with all applicable laws related to nesting birds and birds of prey, and that violations of these laws do not occur.

The Project Site is Ecologically Valuable

The BSGSP project site has high conservation value due to habitat that supports burrowing owls, spadefoot toads, an exceptionally large Los Angeles pocket mouse population, nesting and foraging for white-tailed kites, and foraging for golden eagles. In addition, the creeks onsite are important for the fluvial transport of sand episodically delivered to the CVMSHCP sand transport and deposition areas downstream. The Wildlife Agencies recommend that all or a portion of this property come into conservation (either through acquisition or development as a mitigation bank) to preserve these wildlife resources and ecological functions. It takes 2 to 3 years to complete a mitigation banking instrument with the regulatory agencies.

Department Comments Related to the Lake and Streambed Alteration Program

Although the proposed project is within the CVMSHCP, a Notification of Lake or Streambed Alteration (LSA) is still required by the Department, should the site contain jurisdictional waters. Additionally, the
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Department’s criteria for determining the presence of jurisdictional waters are more comprehensive than the MSHCP criteria in Section 6.1.2 (Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools). The Department is responsible for assessing and evaluating impacts to jurisdictional waters; typically accomplished through reviewing jurisdictional delineation (JD) reports, supporting information, and conducting site visits. Following review of a JD, the Department may request changes to the JD. The Department may also recommend that additional project avoidance and or minimization measures be incorporated, or request additional mitigation for project-related impacts to jurisdictional areas.

The Department recommends submitting a notification early in the project planning process, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a LSA notification package, please go to http://www.dfg.ca.gov/halcon/1600/forms.html.

The Department opposes the elimination of ephemeral, intermittent, and perennial streams, channels, lakes, and their associated habitats. The Department recommends avoiding stream and riparian habitat to the greatest extent possible. The CEQA document should include measures to avoid or minimize project impacts. Where adverse impacts cannot be avoided or minimized, the CEQA document should describe compensatory mitigation, for example, the creation and/or restoration of in-kind habitat either on- or off-site. Additional mitigation requirements through the Department’s Lake and Streambed Alteration Agreement process may be required, depending on the quality of habitat impacted, proposed compensatory mitigation, project design, and other factors.

The following information will be required for the processing of a Notification of LSA and the Department recommends incorporating this information into the CEQA document to avoid subsequent documentation and project delays:

1. Delineation of lakes, streams, and associated habitat that will be temporarily and/or permanently impacted by the proposed project (include an estimate of impact to each habitat type);
2. Discussion of avoidance and minimization measures to reduce project impacts; and,
3. Discussion of potential mitigation measures required to reduce the project impacts to a level of insignificance. Please refer to section 15370 of the CEQA Guidelines for the definition of mitigation.

In the absence of specific mitigation measures in the CEQA document, the Department believes that it cannot fulfill its obligations as a Trustee and Responsible Agency for fish and wildlife resources. Permit negotiations conducted after and outside of the CEQA process are not CEQA-compliant because they deprive the public and agencies of their right to know what project impacts are and how they are being mitigated (CEQA Guidelines Section 15002). The following information is insufficient in the DEIR:

1. The information regarding drainages permanently impacted, if part or all of the drainage is impacted, and the characteristics of the impacted drainages is unclear. The JD is not included in the DEIR Appendices but it is located essentially as a component of an Appendix D (Biological Resources Report). In the very last table of the JD, the CDFW jurisdictional areas of the potentially impacted drainages are provided. A comparison of these areas with the graphic information provided by Figure 6B (p. D-43) of the Biological Resources Report may enable one to eventually determine the areas of the impacted drainages but it would be a painstaking process.

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In short, information about the impacted drainages are only presented in the DEIR as a summary without specific information about the individual drainages. This is insufficient for the drainage information to be adequately evaluated and reviewed in the DEIR. The Department requests that information about each drainage impacted should be presented in a table within the DEIR and the JD included as an Appendix to the DEIR. The scale of the current map for the entire project site is not suitable for project review. A set of maps appropriately scaled to view each drainage and clearly see the boundaries of the delineation should also be provided in the EIR.

2. The Los Angeles Pocket Mouse (LAPM) survey information would also seem to be inadequate for the purposes of SAA view. It was noted on p. 5.4-18 of the DEIR that all the major washes with sandy substrate would be considered occupied and therefore the washes themselves were not surveyed for LAPM. If Pershing and Smith Creek are fully avoided this may not be an issue in those streams but it leaves unanswered all questions with regard to population density and distribution within Montgomery Creek and other smaller drainages. Montgomery Creek is likely to be occupied habitat for LAPM and is proposed by the Applicant to be entirely converted to an underground culvert pipe through the entire project site. Consequently, there is insufficient information to adequately assess the impacts of the proposed action within the DEIR. Adequate avoidance, minimization, and mitigation measures for the SAA could not be devised based on the available information. It should also be noted (see below) that populations of LAPM could become cut off and genetically isolated upstream of the project site within the Montgomery Creek drainage.

3. The DEIR does not adequately address the effects on wildlife movement and genetic exchange upstream of the proposed project site within Montgomery Creek. Montgomery Creek presumably functions as a wildlife corridor and the project site would sever wildlife movements by “undergrounding” Montgomery Creek through the project site. Therefore, the area upstream of the project site should be considered a permanently impacted area at least as far as Interstate 10 (I-10). On p. 5.4-25 it is stated that “Montgomery Creek north of the site passes through the City of Banning as an engineered channel with concrete beds and banks and is undergrounded under and near the I-10. Those segments of Montgomery Creek do not provide cover for wildlife movement. Thus, Montgomery Creek is not an important wildlife corridor linking the project site with wildlife habitat off site”. Even, if we accept this rationale, which is probably oversimplified, there is close to a half mile of Montgomery Creek between the project site and I-10. This area may easily contain LAPM and other wildlife that will become isolated between the project site and I-10. This portion of Montgomery Creek should be considered an impacted area and impacts assessed by the DEIR.

4. Impacts from the loss of sediment transport from Montgomery Creek and other smaller drainages to washes downstream was not addressed and should be included in the Final EIR.

The Draft EIR is Missing Information that the Wildlife Agencies Need in order to Fully Evaluate the Likely Impacts and the Proposed Compensatory Mitigation

The Draft EIR does not provide enough information on several issues of concern to the Wildlife Agencies for us to be able to complete our evaluation of the project’s impacts and its proposed compensatory mitigation. We need the missing information in order to be able to complete our evaluation and request the City’s cooperation in providing the missing information in the revised DEIR. We need the following information elements which were incomplete, vague and uncertain, or absent in the Draft EIR:
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1. A site-specific, quantified, and detailed compensatory mitigation proposal to offset anticipated project impacts to burrowing owls, the Los Angeles pocket mouse, and MSHCP riparian/riverine resources. The revised DEIR (and DBESP) should commit to specific mitigation strategies rather than merely providing lists of vague potential mitigation categories without committing to implementing any particular one of them. It is however, acceptable and even prudent to describe a fall-back mitigation plan that the Applicant could implement if, for example, acquisition negotiations for a specific compensation parcel ended without consummating the purchase. Alternative mitigation strategies need to be fully described and analyzed.

2. A detailed fluvial-aerial sediment transport study quantifying the types and amounts of sediment which the RSGSP’s creeks episodically (USGS 2002) deliver to the CVMSHCP’s Cabazon Fluvial Sand Transport Essential Ecological Process Area over long time scales, and a quantitative estimate (based on rigorous scientific methods, as in the 2002 USGS study) of the project’s potential effects on delivery of sand to the CVMSHCP.

3. If the sand transport study determines that the project, as described in the Draft EIR, may reduce the amount of sand delivered to the CVMSHCP’s natural sand communities, then the revised EIR should include either (a) engineering measures designed to maintain the creeks’ current volume of sand transport (especially during flood events) to the CVMSHCP, or (b) with the agreement of the CVCC, a replacement supply of sand which the project will supply from another source and deliver to sites approved by the CVCC. Such a proposal should include a detailed replacement supply plan including details such as site-specific locations and delivery volumes, and a firm commitment by the Applicant to acquiring ownership or control of the alternative supply source(s) and adequate funding in perpetuity for the replacement provision and delivery processes (similar to an endowment for a permanently conserved land parcel which will be managed by a third-party conservation steward).

4. Hydrologic analysis of the LARPM habitat to determine a sufficient buffer around the avoided stream channel to provide LAPM refuge habitat.

5. A reduced-impact Project Alternative which reduces the project’s biological impacts by maintaining Montgomery Creek as a natural stream (rather than through lowered housing density across the entire RSGSP), including essential road crossings accompanied by wildlife underpasses.

6. A jurisdictional delineation document for Waters of the State that is detailed enough to enable the Department’s Lake and Streambed Alteration Program (LSA Program) to prepare a Streambed Alteration Agreement for the RSGSP project. According to the LSA Program office in Bermuda Dunes, the information currently provided in the DEIR is not detailed enough (particularly the maps) to enable the LSA Program to prepare a Streambed Alteration Agreement for the RSGSP project.

7. Finalized MSHCP Compliance: The three analysis required for the MSHCP DBESP to address the proposed project’s impacts to the burrowing owl, the Los Angeles pocket mouse, and MSHCP Riparian/Riverine Resources should be revised and subsequently submitted by the City to both Wildlife Agencies for review and approval. The DBESP’s should be finalized with the Wildlife Agencies (and the RCA) before the Final EIR is certified.

Revision and Recirculation

CEQA Section §15088.5 requires that a project’s Lead Agency recirculate a Draft EIR for further public comment when comments are received which (1) identify significant new impacts or (2)
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substantial increase severity of an impact identified in the original Draft EIR, or (3) a feasible alternative, or mitigation considerably different from others already in the DEIR, would clearly lessen significant effects, but the project proponent declines to adopt it. In this section of our letter, we remind the City that we have identified the following items which fall into one or more of the three categories used in CEQA Section §15088.5:

1. Significant New Impacts: Significant new environmental impacts not disclosed in the Draft EIR which will remain significant after the project’s currently proposed mitigation measures are implemented (i.e., potential significant impacts to an “adopted regional Habitat Conservation Plan” and that Plan’s sand habitats, sand-specialist species, and ecological processes); potential illegal take of a California Fully Protected Species (the white-tailed kite) and the absence of onsite conservation measures which are strong enough to prevent such take; the loss of foraging habitat utilized by potentially several golden eagle territories overlapping the Banning area, and the potential effects on eagle occupancy, productivity, and inter-nest competition. These analyses need to be performed, and the potential effects disclosed to the public and the relevant permitting agencies in a recirculated DEIR with opportunity for agency and public comment.

2. A substantial increase in the severity of certain environmental impacts compared to what was disclosed to the public in the DEIR: permanent indirect impacts to burrowing owls, Los Angeles pocket mice, and white-tailed kites in the linear open space recreation parks proposed to surround Pershing and Smith Creeks after project build-out.

3. Undisclosed and unresolved impacts to an established regional Habitat Conservation Plan which will remain significant after the project’s currently proposed mitigation measures are implemented, but were not disclosed as such to the public in the Draft EIR: undisclosed impacts to the CVMSHCP’s habitats, species, and ecological processes.

4. “Feasible mitigation ‘considerably different’ from that proposed in the DEIR [such as an an obvious Alternative] which would clearly lessen significant project effects” to biological resources (preserving Montgomery Creek as a natural stream), but which the project Proponent declined to analyze or adopt.

Therefore, the Wildlife Agencies request that the City recirculate the Draft Environmental Impact Report once the requested additional analyses have been prepared for disclosure to the permitting agencies and the public, the requested additional mitigation measures have been added to the project, and all of these substantial modifications have been documented in the revised Draft EIR for review and comment by the citizens of California and interested public agencies. We recommend that the Applicant coordinate closely with the CVCC and Wildlife Agencies on measures to avoid impacts to sand transport ecosystem functions downstream in the CVMSHCP plan area.

We would like to acknowledge that we are aware that the City has tried to assemble adequate compensatory mitigation measures to offset the unavoidable environmental impacts of the proposed project and has incorporated some helpful minimization measures. Unfortunately, more work remains to be done to develop a project configuration and mitigation package which would adequately avoid and/or mitigate the project’s impacts on local and regional environment. The currently proposed project configuration would result in major harm to the Los Angeles pocket mouse. Apart from this, a number of significant new project impacts, substantially more severe

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effects of other impacts, and additional “feasible mitigation considerably different than proposed in the DEIR which would clearly lessen significant project impacts” on the biological resources in the area, have been identified in our analysis of the Draft EIR (as described, above, in this letter).

We appreciate the opportunity to comment on this DEIR. We look forward to continue working with the City of Banning and the Applicant on this project. If you have any questions or comments regarding this letter, or to schedule a discussion of mitigation options, please contact Heather Patt of the Department at (858) 395-9692, or James Thiede of the Service at (760) 322-2070, extension 419.

Sincerely,

KARIN CLEARY-ROSE

for
Kernon A. Corey
Assistant Field Supervisor
U.S. Fish and Wildlife Service

Leslie MacNair
Regional Manager
California Department of Fish and Wildlife

cc: Charles Landry, Regional Conservation Authority
Michael Flores, California Department of Fish and Wildlife
Tom Kirk, Coachella Valley Conservation Authority

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A6. Response to Comments from the U.S. Fish and Wildlife Services/California Department of Fish and Wildlife (USFWS/CDFW), Kennon A. Corey, USFWS Assistant Field Supervisor, and Leslie MacNair, CDFW Regional Manager, dated August 5, 2016.

A6-1 The burrowing owls (*Athene cunicularia hypugaea*) and active burrows were found in the small valleys and rolling hills between Pershing and Montgomery Creeks. There are 23 suitable burrowing owl burrows in the grassland and agricultural fields mainly in the center of the project site, and 11 owls were observed at the active burrow locations. Within the 831-acre Western Riverside County MSHCP Burrowing Owl Survey Area, there are 700.5 acres of suitable burrowing owl habitat. Of the 700.5 acres of habitat, 45.2 acres encompassing Planning Area 17 (southeast portion of the project site), Pershing and Smith Creeks, and a 100-foot minimum average/50-foot minimum no-disturbance buffer along the creeks would be avoided. Overall, 655.3 acres of suitable habitat would be affected.

The comment incorrectly states that the 50-foot buffer along the creeks would allow recreational activities (e.g., multipurpose trails that allow leashed dogs). The project would develop a 100-foot minimum average/50-foot minimum no-disturbance buffer immediately adjacent to the avoided and undeveloped Smith and Pershing Creeks and an additional designated area adjacent to the no-disturbance buffer in which trails and recreational activities (e.g., walking leashed dogs) would be allowed. Therefore, the 100-foot minimum average/50-foot minimum buffer immediately adjacent to the creeks would not allow recreational activities, and humans and dogs would not be within the buffers. Thus, the 45.2-acre avoidance area would be available to burrowing owls for foraging and burrowing, and the disturbance footprint is accurately described in the DEIR as 655.3 acres.

The comment states that the burrowing owl pre-construction phase survey requirements (Mitigation Measure 4-1) detailed in the DEIR are not considered adequate mitigation. This is belied by the stated purpose of the pre-construction surveys, which is to determine those burrowing owls that have persisted on the project site during the multi-year drought and despite the cessation of grazing activity on the site and to document their exact locations. The surveys are designed to determine where on the project site burrowing owls occur before project construction begins so that relocation of burrowing owls on the project site can be effectively planned and implemented to avoid and minimize impacts to individual owls. The mitigation measure requiring pre-construction survey and, if owls are present, development of a relocation plan, match the MSHCP requirement to conduct, within 30 days prior to disturbance, pre-construction presence/absence surveys for burrowing owl within the MSHCP-defined burrowing owl survey area where suitable habitat is present (MSHCP Table 9-2). Passive relocation is authorized when owls are present outside of the nesting season.
Objective 5.2 of the MSHCP Table 9-2, Species Conservation Objectives for Burrowing Owl, states that if a site has three or more pairs of burrowing owls, has more than 35 acres of suitable habitat, is not within Criteria Cell, and is non-contiguous with MSHCP Conservation Area lands, then at least 90 percent of the area with long-term conservation value and burrowing owl pairs must be conserved on site until Burrowing Owl Conservation Objectives 1 through 4, as identified in Table 9-2 of the MSHCP, have been met.

Based on research cited in the 2012 CDFW Staff Report on Burrowing Owl Mitigation, foraging typically occurs within 1,230 feet of the nest or 35 acres of suitable foraging habitat during the breeding season.

The City of Banning submitted a Determination of Biologically Equivalent or Superior Preservation (DBESP) package to the RCA and the wildlife agencies an Amendment to MSHCP Consistency and Determination of Biologically Equivalent or Superior Preservation Report (LSA, August 2016) (“Amendment to the DBESP”) on August 16, 2016, initiating the 60-day DBESP review process. Since the project would impact burrowing owl–occupied habitat, the habitat mitigation measures for burrowing owl would consist of preserving suitable habitat and habitat this is reported to be occupied at Mitigation Sites 1 and 2 (see Figures 3, 4, and 5 in Appendix A of this FEIR). Impacts to grassland habitat on the project site encompass 655 acres, within which 11 owls were observed in the portion of grassland habitat north of Smith Creek and northeast of Pershing Creek.

There are 570 acres of grassland and sparsely vegetated scrub habitat within the proposed mitigation area. These 570 acres of burrowing owl habitat could support as many as 16 owls based on average extent of burrowing owl foraging territory, as described in the 2012 CDFW Staff Report and MSHCP species guidelines. As described in the Amendment to the DBESP, preservation of the suitable burrowing owl habitat within the mitigation sites would be equivalent mitigation due to the similarity of habitats, including grassland and sage scrub vegetation communities. Burrowing owl locations were in Smith Creek and the floodplain northwest and southeast of Mitigation Sites 1 and 2 (see Amendment to the DBESP, Figure 5), and the Mitigation Site are located between other known occurrences of the species in the MSHCP and the Coachella Valley MSHCP. The riparian/riverine habitat mitigation (Mitigation Measures 4-5 and 4-6) would also be complementary mitigation to serve the habitat needs for the burrowing owl through the Federal Clean Water Act (CWA) Section 404 and California Fish and Game Code Section 1602 permit process.

In summary, conservation of the 965-acre mitigation area identified in the Amendment to the DBESP (Appendix A of this FEIR) would result in an overall MSHCP conservation area design and configuration that is biologically equivalent to avoiding 90 percent of the burrowing owl habitat on the project site. Implementation of mitigation
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requiring pre-construction surveys and relocation, as appropriate, and conservation in perpetuity of up to 965 acres, including 570 acres of suitable and occupied burrowing owl habitat, reduces the project’s impacts to less than significant.

A6-2 The EIR does not anticipate that burrowing owls would not be found on the project site; as noted above, surveys are intended to both determine whether owls have persisted on the site as well as locate where the species are on the project site prior to the start of construction. Survey and mitigation measures comply with the measures required by the MSHCP.

The comment also suggests that the site may be conveyed to the MSHCP Conservation Area and should maintain its existing condition prior to Reserve Assembly. The wildlife agencies have not identified any funding to purchase the project site or develop a conservation bank, and proposed project alternatives do not include conveying the project site to the MSHCP Conservation Area for addition to the MSHCP Reserve System or developing the project site as a mitigation bank. Using the site solely or mostly for conservation purposes would fail to meet the project’s objectives, which include providing a wide range of housing opportunities and developing a master planned community that reflects the fundamental land use principles, policies, and objectives of the City of Banning General Plan.

A6-3 Contrary to the commenter’s interpretation, the text in the DEIR was not meant to imply that the City or the applicant expects that the cost of avoiding take of burrowing owls and mitigation for take would be absorbed by the wildlife agencies. The project applicant is solely responsible for any costs associated with translocation and monitoring of burrowing owls implemented as mitigation for project impacts. Mitigation Measure 4-1 has been revised to make it clear that the total costs of translocation, tracking to establish new breeding pairs, and monitoring will be the responsibility of the project applicant (see Section 3, Revisions to the Draft EIR).

A6-4 The Amendment to the DBESP is incorporated into the FEIR as Appendix A and presents a detailed mitigation plan that satisfies the equivalency and consistency requirements of the MSHCP for impacts to covered species and habitats resulting from implementation of the project. The onsite and offsite mitigation identified in the DEIR, DBESP, and the Amendment to the DBESP establishes biological equivalency for impacts to burrowing owl, Los Angeles pocket mouse, and riparian/riverine resources and sets forth the project proposal to accomplish the following: (a) avoiding impacts, (b) minimizing impacts, (c) rectifying impacts through restoration, (d) reducing impacts via preservation, and (e) compensating for unavoidable and significant impacts by providing substitute resources.

1 The quoted mitigation measure now reads, “Total costs for the management associated with translocation, tracking to establish a new breeding pairs, and for monitoring will be the responsibility of the project applicant and shall be discussed between the project applicant and the regulatory agencies.”
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The Amendment to the DBESP also describes onsite preservation of an area encompassing the entire Pershing Creek and Smith Creek US Army Corps of Engineers and CDFW jurisdictional areas. In addition to this avoidance area, the applicant has reviewed the land plan and can commit to compliance with a condition of approval that requires a larger natural buffer than proposed in the DEIR, which averages a minimum of 100 feet (50-foot minimum) in width over the length of both creeks throughout the project site. This area would be protected from development and conserved in perpetuity in its natural condition (the “Creek Conservation Area”). This would generally result in protection of Pershing and Smith Creeks and their associated 100-year flood plains.

The proposed mitigation area is 965 acres, consisting of two mitigation sites of 760 and 205 acres, respectively. The mitigation area offers a unique opportunity to conserve a large block of habitat for burrowing owl and Los Angeles pocket mouse, as well as a large portion of Smith Creek, in the MSHCP-Coachella Valley MSHCP Special Linkage Area.

In addition to the offsite mitigation area identified and described in detail in the Amendment to the DBESP, the City has provided to the applicant at the request of the RCA information regarding the Silverado Conservation Band, which offers up to 300 in-lieu fee credits for impacts to MSHCP-Covered species.

The comment also states that the project is required to complete all of its MSHCP implementation before the FEIR is certified. The City has the authority to condition project approvals on compliance with the terms of the DBESP and to certify the EIR before the wildlife agencies complete review of the DBESP. Additionally, according to the MSHCP, take authorization for third parties is not effective until the City issues a grading permit. The City has the authority and shall condition its project approvals (i.e., certification of the FEIR) on the project’s incorporation and satisfaction of any additional conditions required by the wildlife agencies in association with the DBESP review process. For this reason, it is not necessary for the City to delay certification of the FEIR while waiting for the separate DBESP process to be complete.

Further, the comment states that the DEIR should be recirculated with a burrowing owl mitigation strategy. However, recirculation of the DEIR is not required, because factors under CEQA Guidelines Section 15088.5 have not been triggered. Section 15088.5 requires that the lead agency recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the DEIR for public review. “Significant new information” requiring recirculation includes, for example, a disclosure showing that:

1. A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
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2. A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

3. A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it.

4. The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Notably, recirculation is not required where the new information added to the EIR merely clarifies or amplifies. The Amendment to the DBESP, included as Appendix A of this FEIR, provides clarification about the extent and type of onsite and offsite mitigation as well as the location, acreage, vegetation communities, and species’ habitat at the proposed offsite 965-acre mitigation area. Specifically, it describes 10.8 acres of onsite restoration of riparian habitat through habitat enhancement and establishment within Pershing and Smith Creeks—3.0 acres of nonnative trees would be eradicated and 7.8 acres of seeding and cuttings planting area would reestablish cottonwoods and willow riparian scrub. The offsite mitigation is identified as two mitigation sites, 760 and 205 acres, respectively, within the MSHCP-Coachella Valley MSHCP Special Linkage Area, an area of local, regional, and statewide conservation importance. The 965-acre offsite mitigation area would provide up to 570 acres of burrowing owl habitat and 507 acres of Los Angeles pocket mouse suitable and occupied habitat equivalent in type and quality to that of the project site.

A6-5 The project would preserve 77.7 acres of Los Angeles pocket mouse (LAPM) habitat on the project site. The EIR has been corrected to remove this discrepancy (see Section 3, Revisions to the Draft EIR).

A6-6 As stated above in response to Comment A6-1, the total buffer adjacent to the preserved creeks as described in the DEIR was 100 feet, with a minimum 50-foot no-disturbance zone. As shown on Figure 5 in Appendix B of the Amendment to the DBESP (see Appendix A of this FEIR) and as discussed at the DBESP meeting at the RCA on August 18, 2016, most of the floodplain is avoided by the project. The designated open space in Planning Area 17 in the southeastern portion of the site is adjacent to and outside of the floodplain, and is occupied by LAPM. To further respond to RCA’s concerns, as agreed in the August 18, 2016 meeting at the RCA, the applicant has agreed to prepare a detailed buffer/trail map showing in greater detail the placement of trails within the designated linear parks to show refugia opportunities outside of the floodplain for LAPM and other wildlife species such as the burrowing owl to ensure persistence of the species onsite. While this exercise is not yet completed, the applicant has now confirmed that a natural open space, no-disturbance buffer that is a minimum
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of 50 feet in width and that averages 100 feet in width (the Creek Conservation Area) would be provided for Smith and Pershing Creeks within the project site.

The Creek Conservation Area, including the jurisdictional areas of the creeks and the buffer areas, would be conveyed in fee title to the RCA, and/or protected through deed restriction(s), conservation easement(s), or similar instruments offered for dedication in favor of the RCA or a qualified easement holder, and managed for long-term habitat and open-space purposes by a qualified land management entity. See also response to Comment A6-16.

A6-7 Indirect impacts to wildlife species associated with increased human activity, including predation and disturbance by pets and predator species, and mitigation measures to address indirect impacts are discussed in the DEIR on pages 5.4-40 through -41 (general description and examples of indirect impacts) and page 5.4-57 (mitigation measure to address encroachments from linear parks and adjacent development in the preserved Smith and Pershing creeks); Appendix D on page D-72 (general discussion and examples of project indirect effects); and Appendix E on page E-34 (general), E-38 (riparian birds), E-40 (burrowing owl), E-41 (LAPM), and E-44 through -45 (MSHCP construction guidelines and best management practices designed to reduce indirect impacts resulting from construction activities). Mitigation Measure 4-11 also specifies:

The following measures shall be implemented to mitigate potential impacts of encroachments—such as light, pets, and invasive plant species—from the Smith Creek and Pershing Creek linear parks and proposed adjacent developments to the Creek Conservation Area:

- During project construction and project operation, lighting shall be directed away from the creeks.
- During project operation, pets shall be required to be on leash at all times in the linear parks along Smith Creek and Pershing Creek, as well as in natural open space areas within the Specific Plan site.
- During project design and project operation, native vegetation shall be used in the Smith Creek and Pershing Creek linear parks to provide wildlife movement, cover, and screening.

Contrary to the comment’s suggestion, the EIR addresses and proposes mitigation to reduce the effects of increased human presence, pets, and human-associated predators within and along the Creek Conservation Area, and does not require recirculation to address indirect effects.

A6-8 The wildlife agencies suggest that the project site should be considered in whole or in part for conservation. The MSHCP does not identify the project site as being within a
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criteria cell or otherwise appropriate for addition to the Reserve or inclusion in a Conservation Area, and does not identify the project site as a key special linkage or wildlife corridor. The wildlife agencies have not identified any funding to purchase the site or develop a conservation bank and the MSHCP is not likely to be a source of funding for that purpose because the MSHCP priority is assembly of the Reserve System, and the project site is not identified for inclusion in the Reserve System. Further, the proposed project alternatives do not include conveying the project site to the MSHCP Conservation Area for addition to the MSHCP Reserve System or developing the project site as a mitigation bank. Using the site solely or mostly for conservation purposes does not contribute to the Reserve System assembly and would fail to meet the project’s objectives, which include providing a wide range of housing opportunities and developing a master planned community that reflects the fundamental land use principles, policies, and objectives of the City of Banning General Plan.

A6-9 See response to Comment A6-8.

The extent of suitable grassland, desert scrub, and alluvial sage scrub totals 507 acres within the 965 acres of proposed potential off-site habitat mitigation area (1.4:1 mitigation ratio). As described in the Amendment to the DBESP, preservation of 273 acres of suitable habitat within the MSHCP small mammal survey area plus an additional 335 acres of suitable LAPM habitat within the mitigation sites would be equivalent mitigation due to the similarity of habitats, including Smith Creek, over 125 acres of grassland and desert scrub and 203 acres of sage scrub/chaparral vegetation communities, with the California Natural Diversity Database records for LAPM. The riparian/riverine habitat mitigation (Mitigation Measures 4-5 and 4-6) preserved on these sites through the Federal Clean Water Act (CWA) Section 404 and California Fish and Game Code Section 1602 permit process would also be complementary mitigation to serve the habitat needs for the LAPM as well as burrowing owl.

In summary, conservation of the 965-acre mitigation area identified in the Amendment to the DBESP (see Appendix A of this FEIR) would result in an overall MSHCP conservation area design and configuration that is biologically equivalent to avoiding 90 percent of the LAPM habitat on the project site. Through avoidance and preservation of Smith and Pershing creeks and the majority of the adjacent floodplain with access to upland refugia, and conservation in perpetuity of up to 965 acres, including 507 acres of suitable and occupied LAPM habitat, project impacts would be reduced to less than significant levels.

A6-10 Mitigation Measure 4-3 specifies measures to avoid and minimize impacts to LAPM and Stephen’s kangaroo rat (SKR). The comment suggests revising the measure to make it more specific and enforceable. Mitigation Measure 4-3 is revised to include the suggested specificities (see Section 3, Revisions to the Draft EIR). Additionally, MSHCP
Appendix C, Standard Best Management Practices, lists project design features (PDF 4-20 et seq.), and include such measures as:

- The footprint of disturbance shall be minimized to the maximum extent feasible. Access to sites shall be via preexisting access routes to the greatest extent possible (PDF 4-22).

- The upstream and downstream limits of project disturbance plus lateral limits of disturbance on either side of the stream shall be clearly defined and marked in the field and reviewed by the biologist prior to initiation of work (PDF 4-23).

- Projects should be designed to avoid the placement of equipment and personnel within the stream channel or on sand and gravel bars, banks, and adjacent upland habitats used by target species of concern (PDF 4-24).

A6-11 See response to Comment A6-9.

A6-12 See response to Comment A6-4.

A6-13 The comment correctly notes that of the 26.3 acres of riparian/riverine that would be permanently impacted by the project, 0.06 acres of mule fat scrub and 0.39 acres of individual trees within the streambed are riparian habitat. The balance of the impacted area consists of 25.85 acres of riverine habitat (i.e., upland sage scrub, Riversidean alluvial sage scrub, and unvegetated streambed). For distribution and type of trees/shrubs, see Figure 5, Location of Riparian Trees/Shrubs Impacted and Avoided, in Appendix B of the Addendum to the DBESP Report (Appendix A of this FEIR).

A6-14 The comment correctly recounts the mitigation commitments and performance standards detailed in Mitigation Measure 4-6. The Amendment to the DBESP (Appendix A of this FEIR) identifies two potential mitigation sites totaling 965 acres within a Special Linkage Area within the boundaries of the MSHCP Plan. Appendix A to the DBESP Report documents combined onsite and offsite restoration and preservation at a 3:1 mitigation ratio for impacts to CDFW-jurisdictional resources and riparian/riverine resources within the MSHCP. For further discussion, see response to Comment A6-9 and Amendment to the DBESP, which documents over 107 acres of CDFW streambeds/MSHCP riparian/riverine available for preservation within the identified 965-acre mitigation area.

A6-15 In response to the comment's recommendations, the Creek Conservation Area encompassing the entire Pershing Creek and Smith Creek Corps and CDFW jurisdictional areas, together with a larger natural, no-disturbance buffer than proposed in the DEIR averaging a minimum of 100 feet (50-foot minimum) in width over the length of both creeks throughout the project site, would be protected from development and conserved in perpetuity in its natural condition (Creek Conservation
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Area). Avoiding improvements within and conserving the Creek Conservation Area would generally result in protection of Pershing and Smith creeks and their associated 100-year flood plain areas, except in the southeastern corner of the project site where Montgomery Creek and Gilman Channel currently converge with Smith Creek.

To address the concerns raised in the comment regarding avoidance of the Creek Conservation Area, the Specific Plan and tentative tract map would be conditioned expressly upon avoiding all construction activity and facilities, including park, drainage, flood control, and bank stabilization improvements, within the Creek Conservation Area other than: (1) very localized areas of riprap at up to 18 water quality treatment retention/detention basin outfalls shown on the Drainage Master Plan (Figure 3-10 of the DEIR), as required to stabilize and prevent erosion within the creeks at the outfalls; (2) four localized areas of riprap at the base of the bridge abutments for both the Sunset Avenue and B Street bridges, which shall be constructed to span the Corps and CDFW jurisdictional areas within Pershing Creek (see only “B Street Cross Section” of Exhibit 2-4D in the Specific Plan) to assure bank stabilization to support the bridge abutments in a manner that protects public health and safety; and (3) the on-site wetland restoration work to increase the vegetation and wetland function and value of the Creek Conservation Area as described in the Amendment to the DBESP. All linear park trails, trailheads, rest areas, and landscaping required by the Specific Plan to be located within the Pershing Creek and Smith Creek linear parks and Planning Area 17 would be constructed outside and upslope of the Creek Conservation Area. Based on these development restrictions, the Creek Conservation Area would be avoided with only limited exceptions and would remain conserved open space in perpetuity.

To implement and assure adequate enforcement of these development restrictions augmenting avoidance of the Creek Conservation Area:

4. Specific Plan Sections 2.3.1, 2.3.3, 2.5.4, 2.8-3 and 3.3.7, and Exhibits 2-4D, 3-15, 3-16A and B are amended to provide that the Creek Conservation Area within Planning Areas 15-A, 5-B, and 17 shall remain natural open space, and no work or development shall be permitted within the Creek Conservation Area except:

a. localized areas of riprap at up to 18 water quality treatment retention/detention basin outfalls shown on the Drainage Master Plan (Figure 3-10 of the DEIR), as required to stabilize and prevent erosion within the creeks at the outfalls;

b. up to four localized areas of riprap at the base of the bridge abutments for both the Sunset Avenue and B Street bridges, which shall be constructed to span the Corps and CDFW jurisdictional areas within Pershing Creek (see only “B Street Cross Section” of Exhibit 2-4D in the Specific Plan) to assure bank stabilization to support the bridge abutments in a manner that protects public health and safety; and
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c. the proposed on-site wetland restoration work to increase the vegetation and wetland function and value of the Creek Conservation Area as described in the Amendment to MSHCP Consistency and DBESP (LSA August 2016).

5. The following condition would be added to the Tentative Tract Map, which would govern future approvals of the final tract map for the proposed project:

Open Space Numbered Lots 34, 35, and 37, which shall be configured to constitute and fully encompass the Creek Conservation Area, shall be subject to the following Tentative Tract Map condition to ensure they are avoided and maintained in natural open space with only limited exceptions:

a. Prior to recordation of each phase of the final tract map, a deed restriction, conservation easement, or similar instrument running with the land shall be offered for dedication and recordation, requiring conservation of Open Space Numbered Lots 34, 35, and 37 in natural open space, free of all landscaping, park, bank stabilization, drainage facilities, flood control facilities, and other constructed improvements of any type, except for and subject to:

i. Construction and maintenance of up to 18 localized areas of riprap as required to stabilize and prevent erosion within the Creek Conservation Area at the retention/detention basin outfalls, generally in the location and configuration shown on the Drainage Master Plan (Figure 3-10 of the DEIR);

ii. Construction and maintenance of up to four localized areas of riprap at the base of the bridge abutments for both the Sunset Avenue and B Street bridges, which shall be constructed to span the Corps and CDFW jurisdictional areas within Pershing Creek (see only “B Street Cross Section” of Exhibit 2-4D in the Specific Plan) to assure bank stabilization to support the bridge abutments in a manner that protects public health and safety; and

iii. Construction, planting, management and maintenance activities associated with the on-site wetland restoration work proposed to increase the vegetation and wetland function and value of the Creek Conservation Area as described in the Amendment to the DBESP.

Smith and Pershing Creeks and the buffer zone would be conveyed to a public agency, such as the City of Banning or the RCA. The Creek Conservation Area would be protected through an offer to dedicate fee title, deed restriction(s) or conservation easement(s) in favor of qualified entities, such as RCA, and managed for long-term habitat and open-space purposes by a qualified land management entity. Assuming the RCA would take a protective ownership interest in the Creek Conservation Area, the
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City has committed to including a condition in the project’s development agreement specifying that the applicant is to dedicate such an interest in the Creek Conservation Area to the RCA before recordation of the phase of the final map that includes those lots. Such a development agreement provision would further protect the Creek Conservation Area from improvements that may inhibit the habitat and waters functions and values of the preserved areas.

A6-16

See response to Comment A6-15.

Additionally, the Rancho San Gorgonio Specific Plan includes several project design features requested by the comment: habitat and stream bank restoration planting and signage (Specific Plan Section 3.3.7); landscape buffers of 10 to 15 feet (Exhibits 3-16A and 3-16B); and a 54-inch, three-rail PVC trail fence (Exhibits 3-22 and 3-23(F)) would be used to limit public access to the no-disturbance zones of the linear parks and the preserved creeks. Access to Planning Area 17, which consists of 25.7 acres of designated and preserved open space adjacent to the southeastern portion of Smith Creek, would also be restricted with a minimum six-foot view fence as identified on Exhibit 3-22 and described in Exhibit 3-23B Detail D of the proposed Specific Plan.

A6-17

The comment requests consideration of an alternative that avoids filling and undergrounding Montgomery Creek. The DEIR considered a reasonable range of alternatives to the proposed project as mandated by CEQA that would “feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen any significant effects of the project, and evaluate the comparative merits of the alternatives” (CEQA Guidelines Section 15126.6). The DEIR alternatives included a No Project Alternative, Existing General Plan Alternative, and a Reduced Density Alternative (Chapter 7 of the DEIR). As the comment correctly notes, the project considers and adopts avoidance of two onsite creeks, Pershing and Smith; avoidance of Montgomery Creek was considered and rejected as a CEQA alternative because it would “reduce the total developable area contiguous with the existing infrastructure and existing urban development adjacent to the northern portion of the project site along Westward Avenue” (Page E-34 of Appendix E in the DEIR). The comment’s observation that the DBESP’s rationale was “oversimplified and exaggerated” demonstrates a failure to recognize that reductions in the total developable area involves more than reductions to the number of dwelling units. Reductions also include elimination of developable land, roads and other infrastructure, amenities, community features, and residences.

Furthermore, the DBESP considers an alternative to piping and undergrounding Montgomery Creek that would retain certain characteristics of Montgomery Creek in its existing condition (i.e., avoidance): using an open earthen channel within the proposed storm drain easement (Page E-36 and Figure 9 of Appendix E in the DEIR). It is anticipated that this alternative would be further analyzed in the DBESP, and in the
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CWA Section 404(b)(1) alternatives process. Avoidance negotiated in the CWA Section 404 and California Fish and Game Code Section 1602 permit processes may provide further avoidance or minimization of impacts to Montgomery Creek, but the analysis conducted to date for purposes of identifying a reasonable range of alternatives that meet the objectives for the project under CEQA does not indicate that it is feasible to avoid Montgomery Creek and attain identified project objectives.

As described in the Encompass Associates, Inc. technical memorandum dated August 16, 2016 and outlined below, the project does not measurably reduce the sediment supply downstream of the project, and does not change flow characteristics for the onsite creeks appreciably; therefore, there would be a negligible impact on sediment transport to downstream areas, including the San Gorgonio River, as a result of the proposed project. Because impacts to sediment transport downstream into the Coachella Valley MSHCP would be less than significant, it is not necessary to conduct a fluvial/aeolian sediment transport study; nor is it necessary for the applicant to consult with the Coachella Valley Conservation Commission regarding project impacts to the Coachella Valley MSHCP.

In the existing condition, Smith and Pershing creeks accept the vast majority of project site runoff and have the largest undeveloped tributary area. The area of the project site draining to Smith and Pershing creeks and tributaries that drain to those creeks in the existing condition is not a significant source for sediment, as it is substantially covered by mature grasses, which stabilize and hold soil in place. Further, the 830 acre stabilized project site is only a small portion of the watershed contributing sediment to the downstream reaches in the San Gorgonio River and its tributaries in the Coachella Valley MSHCP Plan area. Accordingly, development of impervious surfaces on the project site in connection with the project is not anticipated to significantly reduce the sediment supply tributary to Smith and Pershing Creeks.

In the existing condition, Montgomery and Gilman Creeks are already channelized and lined or piped through the areas in the City of Banning upstream of the project site. In addition, the majority of the tributary area contributing runoff to these channelized creeks is developed with impervious area, and the remainder is stabilized due to growth of mature grasses. Accordingly, these creeks are not contributing significant sediment loads at the point of confluence with Smith Creek or downstream of that confluence.

With respect to mobilization of in-stream sediments, hydrologic and water quality best management practices (e.g., swales and infiltration/detention basins) specified for implementation as a part of the project in the preliminary Water Quality Management Plan would substantially maintain existing predevelopment condition creek flow volumes, rates, and durations, including the existing flow characteristics critical to in-stream sediment transport within Smith and Pershing creeks. Further, the Smith and Pershing Creek channels would be unchanged because the project proposes to maintain...
the current, unarmored, and natural channel conditions for both creeks in the post-
development condition. Because channel and flow characteristics for Smith and Pershing
creeks would not be appreciably changed by the project, in-stream sediment transport
from the creeks to downstream areas, including the San Gorgonio River, are not
expected to decrease or otherwise change in a significant manner.

The project's hydrologic and water quality best management practices would also
substantially maintain existing pre-development condition flow characteristics for flows
from Montgomery and Gilman Creeks into Smith Creek. Therefore, piping of
Montgomery and Gilman Creeks through the project site would have a negligible impact
on sediment transport to downstream areas because sediment supply and in-stream
sediment transport conditions are not substantially impacted by channelizing the
unimproved portions of those creeks within the project site.

For all of these reasons, the project's impacts on sand and sediment fluvial transport
downstream to the San Gorgonio River, fluvial/alluvial transport of sand into the
Coachella Valley MSHCP's Fluvial San Transport Essential Ecological Process Area, and
delivery of sand to the Coachella Valley MSHCP sand deposition areas in the Cabazon
Conservation Area, Snow Creek/Windy Point Conservation Area, and Whitewater
Floodplain Conservation Area would be less than significant.

A6-19 Comment acknowledged.

A6-20 The white-tailed kite nest on the project site is in a cottonwood tree in the middle of
Pershing Creek. The tree would be preserved as a part of the native tree/riparian
preservation of the Creek Conservation Area. The location of the tree within the
preserved area, combined with signage, fencing, and buffering vegetation along the no-
disturbance buffer and linear park adjacent to the creek, would minimize indirect adverse
effects of project operations and would not result in the unlawful take of the white-
tailed kite (also see response to Comment A6-16). Note that recreational uses along the
creek, outside of the no-disturbance buffer area, would also be restricted to passive uses;
no motorized vehicles would be allowed.

The project would implement extensive construction design guidelines and best
management practices prescribed by and in compliance with the MSHCP, as described in
Sections 5.9 and 5.10 of the DBESP (Appendix E of the DEIR), and Project Design
Features 4-2 (pre-construction nesting bird surveys and restrictions on work in riparian
areas during the breeding season) and 4-3 (nest surveys and mandatory buffers) in the
DEIR, thus reducing construction-related project impacts to less than significant.
Permanent loss of foraging habitat would be mitigated through conservation of up to
965 acres of foraging habitat at Mitigation Sites 1 and 2 (see response to Comment A6-9).
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The protection in perpetuity of the Creek Conservation Area together with implementation of the extensive construction design guidelines and best management practices in compliance with the MSHCP assures that no “take” of the Fully Protected Species or any species protected under the Migratory Bird Treaty Act (MBTA) by a future resident would occur or render the project applicant in violation of those statutes or vulnerable to legal penalties thereunder or other similar state environmental laws. See *U.S. v. CITGO Petroleum Corp.*, 801 F.3d 477 (5th Cir. 2015), for an unlawful take to occur under the MBTA, the defendant must have undertaken a “deliberate act done directly and intentionally to migratory birds”; *City of Sausalito v. O’Neill*, 386 F.3d 1186 (9th Cir. 2004), habitat modification does not constitute MBTA violation; *Protect our Communities Foundation v. Salazar*, 2013 WL 5947137, at *18 (S.D. Cal. 2013) (citing *Seattle Audubon Soc’y v. Evans*, 952 F.2d 297 (9th Cir. 1991)), “[i]n interpreting the word “take” in the MBTA, the Ninth Circuit stated that the definition of “take” in the MBTA was limited to conduct engaged in by hunters and poachers.”

**A6-21**

Golden eagles live in open and semi-open country featuring native vegetation across most of the northern hemisphere. They avoid developed areas and uninterrupted stretches of forest. They are found primarily in mountains up to 12,000 feet, canyonlands, rim rock terrain, and riverside cliffs and bluffs. Golden eagles nest on cliffs and steep escarpments in grassland, chaparral, shrubland, forest, and other vegetated areas. The closest recorded nest is approximately four miles from the project site (2008); the project site does not offer golden eagle nesting habitat.

One golden eagle was observed foraging on the project site during one site visit in August 2012 by the project biologist. Despite over half a dozen visits to the project site over several years, and substantial survey and habitat assessment work, no other golden eagle observations have occurred. As described in the DEIR, the site provides raptor and golden eagle foraging habitat. No active eagle nests were observed. For the loss of approximately 655 acres of nonnative grassland on the project site, the proposed mitigation site would preserve in perpetuity up to 965 acres of eagle and other raptor foraging and nesting habitat in Mitigation Sites 1 and 2 (see response to Comment A6-9).

**A6-22**

Spadefoot toad tadpole was observed at a single location on the project site, as depicted in the attached figure. Project impacts were determined to be less than significant because the project would meet the MSHCP conditions to protect and conserve riparian/riverine areas within the MSHCP Plan Area as follows:

- Protect onsite 47.4 acres riparian/riverine habitat within the Creek Conservation Area
- Restore onsite 10.8 acres of native trees, riparian scrub, and alluvial sage scrub
- Offsite protection of Smith Creek (65.1 acres)
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- Three acres of offsite enhancement of alluvial sage scrub and riparian scrub along disturbed stream banks and streambeds

- Offsite mitigation includes creating ponding conditions within the mitigation area

See Amendment to the DBESP, Figure 3

A6-23 Mitigation Measure 4-7 is revised in Section 3, Revisions to the Draft EIR, and includes the additions and revisions recommended in the comment.

A6-24 Mitigation Measure 4-9 is revised to include the suggested planting recommendations from the comment (i.e., for each removed tree, replace with 15 one-gallon saplings instead of one 36-inch boxed specimen, and replacing native riparian trees with saplings of native riparian species that occur naturally in the San Gorgonio Pass) (see Section 3, Revisions to the Draft EIR).

A6-25 The comment incorrectly references Mitigation Measure 4-7. The mitigation related to nesting birds, including raptors, is Mitigation Measure 4-10. This mitigation measure has been revised based on the wildlife agencies’ suggestions (see Section 3, Revisions to the Draft EIR).

In addition to Mitigation Measure 4-10, the project would implement extensive construction design guidelines and best management practices to avoid and minimize impacts to nesting birds and raptors during construction. As prescribed by and in compliance with the MSHCP and as described in the Sections 5.9 and 5.10 of the DBESP and in the DEIR, Project Design Features 4-2 (raptor and nesting bird surveys and restrictions on work in riparian areas during the bird breeding season) and 4-3 (nest surveys and mandatory buffers) would reduce construction-related project impacts to nesting birds and raptors to less than significant levels. See also responses to Comments A6-20 and -21.

A6-26 See response to Comments A6-8, -9, -18, -20, -21, and -22.

A6-27 The comment states the applicability of California Fish and Game Code Section 1602 to the project, which requires the developer to comply with the CDFW Lake and Streambed Alteration program. The City concurs that the project must obtain a Section 1602 Streambed Alteration Agreement.

A6-28 As correctly noted in the comment, a jurisdictional delineation was provided in Appendix D of the DEIR, and the table quantifying the drainage impacts on the project site is in Appendix C, Potential Impacts to Jurisdictional Waters, of the DBESP (Appendix E of the DEIR). Maps scaled to view the affected drainages and boundaries of the delineation have been provided to the wildlife agencies and are included in the FEIR.
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A6-29 Montgomery Creek is not within the MSHCP small mammal survey area. For this reason, surveys for LAPM were not conducted along Montgomery Creek; however, because LAPM were trapped along Smith and Pershing creeks in the project site, the DEIR impact analysis was based upon the presumption that all of Montgomery Creek and adjacent habitat is occupied by LAPM and assumed that all of Montgomery Creek and adjacent habitat is LAPM habitat (see Figure 5 of Appendix E in the DEIR). The applicant is compiling information about LAPM distribution in and along Montgomery Creek for the wildlife agencies and for submittal with a future Lake and Streambed Alteration notification.

A6-30 The area within Montgomery Creek north of the project site is generally of low quality habitat. The MSHCP does not identify the project site as being within a criteria cell or otherwise appropriate for addition to the Reserve or inclusion in a Conservation Area, and does not identify the project site as a key special linkage or wildlife corridor. The statements in the DEIR that “Montgomery Creek north of the site passes through the City of Banning as an engineered channel with concrete beds and banks and is undergrounded under and near the I-10. Those segments of Montgomery Creek do not provide cover for wildlife movement,” accurately represent the existing condition. There is an area between I-10 and the project site where Montgomery Creek is not channelized or undergrounded that the comment appears to be referencing. However, that area is expected to have relatively low suitability for LAPM and other wildlife due to the effects of existing development. The applicant is conducting a habitat suitability analysis of Montgomery Creek on the project site to respond to wildlife agency questions about the distribution of LAPM and will conduct additional analysis of vegetation conditions along Montgomery Creek north of the project site.

A6-31 See response to Comment A6-18.

A6-32 See response to Comment A6-9.

A6-33 See response to Comment A6-18.

A6-34 See responses to Comments A6-6, -7, -10, and -11.

A6-35 See response to Comment A6-17.

A6-36 See response to Comment A6-28. The applicant will submit a lake and streambed alteration notification to CDFW and provide all information necessary to complete the notification at a later date.

A6-37 See response to Comments A6-9. The City has the authority and shall condition its project approvals, i.e., certification of the FEIR, on the project’s incorporating and satisfying any additional conditions required by the wildlife agencies in association with
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In response to the listed items in the comment:

1. Contrary to the comment’s suggestion, the project would not have significant new environmental impacts not disclosed in the DEIR that would remain significant after mitigation. Specifically, as detailed in response to Comment A6-18, the project’s impact on sand habitats in the Coachella Valley MSHCP, and therefore to sand-specialist species and ecological processes, is less than significant. Additionally, the project is not expected to result in illegal take of white-tailed kite, as discussed in response to Comment A6-20, nor would it result in the loss of golden eagle foraging habitat for the reasons discussed in response to Comment A6-21.

2. There is no substantial increase in the severity of permanent indirect impacts to burrowing owl, LAPM, or white-tailed kite in the linear open space/recreational parks in and along Pershing and Smith creeks after project buildout. The DEIR analyzes and incorporates design features and mitigation measures to avoid and reduce indirect impacts to these species from increased human presence, disturbance/predation by pets, and predation by human-associated wildlife species, as detailed in responses to Comments A6-1, -4, -5, -6, -7, and -20.

3. The project’s impacts to the Coachella Valley MSHCP are less than significant, as detailed in response to Comment A6-18.

4. As outlined Appendix E (Sections 5.1.4 through 5.1.6) of the DEIR, preserving Montgomery Creek as a natural stream is not feasible mitigation because it fails to meet project objectives (see response to Comment A6-17). Even if preserving Montgomery Creek were considered as an alternative, it is not mitigation that is...
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“considerably different” from that proposed in the DEIR. The DEIR already includes mitigation that consists of avoiding two other onsite creeks, Smith and Pershing, and the DBESP discusses an open channel/soft-bottom design for Montgomery Creek within the storm drain right-of-way.

In summary, none of the conditions cited in the comment pertain to recirculation requirements under Section 15088.5. The information provided in the Amendment to the DBESP (see Appendix A of this FEIR) and these responses to comments do not constitute significant new information; this information clarifies and adds detail to the project’s impacts evaluation and mitigation proposal that is consistent with that already presented in the EIR and associated project documents.

The Amendment to the DBESP, included in this FEIR at Appendix A, provides a detailed discussion of proposed onsite and offsite mitigation, including identification of up to 965 acres of mitigation lands within two miles of the project site and within the MSHCP Special Linkage Area (see response to Comment A6-9). As explained in response to Comments A6-5 through A6-12, impacts to LAPM have been reduced to less than significant through compliance with MSHCP DBESP procedures and provide mitigation that is biologically equivalent to preserving 90 percent of the LAPM habitat on the project site. In addition to preserving over 77 acres of occupied LAPM onsite and implementing mitigation measures and project design features to avoid and reduce impacts associated with project construction and operations, the proposed mitigation area has over 500 acres of suitable LAPM habitat, including significant acreage within Smith Creek and the floodplain.
2. Response to Comments

LETTER O1 – Alvarez-Glasman & Colvin (5 pages)

Via E-Mail and US Mail

Brian Guillot, Community Development Director
City of Banning
Community Development Department
95 E. Ramsey Street
Banning CA 92220

August 3, 2016

Re: Comments from Banning Library District re Draft Environmental Impact Report (DEIR) for the Rancho San Gorgonio Specific Plan

Dear Mr. Guillot:

The Banning Library District (BLD) is in receipt of the Draft Environmental Impact Report for the Rancho San Gorgonio Specific Plan Project (the RSGSP or “the Project”). BLD is in strong support for the development of the San Gorgonio Specific Plan Project and believes that this Project will add to the housing stock and long term health of the City of Banning.

However, as proposed, the Project will significantly and adversely impact the Banning Library District unless mitigated. This letter conveys comments and recommendations concerning issues germane to BLD’s responsibility to provide library services within the City of Banning.

Currently, the BLD serves 12,150 persons within the District. The District currently has a library facility ("the Library") located at 21 Nicolet Street in the historical center of the City of Banning. The Library consists of a 9,583 s.f. building housing 62,300 volumes. The Library has a main reading room (3,113 s.f.), a teen reading area (570 s.f.), a computer lab with eighteen terminals, a children’s reading area (1,800 s.f.), a circulation desk, and administrative offices. The building capacity is 496 persons. The Library currently sees approximately 27,657 user per month.

The Project is located within the BLD boundaries, and will allow 3,133 to 3,385 new residential units to be built, resulting in an estimated increase of 9,038 persons to the population of the City of Banning at Project build out. This will amount to a 74.38% increase in the number of residents within the District.

Despite this increase in population, the conclusion provided in the Draft EIR is that the Project would have no significant impact on library services and the ability of the BLD to conduct its mission of providing library services. Such conclusion is misplaced.

Such conclusion is in error as the impact of increasing the City population by 9,038 persons would reduce the current level of service of the BLD by adding 75% more patrons to the current library district. The DEIR requires nothing from the developer to mitigate this impact. It is beyond logic that a 75% increase in the number of residents using a resource would be "less than significant".

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The appropriate threshold of significance for analysis is that the proposed project would be considered to have a significant impact on library services if the existing or planned facilities and supplies are not adequate to serve the County's future residents. Here, while the extent of planned facilities at the Project includes space that may be used for BLD, municipal, and/or school operations, no firm amount of space or amenity is provided in the project description or mitigation measures to bridge the gap in services created by this project from phase 1 through project build out. That analysis in the DEIR is flawed as it ignores the fact that the additional residents without increasing library resources will degrade the current ability of the BLD to effectively provide library services to existing residents.

Section 15.13.4. analyzes Library Services as part of the review of the Project on all Public Services in the area. The DEIR comes to the conclusion that, "No mitigation measures are identified, and impacts remain less than significant." (DEIR Section 15.13.4.8).

However, the prior section acknowledges that, "The current 9,583-square-foot library and its resources do not adequately serve the Banning and San Gorgonio Pass residents. Implementation of the proposed project would challenge existing resources." (DEIR Section 15.13.4.3).

The DEIR identifies BLD's proposed mitigation measure for this impact: "According to the Banning Library District, a net increase of 10,500 square feet would be needed to provide new collection items, expanded computer area, new communications equipment, meeting areas, and a historic collections area. The district states that a new library sited near new development south of I-10 would help the district meet current and future library demands and also provide additional library services (e.g., computer labs, research help, meeting rooms) to the student residents attending Banning High School and the Mt. San Jacinto College San Gorgonio Pass Campus (Paparian 2015)." (DEIR Section 15.13.4.3).

Such statement by the BLD is taken out of context; the estimate of an additional 10,500 feet was not to augment current levels of services. Rather, the statement by BLD was that if the project is built, then in order to maintain the current level of service additional space would be needed to be provided by the developer to maintain the status quo of library services in the community. There is nothing in the BLD statements that justifies a position that this Project would bring current BLD services, collections, or programming up to acceptable levels of services for the current population. To be clear, the BLD is only asking that the Project mitigate Project impacts. The DEIR identifies space within the Project which could be utilized to mitigate the impacts on BLD, "The additional community room spaces [in the Project as part of phase 5] would give the Banning Library District an opportunity to partner with nonprofit organizations and other community entities that can offer educational programs to benefit Banning's library patrons or provide rentable meeting spaces (e.g., guest lectures, book signings)." (DEIR Section 15.13.4.3). However, the lack of specificity as to how BLD would "partner" with other non-profit organizations and community entities does not allow for this vagary to act as a mitigation. Statements made by you in our telephone conversation on July 23 implied that the BLD would have to share facility space with the school district and the City, and that such space would need to be purchased from the developer. Such "partnering" does not amount to mitigating the impacts imposed by the developer on public library services, rather it merely is a means for the BLD to pay for space shared with two other entities. In short, such proposal is not appropriate mitigation.

The DEIR puts great weight in the BLD being able to mitigate the Project impacts by way of BLD's own tax assessment: "...Banning Library District is a California Special District and is primarily funded by
property tax revenue through the County of Riverside and a special property tax on residents in the district, which includes the future residents of the proposed project. Future project residents would be required to pay special property tax to the district.” (DEIR Section 15.13.4.3). However, such position is misplaced, and does not address the immediate impacts of adding residents to acknowledged already overburdened library facility.

Instead of mitigating the Project impacts, the DEIR instead attempts to argue that the current level of services is inadequate, and that though future taxation revenue from the Project will not remedy current deficiencies, it will somehow eliminate the acknowledged impacts of creating a 75% increase in the District population: “By [levying the library tax on future Project residents], existing library service deficiencies would not be resolved; however, future project residents would be required to pay special property tax to contribute towards the district’s funds and offset their individual impacts.” (DEIR Section 15.13.4.3). This argument misstates the current situation with the BLD (that there are deficiencies) and that it is up to the BLD to mitigate Project impacts. This simply is not the law under CEQA. The project proponent has the duty to mitigate project impacts and the Lead Agency has the responsibility to ensure that such impacts are not only honestly and accurately identified, but in fact mitigated.

Instead, the DEIR summarily concludes that, "project impacts on the Banning Library District would be less than significant.”

The following section – 5.13.4.4—again acknowledges that, the “[c]umulative population growth within the City associated with the proposed project and development pursuant to Rancho San Gorgonio Specific Plan would likely increase the demand for library services beyond the capacity of the existing Banning Library District. However, as stated above, the Banning Library District is a California Special District and is funded by a special property tax on residents within the District’s service boundary. Therefore, as new developments within the City occur, the special property tax would increase in rough proportion and contribute to an increase in the District’s funds.”

This is a fallacious argument as it ignores statements in the DEIR that the current level of service is inadequate. With that being the case, the impact of additional population will be felt immediately with new patrons further diminishing the level of service of the BLD. That is cumulative impact is not being addressed.

As for the tax imposed by the BLD, the BLD – not the EIR consultant and developer—is responsible for allocating revenues collected by the BLD through taxation methods to projects that the BLD independently sees as relevant. Nothing in California law allows an EIR consultant, let alone a City Council, dictate where funds under the management of an independent political body such as the BLD should be allocating revenues. If the logic presented in the DEIR is adopted, the mere fact that there is tax money revenue available to a government agency related to the project should in and of itself is an acceptable argument that the impact is thereby mitigated. Such is simply not the case, and the DEIR has not sufficiently analyzed the anticipated revenues to support such an argument that at ANY time in the future revenues from the Project would create a revenue stream to adequately fund mitigation for the impacts the Project will cause (i.e., adding 9,038 patrons) to the BLD service area.

This is not the first time the DEIR authors have heard BLD’s position on this matter. In two pieces of correspondence to PLACEWORKS in reference to the potential impacts of the Project, BLD unequivocally addressed these impacts.
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In our July 25, 2015 correspondence, we responded to the PLACEWORKS question as follows:

"Q5: Will Banning Library District be able to service the proposed project in addition to existing patrons and any known cumulative developments?

"No! The Banning Library District will not be able to service the new population without additional land with a building on it. It is incumbent upon new development to assist in establishing increased library infrastructure for new families and residents who will be moving into the City limits due to newly proposed project[s]."

Of concern to BLD is that this direct answer that screams "your project will cause an impact" was taken to mean that the BLD services are presently inadequate and that because BLD has taxing powers that such revenues will be sufficient.

Of even more concern is that it appeared this response in fact sparked a productive conversation with the developer and resulting Project feature which now appears to have not been incorporated in the DEIR and possibly into the Project itself.

In August through October 2015, Peter Pitassi of Diversified Pacific met with BLD President Gail Paparian and Trustee Brenda Freeman on several occasions to discuss how collaboration between the BLD and Diversified Pacific could take place at RSGSP so that these types of impacts would be avoided. Specifically, the discussion addressed how the two entities could be in partnership on this project, namely by incorporating branch library space into the community center area. Mr. Pitassi then made a presentation to the Friends of the Banning Library in October 2015 and discussed other ways that BLD and Diversified Pacific could collaborate to ensure that the new residents of Banning in the RSGSP area would be afforded library services, and more importantly to BLD, that the services of the BLD are not degraded without mitigation by virtue of adding more residents to the District.

Now, BLD is disappointed to see that the scope of the Project does not include dedications of space and amenities for a branch library as discussed with Mr. Pitassi, or mitigation to include added computer amenities in such available space.

Instead, the Draft EIR improperly states that no impact exists despite the obvious: the project will add 9,038 persons to the District boundaries and proposes no mitigation measure to public library services. How is this not an impact? The DEIR analysis and conclusion are without merit and fatally flawed.

Accordingly, BLD recommends that section 5.13.4.6 of the DEIR be amended to more accurately address the impacts that the Project would have on BLD:

"The addition of 9,038 residents to the Library District would challenge existing resources and result in the need for new or physically altered library facilities. Upon implementation of regulatory requirements, and standard conditions of approval, and mitigation measures stated below, the following impacts would be mitigated to less than significant: 5.13-4."

As demonstrated above, both common sense and statements in the DEIR come to the obvious conclusion that the resultant increase in population would increase the number of people using BLD
2. Response to Comments

Mr. Guillot  
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library services and create the need for new or expanded library facilities and inventory. The Final EIR must adopt mitigation measures to address such impact.

As a proposed mitigation measure BLD recommends the following:

1. The applicant shall cause fair share mitigation to be made to the Banning Library District to maintain the current level of service of the Banning Library District by providing furnished library space in the new developed area, or augmented space at the current BLD Library.
2. The fair share mitigation shall be made either in kind (i.e., donation of space associated with impacts on need for additional library service facilities), or by payment to the Banning Library District of a sum agreed to by the parties to address appropriate mitigation measures.
3. The Applicant shall increase the number of computer terminals (computer hardware, computer software, and associated work space furniture) at the Banning Library District by 14 terminals, based on 18 terminals presently and a 75% increase in the number of residents.
4. The Applicant shall dedicate 10,050 s.f. of finished building space to the Banning Library District for the use as a library facility by the Banning Library District exclusively.
5. Delivery of terminals shall be made prior to the issuance of certificate of occupancy of each phase of construction, based on the number of anticipated residents for each phase as calculated by the ratio of total number of units in the phase at issue over the total number of units in the Project.
6. Delivery of dedicated space to the Banning Library as indicated in Item 4 above shall be completed prior to issuance of final occupancy permits for phase 4 of the Project.

Again, the Banning Library District is eager to see the Rancho San Gorgonio Specific Plan Project come to fruition. However, the District has a duty to ensure that the Project does not detrimentally affect the services provided by the District to the community.

The Banning Library District looks forward to reviewing the Final EIR and discussing mitigation measures that would prevent impacts to the BLD. If you have any questions regarding this response, please contact me at (562) 699-5500 or by email at ajared@agclawfirm.com.

Very Truly Yours,

Andrew L. Jared  
General Counsel, Banning Library District
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O1-1 The DEIR acknowledges that the Banning Library District (BLD) does not currently have sufficient resources to serve the existing service population and that development of the proposed project would exacerbate conditions. While the project would introduce a substantial number of new residents into BLD’s service area, new development would also be required to pay its fair share contribution through BLD’s tax assessment and property tax, which would increase BLD’s revenue in rough proportion to the proposed development. Per CEQA, projects are not required to mitigate pre-existing conditions (i.e., BLD’s current insufficient resources or facility space). However, they are required to offset project-generated impacts on existing conditions. Thus, development of the proposed 3,385 residential units (and associated 75 percent increase in residents) would be required to pay the tax assessment fee and property tax, which would increase BLD’s funds proportionally as development under the Specific Plan occurs.

If deemed necessary, immediately or at a later date, BLD can use the collected funds from the proposed project to acquire additional land, construct or expand facilities, and/or purchase additional library resources (i.e., books, tables, computers, etc.) to serve the larger population. Upon payment of such fees, the project is then considered to have a less than significant impact on BLD’s services.

The comment also states that the project may include space for BLD, municipal, and/or school operations, but no firm amount of space or amenity is provided. Banning Unified School District (BUSD) will develop Planning Area 16-C as Rancho San Gorgonio Elementary School. A mitigated negative declaration was prepared and certified in June 2015 for the proposed elementary school, with BUSD as the lead agency. The proposed school is anticipated to begin construction in May 2017 and open for the 2018–19 school year. Based on the school’s proposed site plan, the school would be approximately 85,000 square feet and would include a library. It is expected that the school library would also help to reduce project impacts on BLD’s facility at 21 West Nicolet Street.

O1-2 The discussion in Section 5.13.4.3 of the DEIR regarding the need for 10,500 square feet of additional facility space south of Interstate 10 was interpreted as BLD’s future plans and vision, not as a specific mitigation measure required of the proposed project. As stated above, BLD would receive an allocation of project-generated property tax revenue and collect special tax assessment fees from the proposed development that could be used toward providing this additional 10,500 square feet of facility space if BLD believes it would most benefit library patrons. To require future developments of the Rancho San Gorgonio Specific Plan to fully fund a new 10,500-square-foot library in addition to paying BLD’s special tax assessment fee would be beyond a project’s fair share contribution.
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O1-3 See response to Comment O1-2 above. The comment related to the use of additional community room space for nonprofit organizations and other community entities to use as rentable meeting space was taken from BLD’s questionnaire response and interpreted as a potential future library amenity, not as a specific mitigation measure required of the proposed project.

O1-4 See response to Comment O1-1.

The comment incorrectly concludes that the DEIR suggests it is up to the BLD to mitigate project impacts. Future development in accordance with the Specific Plan would mitigate project impacts by paying fees per BLD’s tax assessment and contributing a portion of its property tax to BLD. Payment of the fees and property tax would then reduce project impacts to less than significant levels. As previously stated, it is not the responsibility of future projects to alleviate existing insufficiencies in library resources; however, it is a project’s responsibility to mitigate its own impacts (i.e., fair share).

O1-5 Similar to the proposed project, cumulative projects are not required to mitigate current inadequate levels of service. Instead, each cumulative project would be responsible for paying BLD’s tax assessment fee and property tax, which would mitigate its individual project impacts on BLD services.

O1-6 The DEIR does not suggest that BLD shall use funds collected from tax assessment fee solely on acquiring additional land, constructing or expanding facilities, and/or purchasing additional library resources (i.e., books, tables, computers, etc.) to serve future project residents. However, it does suggest that BLD funds obtained from individual projects’ required contribution of fair share fees and allocated property tax revenue can be used, if deemed necessary by BLD, toward improving its existing library resources to meet the needs of future residents, and that payment of these fees would help mitigate project impacts on BLD services. This works similarly to how some jurisdictions require payment of development impact fees for public services, including fire protection, law enforcement, library facilities, and park/open space facilities.

O1-7 See response to Comments O1-1, O1-4 and O1-6.

O1-8 The DEIR was prepared by PlaceWorks without the knowledge of meetings between Diversified Pacific and BLD regarding the project’s impacts on BLD’s resources. The DEIR is revised to include a condition of approval requiring the developer to provide a dedicated space in the Community Center for use by the BLD. The size of the space shall be determined by City’s Parks and Recreation Director at time of submittal of construction documents. Additionally, upon occupancy of the Community Center, the developer shall provide 14 computer station desks (see Section 3, Revisions to the DEIR).

O1-9 See response to Comment O1-8.
2. Response to Comments

LETTER O2 – Blum|Collins LLP (3 pages)

BLUM|COLLINS LLP

August 3, 2016

Brian Guillot
Community Development Director
City of Banning
Community Development Department
99 East Ramsey Street
Banning, CA 92220

VIA EMAIL TO:
CD@ci.banning.ca.us

Dear Mr. Guillot:

This letter is to serve you with comments on behalf of the SoCal Environmental Justice Alliance ("SEJA") regarding the Rancho San Gorgonio Project (SCH No. 2015041064) (the "Project") and its Environmental Impact Report (the "EIR").

Specific Plan

The Project proposes to subdivide approximately 831 acres into 44 Planning Areas. The Specific Plan states that the Project will “[e]nsure provision of adequate public services, utilities and infrastructure in a timely manner as development occurs.” However, the EIR fails to specify any detail on how the provision of public services, utilities and infrastructure will be accomplished. This empty promise is inadequate under CEQA. The City must require the Project’s developer to make specific improvements to accommodate the large number of new residents. It is not enough to merely recommend or suggest mitigation. Mitigation measures must be “fully enforceable.” CEQA Guidelines, § 15126.4(a)(2). Mitigation should not be deferred or lie within the discretion of the project applicant. See Sandstrom v. County of Mendocino (1998) 202 Cal.App.3d 296, 306; Woodward Park Homeowners Asso., Inc. v. City of Fresno (2007) 150 Cal.App.4th 683, 730.

The Specific Plan also states that a new elementary school will be developed by the Banning Unified School District (BUSD), but fails to provide any evidence that BUSD has the funds to build the school. Moreover, the Specific Plan fails to address whether the surrounding junior and senior high schools have the capacity to absorb the large number of new students who will move into the Project.
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Inconsistency with General Plan

According to the City's 2006 General Plan land use designations, the Project Site had been designated as predominately Very Low Density Residential (0-2 dwelling units per acre). The Specific Plan proposes uses that are inconsistent with low density residential use. The proposed uses include a mix of up to 3,585 residential units on up to approximately 3-40 acres; 9.5 acres for neighborhood commercial use; 14 acres for an elementary school; 210 acres for public parks and recreational areas; from passive open space and trails to sports fields and public gathering places; and 77 acres for circulation uses, including roadways, pathways and bridges for vehicles, bikes, pedestrian and equestrian use. The Specific Plan also fails to disclose the existing Airport Industrial zoning at the southeast portion of the Specific Plan, and whether measures have been taken to mitigate the impact of the prior industrial use.

Air Quality Impacts

The EIR states: “For purposes of evaluating the traffic impacts at different stages of development, the proposed project has been divided into six phases. Based on the best estimate of absorption rates, Phase 1 is anticipated to be completed by 2017, Phase 2 by 2019, Phase 3 by 2022, Phase 4 by 2025, and Phase 5 by 2029. The project buildout (Phase 6) is anticipated to be complete by 2033.”

This phased modeling is used to analyze air quality impacts. This is improper because the Project does not actually require the developer to adopt the phased construction plan. Even if the phased plan were adopted, NOx emissions still exceed SCAQMD Threshold during 4 of the 6 phases.

Further, the EIR provides no analysis of impact from potential overlap of construction phases or mitigation if this were to occur. Table 5.3-11 (Long Term Regional Operational Emissions) indicates that at Phase 3 (2022) regional emissions of ROG and NOx would be significant. By Phase 4 (2023) emissions expand to include significant emissions of CO and PM10. By Phase 5 (2029) emissions expand to include significant emissions of PM25. All of these emissions remain significant and exceed SCAQMD thresholds during Phase 6 (2033). The EIR fails to exclude the possibility that these construction phases could occur simultaneously and result in even more serious pollution.

The EIR also fails to consider that construction may occur faster, which would result in significantly greater impacts. It also does not specify the number of hours per day that construction will occur, or require that construction be completed over a certain number of days.
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Noise

The EIR and its Noise Study do not attempt to quantify construction noise impacts, thereby failing to disclose relevant project information and preventing the public and decision-makers from making an informed decision based on the predicted actual impacts of the Project. CEQA requires the EIR to include a construction noise analysis.

Tables 5.11-9 through 5.11-15 claim that noise impacts will remain below significant thresholds due to the phased construction plan. These claims are not credible because, as discussed above, the Project does not require the developer to adopt the phased construction plan.

The EIR also fails to consider cumulative noise impacts. Traffic noise impacts are improperly limited to only those intersections adjacent to the Project Site without consideration of any areas in which traffic will intensify because of the Project, such as the I-10 on and off ramps.

Transit and Traffic

The EIR does not analyze or mitigate impacts from construction related traffic, even though the EIR acknowledges that construction will bring at least 15 intersections to unacceptable LOS (levels of service).

Conclusion

For the foregoing reasons, SEJA believes the EIR is flawed. The City of Banning’s environmental review process has failed to ensure environmental justice for the City’s residents. Therefore, we believe you should redraft and recirculate the EIR.

We look forward to your responses. Please forward a notice of availability of the Final EIR to blum@blumcollins.com and ho@blumcollins.com.

Sincerely,

[Signature]

Gary Ho  
BLUM | COLLINS LLP
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2. Response to Comments


O2-1 Project impacts on public services (i.e., fire and emergency, police protection, school, and library) and utilities and infrastructure services (i.e., wastewater, water, storm drain, and natural gas/electricity) are analyzed in Sections 5.13, Public Services, and 5.16, Utilities and Service Systems, of the DEIR. As concluded in these sections, the project would be required to comply with several federal, state, and local regulations that would reduce impacts to less than significant levels. Per CEQA Guidelines Section 15126.4(a)(3), mitigation measures are not required for effects which are not found to be significant.

However, separate from the EIR, the City of Banning and the developer have a development agreement that includes conditions of approval which require specific improvements to accommodate the proposed development.

O2-2 Banning Unified School District (BUSD) will develop Planning Area 16-C as Rancho San Gorgonio Elementary School. As stated on page 5.13-16, “Banning USD is also planning a proposed Rancho San Gorgonio Elementary School at 778 Westward Avenue adjacent to Banning High School’s western boundary. The 85,000-square foot-elementary school would be in Planning Area 16-C of the proposed Specific Plan and underwent separate environmental review, with Banning USD as the lead agency. A mitigated negative declaration was prepared and certified in June 2015. The proposed school is anticipated to begin construction in May 2017 and open for the 2018-19 school year.”

Section 5.13, Public Services, of the DEIR analyzes the project’s impacts on BUSD services and concludes that BUSD schools closest to the project site, including junior and senior high schools (i.e., the future Rancho San Gorgonio Elementary School [K-8], Nicolet Middle School [6-8], and Banning High School [9-12]), would be able to adequately serve the student population generated by development of the project. Additionally, developers would be required to pay development impact fees under Senate Bill 50 to offset potential impacts on BUSD services.

O2-3 Yes, the proposed project would not be consistent with the City’s existing land use designations. Thus, one of the discretionary actions required of the Banning City Council is to approve a General Plan Amendment and Zone Change to reflect the proposed Specific Plan and its associated land uses.

The comment regarding an Airport Industrial designated area at the southeast portion of the project site is incorrect. The most southeast portion of the Specific Plan area is currently designated Open Space-Resources. The closest Airport Industrial land use designation is located northeast of the project site near Banning Municipal Airport.

O2-4 As described in response to Comment A4-2 above, the Air Quality Impact Analysis (Appendix C of the DEIR) accounts for overlapping construction operations. This
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Conservative analysis does show exceedances of NO\textsubscript{x} emissions for four of the six project phases if no mitigation is incorporated (Impact 5.3-1). Therefore, Section 5.3.7 of the DEIR includes feasible mitigation measures to reduce these emissions. Tables 5.3-14 through 5.3-19 in Section 5.3.8 of the DEIR show the reduction in construction emissions with implementation of the feasible mitigation measures, and conclude that all pollutant emissions, including NO\textsubscript{x}, would be below SCAQMD thresholds throughout the entire multi-phase construction process.

The comment suggests that the construction emissions analysis is improper because the developer is not required to adopt the phased construction plan. However, the phasing is included as part of the proposed project and detailed in Section 5.4, Phasing, of the Rancho San Gorgonio Specific Plan. The project is proposed to be constructed in six major phases estimated to occur over a 20-year period from 2016 through 2035, which is subject to market conditions, project financing, and available infrastructure improvements. The project would not be able to be fully constructed in one single phase given resource and financial constraints. The Specific Plan also states that revisions to the phasing plan shall be reviewed by the City’s Community Development Department and the Public Works Department and approved administratively so long as the proposed revisions meet the intent of the Specific Plan and adequately provide for the infrastructure and facility needs of the community.

O2-5 See responses to Comments A4-2 and O2-4 above.

O2-6 The CalEEMod output files included in Appendix A of the air quality impact analysis (Appendix C of the DEIR) lists the construction phase schedules that were modeled and considered to be representative of how the project is likely to be built. This output also shows a detailed list of construction equipment with a number of hours per day for each. While the actual construction of the project may not match these schedules precisely, the construction schedule and equipment analyzed are considered to be “worst-case,” meaning if the actual construction process differs, it would be slower or less intense and result in lower air pollutant emissions per day. In conclusion, Tables 5.3-14 through 5.3-19 in Section 5.3, Air Quality, of the DEIR show that upon implementation of required mitigation measures, construction of the proposed project, even under conservative, worst-case scenarios, would not exceed any SCAQMD emissions thresholds.

O2-7 The noise impact analysis (Appendix L of the DEIR) evaluated potential worst-case construction noise impacts for both off-site sensitive receptors and future proposed on-site noise-sensitive receptors. The DEIR summarizes the analysis under Impact 5.11-1 on pages 5.11-20 through 5.11-23. Permitted construction hours were identified from both the City of Banning Municipal Code and County of Riverside County Code noise ordinance, and temporary construction noise barriers were identified for areas that would be exposed to high construction noise levels from the proposed project.
(Mitigation Measure 11-1). Therefore, project-related construction noise impacts have been properly addressed in the noise impact analysis.

O2-8 See response to Comment O2-4 above.

As detailed in the Specific Plan, the project would be constructed in six phases subject to market conditions, project financing, and available infrastructure improvements. Even if the project is constructed in one phase, all cumulative traffic noise impacts have been adequately analyzed. In addition, both mobile and stationary sources noise impacts were evaluated based on the ultimate General Plan buildout conditions. Therefore, whether the project is constructed in phases or not, the impact conclusions would remain the same, and the proposed mitigation measures would still be applicable.

O2-9 Traffic noise impacts were evaluated for existing conditions to the General Plan buildout (2035) conditions. Proper mitigation measures have been identified for the project to comply with the City’s exterior and interior noise standards for the proposed onsite residential uses. Roadway segments in areas outside of the traffic noise impact analysis would not be affected as much as those evaluated in the noise impact analysis. As a rule of thumb, it takes doubling of traffic volumes (i.e., average daily traffic volumes) to increase the traffic noise by 3 dBA. All of the roadway segments, including the on- and off-ramps for I-10, would have high traffic volumes under the “Without Project” conditions. The proposed project would add less than 50 percent of the daily traffic volumes to these roadway segments further from the project study area, and the associated traffic noise level increases would be less than 2 dBA. Therefore, it is not warranted to analyze these further roadway segments for potential project traffic noise impacts.

O2-10 The commenter misinterprets the information in the EIR. The traffic impact analysis identifies mitigation measures by project phase for impacted intersections but does not conclude that construction traffic alone causes these intersections to operate at unacceptable levels of service. Construction traffic is projected to be less than operational traffic. The traffic impact analysis, which analyzed each phase under fully operational conditions accounts for a “worse case” analysis and any impacts from construction traffic would be equal to or less than the impacts from operational traffic.

O2-11 Comment acknowledged.
3. Revisions to the Draft EIR

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2. Response to Comments

LETTER 11 – Inge Schuler (2 pages)

Patricia Nevins

From: Brian Guillot  
Sent: Wednesday, August 03, 2016 12:30 PM  
To: Patricia Nevins  
Subject: FW: Comments on the Draft EIR for Rancho San Gorgonio Specific Plan

From: Inge Schuler  
Sent: Wednesday, August 03, 2016 12:29:40 PM (UTC-08:00) Pacific Time (US & Canada)  
To: Brian Guillot; Marie Calderon  
Subject: FW: Comments on the Draft EIR for Rancho San Gorgonio Specific Plan

Please acknowledge receipt of this e-mail. Thank you.
Inge Schuler  
1030 W Westward Avenue  
Banning, CA 92220

DRAFT EIR for the proposed Rancho San Gorgonio Specific Plan Project

Areas of Concern and Controversy

I. General Plan and Zoning

The acreage for the proposed plan would require substantial changes to the GP and Zoning and be very likely detrimental to the community. The current EIR in its Executive Summary offers as an alternative to the proposed project (1.5.2, p 1–16ff) the No Project/Existing General Plan Alternative. That alternative would probably be acceptable to the majority of the residents of this City of Banning (CoB), although with build out of the project, there still would be some significant impacts to the quality of life as discussed below.

II. Water and Waste Water

Water

The CoB is currently under water use restriction and an ever increasing rate schedule. Both Beaumont and Banning share the Beaumont-Banning Groundwater Basin that currently experiences an overdraft condition of the available supply. In order to alleviate some supply problems, Banning investigated the establishment of a system of recycled water, dated September 21, 2006. The total capital cost to the then size CoB with 57% residential use of the system was estimated to be $68M. (Urban Water Management Plan 2015). According to the July 22, 2016 report by the California Regional Water Quality Control Board, Santa Ana Region, “the CoB has not planned for recycled water use.”

The Rancho San Gorgonio (RSG) project must be conditioned to establish its own recycled water system for both construction and subsequent residential use as well as being charged with the entire cost of such a system before being granted approval of the project. The current population of the CoB cannot be saddled with such extravagant costs when there is no plan within the foreseeable future of making a recycled water system available. The construction for the recycling process would necessitate substantial and costly improvements to the existing CoB water treatment facility.
3. Revisions to the Draft EIR

Waste Water
The present water treatment plant of the CoB is near or at capacity and even now is saddled with the additional task of handling the Chromium IV contamination of a number of our existing wells. Any added requirements to improve/expand is going to be very costly. The RSG project must present a plan to deal with the logistics and assumptions of the cost in this new development. Extensive pumping of low lying waste water origin adds to such costs and these costs must be explicitly met by the developer as part of the Conditions of Approval.

III Biological Resources
In the EIR there is reference to a one time examination by a CDFW approved biologist and a USFWS certified arborist to determine the extent of endangered species habitat and extent of mature trees for habitat. That seems woefully inadequate for the size and the extent of the project. Mitigation suggestions seem to favor the lowest cost factor at the expense of the environment.

IV Demographics
My very late access to the document Fiscal and Economic Impact Analysis prepared by David Taussig and Associates (DTA) June 3, 2015, for RSG Specific Plan yielded some interesting projections for the future. No time frame was included. The retail commercial land use of 100,000sf projected 475 to be generated and providing $250 taxable sales per sf.
Mortgage Assumption for sale price per unit is $392,000 with the average mortgage at 20% down payment being $314,240. The annual mortgage payment at 6% for 30 years would be $22,608; average household income would be $91,395. It seems that these figures would be appropriate for Rancho Santa Fe or La Jolla instead of CoB where the current annual household income is pegged at around $39,000. In the Very Low Density Residential, the Household Income is projected at $141,045, at the Medium-High Density Residential at $88,135. Again, rather speculative.

On the whole, this project is not going to benefit this town in any way; it just lines the pocket of the developer unless we establish some parameters for his assumption of the astronomical costs to the CoB.
2. Response to Comments


I1-1 Comment acknowledged. The proposed project would require the Banning City Council to approve a General Plan Amendment and Zone Change to reflect the proposed Specific Plan and its associated land uses.

I1-2 All jurisdictions in California are currently under water use restrictions and increasing rate schedules as mandated by Governor Brown. However, as analyzed in Section 5.16, Utilities and Service Systems, of the DEIR, and concluded in the water supply assessment (Appendix J of the DEIR), the projected water demand would be adequately met with the City's water supply sources, and the project would introduce new sources of water supply through stormwater recharge, recycled water, and return flows from irrigation.

As a condition of approval with the City’s Public Works Department, prior to recordation of the final map, recycled water plans shall be submitted to the City for review and approval. The source and supply of recycled water for the Rancho San Gorgonio Specific Plan may include the City’s proposed upgrade to its existing wastewater treatment plant (WWTP) or a potential onsite satellite treatment plant at Planning Area 16-A. The developer would be required to work with the City of Banning Public Works and Water Utilities Departments to identify phasing and timing requirements for the design and construction of all recycled water system improvements (pipelines, services, pumps, etc) necessary to serve the Specific Plan area. The improvements would be required to be in substantial conformance with the Specific Plan and with City of Banning requirements and standards, as determined by the Public Works Director or designee.

Based on the City’s recently approved 2015 Urban Water Management Plan, expansion of the City’s WWTP to generate recycled water has been approved and funded, with construction ready to commence. The City is also in the process of establishing a centralized recycled water system and has installed recycled water pipelines in Westward Avenue from Highland Home Road to Sunset Avenue (west of the project site) and in Lincoln Street from Sunset Avenue to San Gorgonio Avenue (north of the project site). If the project connects to the City’s upgraded WWTP, the applicant shall construct an off-site recycled water pipeline from the project boundary to the point of connection to the city system at Lincoln Avenue and 8th Street, and would also be required to pay the fair share cost for the additional recycled water storage requirement to meet the project’s recycled water needs.

Whichever option is chosen, the applicant would be required to ensure adequate facilities are present prior to filing of final subdivision maps.

I1-3 As detailed in the Specific Plan and the DEIR, the project applicant will be required to implement one of two options regarding wastewater treatment: 1) construction of a dedicated package wastewater treatment facility onsite on Planning Area 16-A; or 2)
3. Revisions to the Draft EIR

expansion of, or the addition of chemical treatment to, the City’s existing WWTP. Expansion of the City’s WWTP to accommodate project-generated wastewater would require a fair-share contribution by the project applicant commensurate with forecast project wastewater generation of approximately 1.43 million gallons per day. Implementing one of these two options is required by the project applicant as a condition of approval by the City’s Public Works Department.

It is unclear where in the EIR the commenter is referring to an insufficient examination of endangered species habitat and extent of mature trees for habitat by a CDFW-approved biologist and USFWS-certified arborist. However, the methodologies in preparing the Biological Resources Report and DBESP Report (Appendices D and E of the DEIR) are detailed under the ‘Methods’ section of each appendix. Literature reviews, California Natural Diversity Data Base (CNDDB) and the CNPS Online Inventory record searches, focused species surveys and habitat suitability assessments were conducted by qualified biologists. Table B of Appendix E of the DEIR (page E-14) summarizes the survey dates from August 2012 through September 2015, which consist of over 15 site visits for intensive field surveys (vegetation and soil mapping); habitat suitability assessment (for narrow endemic plants in MSHCP Survey Area 8); focused surveys for the Mojave tarplant, Los Angeles Pocket mouse, burrowing owl, Riverside and vernal pool fairy shrimps (wet and dry season); and habitat assessment for least Bell’s vireo and Southwestern willow flycatcher. A jurisdictional delineation was also conducted on the site in August 2012 and April 2013. I1-5 This comment compares mortgage assumptions of the proposed residential dwelling units to the current annual household income in the City of Banning. Housing values and fiscal impacts of a project are not considered environmental concerns under CEQA.
2. Response to Comments

LETTER I2 – Libi Uremovic (6 pages)

State Clearinghouse
1400 Tenth Street
Sacramento, CA 95814

August 3, 2016

RE: City of Banning
Rancho San Gorgonio Specific Plan
SCH Number 26015041064

I would like to submit comments on the EIR that has been submitted for the Project listed above.

5-13 Fire Protection:
Fire Protection for the entire Pass Area is grossly inadequate. EIR page 5.13-3 lists the Banning Fire Station No. 89 and Beaumont Station No. 20 as the two closest fire stations; each with one fire truck. The City of Beaumont has grown from 10,000 to 45,000 people without building any fire stations and depends on the Banning Fire Station for additional coverage.

5-16 Wastewater Treatment and Collection:
EIR page 5.16-3 states: "Currently, the Water and Wastewater Utilities Department has plans and is working towards expanding the Banning WWTP facility through the Banning WWTP Expansion and Phase I Recycled Water System project. The project would expand the existing facility to allow tertiary treatment of up to 5.1 mgd, install new pipelines to transport recycled water, and construct a pump station and storage reservoir for recycled water."

Furthermore; Appendix J, Water Supply Assessment, page J-16 claims that there will be 1,680 acre feet of Recycled Water available for the project.

The City of Banning has no Recycled Water.

In 2005 the Banning Utility Authority acquired a $42,735,000 Bond. Page 30 claims that Banning will have 1,504 acre feet of Recycled Water by 2010.

In 2015 the above Bond was Refinanced/Refunded. Page 15 records the same sources of water, but now claims 1,680 acre feet of Recycled Water, this time by 2020.

Banning’s 2006 General Plan page IV-11 states: “The City has considered the use of Recycled Water for irrigation.”

Because of the above stated reasons; I am requesting the State Clearinghouse demand adequate Fire Protection and an actual Recycled Water supply before approving this project.

Please contact me for any questions.

Thank you,

Libi Uremovic
P.O. Box 2894
Rancho Cordova, CA 95741
(702) 503-2022
libi@libionline.net

Governor’s Office of Planning & Research
AUG 03 2018
STATE CLEARINGHOUSE
3. Revisions to the Draft EIR

NEW ISSUES
BOOK-ENTRY ONLY

Water Bonds
Financial Guarantee Issuer: Standard & Poor's: AAA; Moody's: Aa1
Underwriting: Standard & Poor's: A

Wastewater Bonds
Ambac Guarantee: Standard & Poor's: AAA; Moody's: Aa1
Underwriting: Standard & Poor's: A

(See “RATINGS” herein)

In the opinion of Fulbright & Jaworski LLP, Los Angeles, California, Bond Counsel, under-existing law, interest on the Bonds is exempt from personal income taxes of the State of California and, assuming compliance with the tax covenants described herein, interest on the Bonds is excluded pursuant to section 103 of the Internal Revenue Code of 1986 from the gross income of the owners thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax. See, however, “Exemption” herein regarding certain other tax considerations.

BANNING UTILITY AUTHORITY

$35,635,000 Water Enterprise Revenue Bonds and $7,100,000 Wastewater Enterprise Revenue Bonds Refunding and Improvement Projects, 2006 Series

Date of Delivery

The Banning Utility Authority (the “Authority”) is issuing its Water Enterprise Revenue Bonds, Refunding and Improvement Projects, 2006 Series (the “Water Bonds”) and its Wastewater Enterprise Revenue Bonds, Refunding and Improvement Projects, 2006 Series (the “Wastewater Bonds”), to refinance the Bonds of the Water Enterprise and the Wastewater Enterprise as more fully described herein. The Bonds will be available to ultimate purchasers of the Bonds in denominations of $5,000 or any integral multiple thereof under the book-entry system maintained by the Authority. Ultimate purchasers of the Bonds will receive physical certificates representing their interest in the Bonds. The Bonds are registered in the name of the Authority, as nominee of the Depository Trust Company, New York, New York (“DTC”). The Bonds will be available to ultimate purchasers of the Bonds in denominations of $5,000 or any integral multiple thereof under the book-entry system maintained by DTC. Ultimate purchasers of the Bonds will receive physical certificates representing their interest in the Bonds. The Bonds are registered in the name of the Authority, as nominee of DTC. Interest payments on the Bonds will be payable to the registered owner of the Bonds. Disbursement of such payments to DTC’s Participants in the responsibility of DTC and disbursement of such payments to the Beneficial Owners is the responsibility of DTC’s Participants and Indirect Participants, as more fully described herein. See “APPENDIX E — BOOK-ENTRY ONLY SYSTEM.”

The Bonds will bear interest at the rates set forth on the inside cover, payable semi-annually on May 1 and November 1 of each year, commencing on May 1, 2006, as described herein. The Water Bonds will be issued under an Indenture of Trust, dated as of December 1, 2005 (the “Water Indenture”), by and between the Authority and the Trustee. Proceeds of the Water Bonds will be used for: (i) pay costs of certain capital improvements to the Water Enterprise; (ii) defease the 1998 Water Certificates (as defined herein), currently outstanding in the aggregate principal amount of $2,075,000; (iii) defease the 1996 Water Certificates (as defined herein), currently outstanding in the aggregate principal amount of $1,680,000; (iv) make an initial up-front lease payment to the City, which will be used to pay costs of certain capital improvements to the City’s public facilities; (v) pay the insurance premium for the Water Bonds; (vi) purchase a reserve for the Water Bonds; and (vii) pay costs of issuance of the Water Bonds. The Wastewater Bonds will be issued under an Indenture of Trust, dated as of December 1, 2005 (the “Wastewater Indenture”), by and between the Authority and the Trustee. Proceeds of the Wastewater Bonds will be used for: (i) pay costs of certain capital improvements to the Wastewater Enterprise; (ii) defease the 1996 Wastewater Certificates (as defined herein), currently outstanding in the aggregate principal amount of $1,950,000; (iii) pay the insurance premium for the Wastewater Bonds; (iv) purchase a reserve for the Wastewater Bonds; and (v) pay costs of issuance of the Wastewater Bonds.

The Bonds are subject to optional and mandatory redemption as described herein. The Bonds are special obligations of the Authority. The Bonds will be payable from, and are secured by a charge and lien on, Net Water Revenues. The Income Guarantee for the Bonds and are secured by a charge and lien on, Net Wastewater Revenues. The Bonds are also payable from, and are secured by a charge and lien on, amounts held from time to time in the trust account established under the Water Indenture and the Wastewater Indenture, as applicable. See “SECURITY FOR THE BONDS” herein.

The scheduled payment of principal of and interest on the Water Bonds, when due, will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Water Bonds by Financial Guaranty Insurance Company (FGIC), and the scheduled payment of principal of and interest on the Wastewater Bonds, when due, will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Wastewater Bonds by Ambac Assurance Corporation (Ambac). See “INSURANCE” herein.


This cover page contains certain information for quick and general reference only. It is not a summary of this issue. Investors must read the entire Official Statement to obtain information essential to making an informed investment decision.

The Bonds are offered when, as and if issued and accepted by the Underwriters, subject to the approval of the City, as to legality by Fulbright & Jaworski LLP, Los Angeles, California, Bond Counsel, Certain legal matters will be passed on for the Authority by Burke, Williams & Sorensen, LLP, San Diego, California, Disclosure Counsel, and for the Authority and the City by the City Attorney. It is anticipated that the Bonds will be available for delivery through the facilities of FTC on or about December 21, 2005.

KINSSELL, NEWCOMB & DE DIOS, INC.
DEALERS

Governor’s Office of Planning & Research
AUG 03 2016
STATE CLEARINGHOUSE
2. Response to Comments

Under the City’s groundwater management plan, the City may choose to mine groundwater when the need arises.

The City’s existing and planned water supply sources are reflected in the table below. In addition to the sources described above, the City also plans to purchase 6,574 AFY of State Water Project from the Department of Water Resources of the State of California or other entities. State Water Project water is anticipated to be available starting in 2007. With the exception of the Beaumont Storage Unit, the groundwater supplies for each storage unit in Table No. 2, below reflects the mid-value within the range indicated in Table No. 1 above.

### Table No. 2

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Banning Canyon/Banning Bench Storage</td>
<td>5,000</td>
<td>5,000</td>
<td>5,000</td>
<td>5,000</td>
<td>5,000</td>
<td>5,000</td>
</tr>
<tr>
<td>Beaumont Storage Unit</td>
<td>5,900</td>
<td>1,000</td>
<td>400</td>
<td>400</td>
<td>2,500</td>
<td>5,000</td>
</tr>
<tr>
<td>Cabazon Storage Unit</td>
<td>0</td>
<td>2,050</td>
<td>2,050</td>
<td>2,050</td>
<td>2,050</td>
<td>2,050</td>
</tr>
<tr>
<td>East Banning Storage Unit</td>
<td>1,050</td>
<td>1,050</td>
<td>1,050</td>
<td>1,050</td>
<td>1,050</td>
<td>1,050</td>
</tr>
<tr>
<td>West Banning Storage Unit</td>
<td>350</td>
<td>350</td>
<td>350</td>
<td>350</td>
<td>350</td>
<td>350</td>
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<tr>
<td>Recycled Water Use</td>
<td>0</td>
<td>1,504</td>
<td>1,832</td>
<td>2,160</td>
<td>2,488</td>
<td>2,816</td>
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<tr>
<td>Return Flows from Irrigation</td>
<td>1,128</td>
<td>1,309</td>
<td>1,564</td>
<td>1,822</td>
<td>2,077</td>
<td>2,330</td>
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<tr>
<td>State Water Project</td>
<td>0</td>
<td>3,500</td>
<td>7,000</td>
<td>9,509</td>
<td>9,992</td>
<td>9,992</td>
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<tr>
<td><strong>Total</strong></td>
<td>13,428</td>
<td>15,763</td>
<td>19,246</td>
<td>21,924</td>
<td>24,607</td>
<td>27,688</td>
</tr>
</tbody>
</table>

Source: City of Banning.

Recycled water supplies are reflected in Table No. 2, above, as being equal to projected irrigation demand. Recycled water production is anticipated to exceed demand and to be applied in other beneficial ways. Water used for irrigation purposes and not utilized by the plants percolates to the groundwater and is available for future use. That volume of water is known as return flow. Return flows from irrigation were calculated from current and projected demands. If a consumptive factor of 0.75 is used in groundwater quality modeling, the return flows are equal to twenty-five percent (25%) of the total amount of water used for irrigation plus the portion of residential water used for outdoor irrigation, which equals fifty percent (50%) in the City and surrounding areas. Any irrigation occurring in the industrial, commercial or public sector was not included in the return flow calculations.

### Storage and Distribution Systems

The water system consists of groundwater wells, reservoirs and a distribution line covering approximately 23 square miles and servicing approximately 28,000 people via approximately 10,500 metered connections.

The City operates and maintains 22 potable groundwater production wells. Half of the wells are located in Banning Canyon and the remaining ones are located in the Banning Bench, East Banning, West Banning and Beaumont storage units. The 22 wells have a total design capacity of approximately 28,450 gallons per minute ("gpm"). During dry years, the capacity of the Canyon and Banning Bench wells decrease in response to decreased precipitation and subsequent recharge. In 2002, a recent dry year, the total capacity of the wells was estimated to be 18,950 gpm. The following table shows a summary of the City’s wells and their current capacities by storage unit.
3. Revisions to the Draft EIR

NEW ISSUE - BOOK ENTRY ONLY

BANNING UTILITY AUTHORITY
$25,365,000
Water Enterprise Revenue Bonds
Refunding and Improvement Projects, 2015 Series

Dated: August 19, 2015

The Bonds are special obligations of the Authority. The Bonds are payable from, and are secured by a charge and lien on, Net Water Revenues. The Bonds are also payable from, and are secured by a charge and lien on, amounts held from time to time in certain funds and accounts established under the Indenture. A reserve fund will not be funded for the Bonds. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" herein.

Neither the faith and credit nor the taxing power of the City, the County of Riverside (the "County"), the Parking Authority of the City of Banning (the "Parking Authority"), the State of California (the "State"), or any political subdivision thereof is pledged to the payment of the principal of or interest on the Bonds. None of the City, the County, the Parking Authority, the State or any political subdivision thereof, other than the Authority, is liable for the payment of the Bonds. In no event shall the Bonds or any interest or redemption premium thereon be payable out of any funds or properties other than those of the Authority as provided in the Indenture. The Authority has no taxing power. The Bonds do not constitute an indebtedness of the Parking Authority, the City, the County, the State or any political subdivision thereof, other than the Authority, within the meaning of any constitutional or statutory debt limitation or restriction.

This cover page contains certain information for quick and general reference only. It is not a summary of this issue. Investors must read the entire Official Statement to obtain information essential to making an informed investment decision.

The Bonds are offered when, as and if issued by the Underwriters, subject to approval of legality by Norton Rose Fulbright US LLP, Los Angeles, California, Bond Counsel to the Authority, and subject to certain other conditions. Certain legal matters will be passed on for the Authority by Norton Rose Fulbright US LLP as Disclosure Counsel to the Authority, for the Underwriters by Stradling Torcau Carlson & Roud, a Professional Corporation, and for the Authority and the City by Aleshire & Wynder, LLP. It is anticipated that the Bonds will be available for delivery through the book-entry facilities of DTC on or about September 9, 2015.

STIFEL
THE WILLIAMS CAPITAL GROUP, L.P.
The following table reflects the current groundwater sources for the City and the recommended range of yield.

**TABLE NO. 1**

<table>
<thead>
<tr>
<th>Sources</th>
<th>Perennial Yield (AFY)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banning Storage Unit</td>
<td>1,130</td>
</tr>
<tr>
<td>Banning Bench Storage Unit</td>
<td>1,960</td>
</tr>
<tr>
<td>Banning Canyon Storage Unit</td>
<td>4,070</td>
</tr>
<tr>
<td>Cabazon Storage Unit</td>
<td>5,265</td>
</tr>
<tr>
<td>Beaumont Basin</td>
<td>2,514</td>
</tr>
<tr>
<td>Grand Total</td>
<td>14,939</td>
</tr>
</tbody>
</table>

*Source: City of Banning.*

The City's existing and planned water supply sources are reflected in the table below.

**TABLE NO. 2**

<table>
<thead>
<tr>
<th>Water Supply Source</th>
<th>2015</th>
<th>2020</th>
<th>2025</th>
<th>2030</th>
<th>2035</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banning Storage Unit</td>
<td>1,218</td>
<td>1,130</td>
<td>1,130</td>
<td>1,130</td>
<td>1,130</td>
</tr>
<tr>
<td>Banning Bench Storage Unit</td>
<td>1,960</td>
<td>1,960</td>
<td>1,960</td>
<td>1,960</td>
<td>1,960</td>
</tr>
<tr>
<td>Banning Canyon Storage Unit</td>
<td>4,070</td>
<td>4,070</td>
<td>4,070</td>
<td>4,070</td>
<td>4,070</td>
</tr>
<tr>
<td>Cabazon Storage Unit</td>
<td>1,185</td>
<td>1,405</td>
<td>1,648</td>
<td>1,916</td>
<td>2,212</td>
</tr>
<tr>
<td>Beaumont Basin</td>
<td>2,514</td>
<td>2,514</td>
<td>2,514</td>
<td>2,514</td>
<td>2,514</td>
</tr>
<tr>
<td>Recycled Water Use(1)</td>
<td>0</td>
<td>1,680</td>
<td>1,680</td>
<td>1,680</td>
<td>1,680</td>
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<tr>
<td>Return Flows from Recycled Water Irrigation (2)</td>
<td>0</td>
<td>420</td>
<td>420</td>
<td>420</td>
<td>420</td>
</tr>
<tr>
<td>Return Flows from Perforated Water Irrigation</td>
<td>9</td>
<td>18</td>
<td>28</td>
<td>38</td>
<td>48</td>
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<tr>
<td>State Water Project</td>
<td>2,595</td>
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<tr>
<td>Total</td>
<td>13,551</td>
<td>15,792</td>
<td>16,045</td>
<td>16,323</td>
<td>16,629</td>
</tr>
</tbody>
</table>

*Source: City of Banning 2010 Urban Water Management Plan (Gioscience, 2011).*

(1) These values were revised to zero as compared to the 2010 Urban Water Management Plan due to the fact that the City of Banning has not constructed the facilities to provide recycled water as expected. It is anticipated that a treatment facility will be constructed by 2020.

Recycled water supplies are reflected in Table No. 2, above, as being equal to projected irrigation demand. The City has not constructed the facilities required to provide recycled water as expected. Although the City anticipates that a recycled water treatment facility will be constructed by 2020, there can be no assurances that the facility will be completed by the currently expected timeline. Recycled water production is anticipated to exceed demand and to be applied in other beneficial ways. Water used for irrigation purposes and not utilized by the plants percolates to the groundwater and is available for future use. That volume of water is known as return flow. Return flows from irrigation were calculated from current and projected demands. The return flows are equal to twenty-five percent (25%) of the total amount of water used for irrigation plus the portion of residential water used for outdoor irrigation, which equals fifty percent (50%) in the City and surrounding areas. Any irrigation occurring in the industrial, commercial or public sector was not included in the return flow calculations.
3. Revisions to the Draft EIR

2006 General Plan

the imported water to recharge the Beaumont Storage Unit, via the Noble Creek spreading grounds in Cherry Valley. The City is entitled to 3,287 a/fy per phase, for a total of 6,574 a/fy.

The SWP water may be used for any combination of uses, including aquifer recharge, irrigation, or, with treatment, potable uses.

Reclaimed Water
The City of Banning Wastewater Reclamation Plant is located at 2242 East Charles Street. The City contracts with United Water Services for the operation and maintenance of the water reclamation plant. Recent upgrades of the plant resulted in an increase in secondary treatment capacity to 3.6 mgd, including the addition of several plant parts that could accommodate future capacity to approximately 5.8 mgd. On a daily basis, the plant receives an average flow of approximately 2.3–2.4 mgd.

The City has considered the use of recycled water sources to provide additional supplies to those customers that could use reclaimed water for irrigation. These users include golf courses and landscaped areas of new homes, and could also include Caltrans and Banning Unified School District irrigation. A design has been completed on an irrigation pipeline that would allow the City to deliver reclaimed water to irrigation customers. Phase I of the City’s proposed recycled water system would make 3.6 mgd (4,033 a/fy) available for irrigation purposes. In addition, Phase II of the City’s proposed recycled water system would make an additional 3.0 mgd (3,361 a/fy) available for irrigation. Reclaimed water from the City’s wastewater treatment plant and untreated SWP water from SGPWA constitute the potential supplies of non-potable water currently available to the City. The use of non-potable water could reduce the demand for potable supplies and help maintain supply reliability.

New technologies are also becoming available which allow individual property owners to reuse water for irrigation and other non-potable uses. This reuse includes gray water reclamation systems, which includes the reuse of water from sources such as sink drains, dishwashers and washing machines for irrigation purposes. These technologies can also be implemented, independent of City facilities, to augment the City’s reuse of water, thereby increasing overall conservation. When recycled water from City facilities is made available, those users who have implemented on-site systems should be encouraged to connect to the City’s facilities.

Total Additional Resources Available
The Table below illustrates the potential additional residential units and commercial/industrial acreage that could be supported by the SWP and recycled water programs, when implemented.

I2-1 Based on the service provider questionnaire response provided by the Riverside County Fire Department/Banning Fire Services, current resources are adequate to serve the existing community; however, a fire station may be needed on the south side of I-10 near Sunset Avenue in the future.

The proposed Specific Plan can accommodate a future fire station facility on the east side of Planning Area 10 near the proposed Rancho San Gorgonio Community Park site. Funding for future fire facilities would be obtained through development impact fees per Section 15.72.010 of the City of Banning Municipal Code. New residential developments are required to pay for their fair share of the estimated cost of construction of fire facilities serving the property. Other jurisdictions in the Pass Area, including the City of Beaumont, also have development impact fees that fund the acquisition, planning, and equipping of future public facilities, including fire stations, to maintain adequate levels of public service. Therefore, as development continues to occur in the Pass Area, revenue from development impact fees and property tax would increase each jurisdiction's available funds that can, if deemed necessary, go toward improving fire and emergency service resources (i.e., facilities, equipment, and staffing).

I2-2 See response to Comment I1-2 above.
3. Revisions to the Draft EIR

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3. Revisions to the Draft EIR

3.1 INTRODUCTION

This section contains revisions to the DEIR based upon (1) additional or revised information required to prepare a response to a specific comment; (2) applicable updated information that was not available at the time of DEIR publication; and/or (3) typographical errors. Changes made to the DEIR are identified here in strikeout text to indicate deletions and in underlined text to signify additions.

3.2 DRAFT EIR REVISIONS IN RESPONSE TO WRITTEN COMMENTS

The following text has been revised in response to comments received on the DEIR.

Page 3-17, Chapter 3, Project Description. The following text has been revised in response to Comment A5-5 from County of Riverside Transportation and Land Management Agency, Transportation Department, Russell Williams, Development Review Manager.

Primary community access points would be at 22nd Street and 8th Street, south of Westward Avenue. A median-divided modified arterial named Rancho San Gorgonio Parkway is designed to connect 8th Street to 22nd Street, with an east-west connection to SR-243. Additional access will be provided via Sunset Avenue, with a proposed bridge crossing Pershing Creek.

The proposed project would also include circulation improvements as part of the proposed General Plan Amendment. Proposed amendments to the City of Banning General Plan Circulation Element include removing the segment of Porter Road through the project site (including the portion across County property) as an east-west Secondary Highway in the City’s Circulation Element and replacing General Plan road classifications south of Sun Lakes Boulevard/Western Avenue and between Highland Home Road and SR-243 with road classifications identified in the proposed Specific Plan. Upon approval of the General Plan Amendment, the project would be consistent with the adopted City of Banning General Plan.

Public transit in Banning is provided by Banning Pass Transit System. Route 6 serves the southern portion of the City, which includes the project area, along Westward Avenue from Sunset Avenue to South San Gorgonio Avenue/SR-243. The proposed circulation plan includes bus turnouts to accommodate future transit use.
3. Revisions to the Draft EIR

Page 3-18, Chapter 3, *Project Description*. The following text has been revised in response to Comment A2-6 from Caltrans, Mark Roberts, Office Chief, Intergovernmental Review, Community and Regional Planning.

This DEIR is a program EIR that examines the potential environmental impacts of the proposed project. This DEIR is also being prepared to address various actions by the City and others to adopt and implement the Rancho San Gorgonio Specific Plan. It is the intent of the DEIR to enable the City of Banning, other responsible agencies, and interested parties to evaluate the environmental impacts of the proposed project, thereby enabling them to make informed decisions with respect to the requested entitlements. The anticipated approvals required for this project are listed.

<table>
<thead>
<tr>
<th>Lead Agency</th>
<th>Action</th>
</tr>
</thead>
</table>
| City of Banning City Council | • Approval of General Plan Amendment / Zone Change to reflect the proposed Specific Plan  
• Approval of Master Tentative Tract Map No. 36586 and Conditions of Approval  
• Approval of Development Agreement  
• Annexation of 161 acres in SOI into City limits  
• Adoption of the Rancho San Gorgonio Specific Plan  
• Certification of the Rancho San Gorgonio Specific Plan EIR  
• Adoption of the Findings of Fact and Statement of Overriding Considerations (if required)  
• Adoption of the Mitigation Monitoring Program |

<table>
<thead>
<tr>
<th>Responsible Agencies</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Riverside County Local Agency Formation Commission (LAFCo)</td>
<td>• Approval of annexation of 161 acres from unincorporated Riverside County into City of Banning</td>
</tr>
<tr>
<td>California Department of Fish and Wildlife</td>
<td>• Approval of Section 1602 Permit</td>
</tr>
<tr>
<td>US Army Corps of Engineers</td>
<td>• Approval of Clean Water Act Section 404 Permit</td>
</tr>
<tr>
<td>Regional Water Quality Control Board</td>
<td>• Certification of Clean Water Act Section 401 Permit</td>
</tr>
<tr>
<td>Colorado River Basin Regional Water Quality Control Board</td>
<td>• Approval of Water Quality Management Plan</td>
</tr>
<tr>
<td>South Coast Air Quality Management District</td>
<td>• Approval of construction permits and permits to operate new stationary sources of equipment that emit or control air contaminants (e.g., heating, ventilation, and air conditioning units)</td>
</tr>
<tr>
<td>California Department of Transportation</td>
<td>• Approval of Encroachment Permit required for SR-243 traffic improvements</td>
</tr>
</tbody>
</table>
3. Revisions to the Draft EIR

Page 5.3-29, Section 5.3, Air Quality. The following mitigation measures have been added in response to Comments A4-1 and A4-4 from South Coast Air Quality Management District, Jillian Wong, Ph.D., Planning & Rules Manager.

Impact 5.3-1

3-1 Application of Architectural Coatings. Prior to issuance of any grading permits, the City of Banning Public Works Department, or designee, shall verify that construction contracts provided by future applicants include a statement specifying that the Construction Contractor shall comply with the SCAQMD Rule 1113 and any other SCAQMD rules and regulations on the use of architectural coatings or high-volume, low-pressure (HVLP) spray methods. Emissions associated with architectural coatings would be reduced by complying with these rules and regulations, which include using pre-coated/natural colored building materials, using water-based or low-VOC coating, and using coating transfer or spray equipment with high transfer efficiency. As the emissions from architectural coatings will exceed the SCAQMD’s thresholds, the use of low-VOC (e.g., 50 grams per liter [g/L] of VOC content or lower) shall be required for interior and exterior painting using an HVLP method.

3-2 EPA Tier 4-Final Emissions Standards. The applicant shall make available to the City of Banning, or designee, for review and approval, a comprehensive inventory of all off-road construction equipment equal to or greater than 50 horsepower that will be used an aggregate of 40 or more hours during any portion of construction activities for the project. The inventory shall include the horsepower rating, engine production year, and certification of the specified tier standard. A copy of each such unit’s certified tier specification, Best Available Control Technology documentation, and ARB or SCAQMD operating permit shall be provided on site at the time of mobilization of each applicable unit of equipment. Off-road diesel-powered equipment that will be used an aggregate of 40 or more hours during any portion of the construction activities for the project shall meet the EPA Tier 4 final emissions standards.

In the event that such equipment is not available, the use of Tier 3 construction equipment is sufficient so long as it can be demonstrated to the City that similar Tier 4 construction equipment is not readily available

3-3 Equipment Maintenance. All construction equipment shall be properly tuned and maintained in accordance with manufacturer’s specifications.

3-4 Equipment Operation. General contractors shall maintain and operate construction equipment so as to minimize exhaust emissions. During construction, trucks and vehicles in loading and unloading queues would turn their engines off when not in use to reduce vehicle emissions. Construction emissions should be phased and scheduled to avoid emissions peaks and discontinued during second-stage smog alerts.
3. Revisions to the Draft EIR

3-5 **Generator Use.** Electricity from power poles rather than temporary diesel- or gasoline-powered generators shall be used to the extent feasible.

3-6 **SCAQMD Rule 403(e).** The proposed project is considered a large operation (50 acre sites or more of disturbed surface area; or daily earth-moving operations of 3,850 cubic yards or more on three days in any year) in the South Coast Air Basin; therefore, the project applicant is required to comply with SCAQMD Rule 403(e) – Additional Requirements for Large Operations. Prior to issuance of grading permits, the City of Banning Public Works Department shall ensure the project applicant complies with the regulations detailed in SCAQMD Rule 403(e).

This may include, but is not limited to, Large Operation Notification, appropriate signage, additional dust control measures, and employment of a dust control supervisor that has successfully completed the Dust Control in the South Coast Air Basin training class.

Additional requirements include, but are not limited to:

- Implementation of Table 2 of Rule 403 at all times and implementation of the actions specified in Table 3 of Rule 403 when applicable.
- Submittal of a fully executed Large Operation Notification to the Executive Officer.
- Maintenance of daily records to document the specific dust control actions taken.
- Installation and maintenance of project signage with project contact person that meets the minimum standards of Rule 403 Implementation Handbook.
- Identification of a dust control supervisor that has completed the AQMD Fugitive Dust Control Class.

3-7 **2010 Diesel Haul Trucks.** The project’s construction contractors shall use 2010 and newer diesel haul trucks (e.g., material delivery trucks and import/export). If the City of Banning determines 2010 or newer diesel trucks cannot be obtained, the construction contractor shall use trucks that meet EPA 2007 model year NOx emissions requirements.

3-8 **SCAQMD SOON Program Funds.** The City of Banning shall encourage future developers to apply for SCAQMD’s Surplus Off-Road Opt-In for NOx (SOON) Program to receive funding assistance to purchase commercially-available low-emission heavy-duty engines to achieve near-term reduction of NOx emissions from in-use off-road diesel vehicles.

**Impact 5.3-2**

3-62 **Operational Mitigation Measures.** Prior to issuance of any construction permits, future development applicants shall submit for review and approval by the City of Banning,
building plans that incorporate operational mitigation measures such as, but not limited to, the following:

- **Transportation**
  - Applicants for future development projects shall provide evidence to the City that they would provide one electric car charging station for every 10 high-density residence and provisions for electric car charging stations in the garages of all very low density, low density, medium density, and medium-high density housing.
  - Applicants for future development projects shall provide evidence to the City that they would provide at least two designated parking spots for parking of zero-emission vehicles (ZEVs) or for car-sharing programs in all employee/worker parking areas.
  - Applicants for future development projects shall provide evidence to the City that they would provide incentives for employees and the public to use public transportation such as discounted transit passes, reduced ticket prices at local events, and/or other incentives.
  - Applicants for future development projects shall provide evidence to the City that they would implement a rideshare program for employees at retail/commercial sites.

- **Energy Efficiency**
  - Applicants for future development projects shall provide evidence to the City that they would design all structures to use passive heating, natural cooling, and reduced pavement to the extent feasible. All residences shall use either high-efficiency or solar hot water systems.
  - Applicants for future development projects shall provide evidence to the City that they would limit the hours of operation of outdoor lighting in publicly accessible areas.
  - Applicants for future development projects shall provide evidence to the City that they would install light-colored “cool” roofs on all commercial structures and cool pavements throughout the project site.
  - Applicants for future development projects shall provide evidence to the City that they would require the use of electric/energy-efficient appliances (e.g., stoves) in all residences.

- **Other**
  - Prior to issuance of a building permit, the applicant shall submit a Construction Plan to the City for review and approval that demonstrates that the development will install photovoltaic panels on a minimum of 25 percent of the units within the development. The panels shall be capable of generating 25 percent of the projected...
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electricity demand of each proposed housing unit. For non-residential projects, photovoltaic panels shall be installed, which shall provide a minimum of 25 percent of the electrical demand of the non-residential building.

- Applicants for future development projects shall provide evidence to the City that they would provide outlets for electric and propane barbecues in every residence with an outside patio.
- Applicants for future development projects shall provide evidence to the City that they would require that all homeowner associations’ covenants, conditions and restrictions (CC&Rs) mandate the use of electric lawn mowers and leaf blowers by all residents.

Page 5.4-51, Section 5.4, Biological Resources. The following mitigation measure has been revised in response to Comment A6-3 from U.S. Fish and Wildlife Services/California Department of Fish and Wildlife (USFWS/CDFW), Kennon A. Corey, USFWS Assistant Field Supervisor, and Leslie MacNair, CDFW Regional Manager.

To ensure direct mortality of burrowing owls is avoided, a preconstruction survey shall be conducted by a qualified biologist within 30 days prior to ground disturbance at the site and submitted to the City. If construction is to be initiated during the breeding season (February 1 through August 31) and burrowing owl is determined to occupy any portion of the study area during the 30-day preconstruction survey, consultation with the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) shall take place, and no construction activity shall take place within a buffer zone of a minimum of 300 feet except when a smaller buffer is determined to be adequate to protect nesting activity by a qualified biologist and in consultation with CDFW and/or USFWS, until it has been determined that the nest/burrow is no longer active and all juveniles have fledged the nest/burrow. To avoid active nests, no grading or heavy equipment activity shall take place in the buffer zone during the breeding season (February 1 through August 31). Indirect impacts of exotic plant and animal infestations, litter, fire, and increased light and glare will be minimized by use of native plants for landscaping, removal of litter during construction, and by incorporating shielded lighting at the boundary of the conservation area.

If active burrowing owl burrows are detected outside the breeding season (March 1 through August 31, according to the Western Riverside County Regional Conservation Authority Burrowing Owl Survey Instructions, dated 2006), or within the breeding season but owls are not nesting or in the process of nesting, passive relocation may be conducted following consultation with the CDFW and USFWS. If occupied burrows are identified in a development area, the burrows shall be avoided or the owls passively relocated.

If burrowing owls are identified during the pre-construction surveys and cannot be avoided, a burrowing owl relocation/translocation plan will be prepared for submittal to the wildlife agencies for approval 90 days prior to ground-disturbing activities. One-way doors shall be
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installed as part of a passive relocation program. Burrowing owl burrows shall be excavated with hand tools by a qualified biologist when determined to be unoccupied and backfilled to ensure that animals do not reenter the holes/dens. Disturbance to active burrows shall be minimized to the extent practicable and shall not occur without necessary approvals from the USFWS and/or CDFW.

Prior to construction of the project development areas, the following mitigation measures shall be implemented to minimize impacts to burrowing owl:

- On site conservation of habitat at economically feasible quantity, and not more than a 1:1 mitigation ratio,
- Off-site land conservation, at economically feasible quantity, and not more than a 1:1 mitigation ratio
  - A burrowing owl relocation plan will be developed in cooperation with CDFW, USFWS and Regional Conservation Authority (RCA). The owls will be relocated to an MSHCP Core Area or other public/quasi-public land protected and managed for the conservation of the species at a ratio of 1:1. Total costs for the management associated with translocation, tracking to establish a new breeding pairs, and for monitoring will be the responsibility of the project applicant and shall be discussed between the project applicant and the regulatory agencies.
  - Additionally, the applicant may contribute funds to an existing RCA land purchase or for the management of burrowing owl, thus providing equivalent preservation of habitat for the species (1:1 ratio).
  - Purchasing private land and dedicating a conservation easement over suitable burrowing owl habitat such land in the Smith Creek watershed and San Gorgonio River Valley are preferred options. The Smith Creek watershed conservation study area is located downstream from the project site south of Interstate 10 and east of Banning Municipal Airport. The 2,700-acre study area contains coastal sage scrub, desert scrub, grassland, riparian scrub woodland forest and Riversidean alluvial fan sage scrub habitats. Other suitable locations in western Riverside County will also be considered opportunities for conserving habitat for the burrowing owl.
  - The riparian/riverine habitat mitigation may also be complementary mitigation to serve the habitat needs for the burrowing owl through the Clean Water Act Section 404 and California Fish and Game Code Section 1602 permit process.

The contribution of land or funding must be completed before issuance of grading permits by the City of Banning.

Page 5.4-53, Section 5.4, Biological Resources. The following mitigation measure has been revised in response to Comment A6-10 from U.S. Fish and Wildlife Services/California Department of Fish
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and Wildlife (USFWS/CDFW), Kennon A. Corey, USFWS Assistant Field Supervisor, and Leslie MacNair, CDFW Regional Manager.

4-3 To reduce potential impacts to Stephens' kangaroo rat (SKR) and Los Angeles pocket mouse, project proponents and construction contractors shall adhere to the following best management practices:

- Construction personnel will refrain from entering within 100 feet, on foot or by vehicle, the sandy wash adjacent to the project area. The 100-foot buffer adjacent to the sandy wash shall be clearly marked.

- Vehicle and equipment staging areas will be established away from the creeks and also away from the terraces that separate the project area from the creek.

- Construction fencing will be used to clearly demarcate where sensitive habitat shall be avoided.

- To mitigate for impacts to SKR the project proponent will pay funds into the SKR mitigation fund.

Page 5.4-55, Section 5.4, Biological Resources. The following mitigation measure has been revised in response to Comment A6-23 from U.S. Fish and Wildlife Services/California Department of Fish and Wildlife (USFWS/CDFW), Kennon A. Corey, USFWS Assistant Field Supervisor, and Leslie MacNair, CDFW Regional Manager.

4-7 The following measures shall be implemented during project construction to mitigate impacts to birds nesting and bats roosting in large trees:

- Prior to site preparation or ground-disturbing activities by a project developed pursuant to the Specific Plan, a qualified bat biologist shall conduct a focused bat roosting habitat suitability assessment of all structures (including, but not limited to, bridges, culverts, and buildings) and trees that may be removed, altered, or indirectly impacted by the proposed project. Any locations with potential for roosting or suitable as a maternity roost will be surveyed by the qualified bat biologist using an appropriate combination of structure inspection, exit counts, and acoustic surveys. Surveys shall be conducted during the appropriate season and time of day/night to ensure detection of bats. If bats are found using any structures or trees within the project area, the qualified bat biologist shall identify the bats to the species level, and evaluate the colony to determine its size and significance. The bat survey shall include: 1) the exact location of all roosting sites (location shall be adequately described and drawn on a map); 2) the number of bats present at the time of visit (count or estimate); 3) each species of bat present shall be named (include how the species was identified); and 4) the type of roost, i.e., a night roost (rest at night while out feeding) versus a day roost (resting during the day).
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A report containing the bat survey findings shall be submitted to the City and to CDFW at the following address: 3602 Inland Empire Blvd., Suite C-220, Ontario, CA 91764.

- If a roosting site and/or maternity colony(s) is detected, and the qualified bat biologist determines that impacts (either direct or indirect, including disturbance from noise, vibration, dust, exhaust) from project-related activities may occur, the applicant shall consult with CDFW to determine the most appropriate type of avoidance, minimization, and mitigation measures to implement. Examples of avoidance and minimization strategies may include daily work timing restrictions and buffer distances. Work timing restrictions and buffer distances will be determined based on the expert opinion of the qualified bat biologist, as approved by the Department. Mitigation measures may include replacement of impacted roosting sites with alternate roosting structures, such as those described in the “California Bat Mitigation Techniques, Solutions, and Effectiveness” (H. T. Harvey and Associates, 2004). Alternate roosting structures shall be designed to ensure use by bats impacted by the project. For example, designs will take into consideration the thermal and crevice/structure roosting requirements of the impacted bats.

- The removal of mature trees and snags will be minimized to the greatest extent practicable. Avoidance of mature native trees such as western cottonwood, black willow, and western sycamore, as well as ornamental fan palms that may serve as roost sites will minimize impacts to roosting bats.

- If trimming or removal of mature trees and snags containing roost cavities is required, a two step removal process shall be employed for the removal of these mature trees and snags. This process involves removing all branches less than 2 inches in diameter from trees to create a disturbance that will encourage bats to choose another roosting site after foraging that night. The following day, the tree may be completely removed. Alternatively, if a tree is small enough that a bat biologist can determine zero occupancy, then that tree may be removed in one step. The qualified bat biologist, in consultation with CDFW, shall oversee and direct the trimming and/or removal of all trees, including snags, from the project site.

- To avoid direct impacts to flightless young, tree trimming/removal activities associated with project construction shall be performed outside of the bat maternity season, which occurs from April 1 through August 31; this period also coincides with the bird nesting season of March 15 through September 15, thereby reducing impacts to nesting birds. To further reduce impacts to all age classes of bats, all trees subject to impacts from project construction will be inspected by the qualified bat biologist, regardless of time of year.

- If tree trimming/removal activities cannot be avoided during the bat maternity season (April 1 through August 31) and roosting bats have been documented by CDFW-approved qualified bat biologist, then a biological monitor shall be present during
3. Revisions to the Draft EIR

removal of any mature trees or snags containing roosting crevice or cavity habitat during
the bat maternity season to monitor for the presence of flightless juvenile bats. If any
flightless juvenile or injured adult bats are found during the trimming or removal of
those trees, these bats will be transported to a CDFW-licensed rehabilitator according to
accepted protocol.

- Bridges constructed for the project can include roosting features suitable for use by
crevise and cavity-roosting bats; these bridge features would simulate rock crevices or
cave-like spaces and may be part of the bridge structure or consist of bolted-on
features. Any bat roosting structures, per most current recommended standards, such as
California Department of Transportation bat box specifications, can be installed as
mitigation for impacts. The most appropriate will be selected in coordination with a
qualified bat biologist to ensure it is appropriate for the target bat species (e.g., size,
adjacency to forage, orientation, material, color, type of roost). The inclusion of mature
plantings of cottonwood, willow, and sycamore in the landscaping plan (Mitigation
Measure 4-9) for the project would serve to mitigate for loss of these roost sites because
they would provide suitable habitat for tree-roosting bat species.

- Native habitat enhancement, if implemented as part of the riparian/riverine and
jurisdictional waters mitigation plan in Pershing and Smith Creek areas, will improve the
quality of the foraging habitat currently available and the overall quantity of the foraging
habitat currently available to the local bat population.

Page 5.4-56, Section 5.4, Biological Resources. The following mitigation measure has been revised in
response to Comment A6-25 from U.S. Fish and Wildlife Services/California Department of Fish
and Wildlife (USFWS/CDFW), Kennon A. Corey, USFWS Assistant Field Supervisor, and Leslie
MacNair, CDFW Regional Manager.

4-10 To mitigate impacts to nesting birds including raptors and non-raptors: Within 34 days prior
to the commencement of construction (if between January 15 and August 31), a qualified
biologist shall perform a raptor nesting survey that will consist of a single visit to ascertain
whether there are active raptor nests within 500 feet or other protected bird nests within 300
feet of the project footprint. Nests will be searched for in unused structures, and trees and
shrubs, and on the ground. This survey will also identify the species of nesting bird and, to
the degree feasible, nesting stage (e.g., incubation of eggs, feeding of young, near fledging).
Nests will be mapped (not by using GPS because close encroachment may cause nest
abandonment).

Work shall be avoided in riparian areas during active breeding season, typically designated as
March 1 through August 31 by the Burrowing Owl Survey Instructions for the Western Riverside
Multiple Species Habitat Conservation Plan Area, dated March 29, 2006. If vegetation removal
must occur during this avoidance period, then a nest survey by a qualified biologist is
required. The nest survey shall be conducted for five consecutive days and no more than
three days prior to clearing. If an active nest is observed, then the nest location shall be
fenced off surrounding a buffer zone of 300 feet for all bird species and 500 feet for
raptors, including the burrowing owl; the buffer zone shall not be disturbed until the nest is
inactive; and biological monitoring shall occur during vegetation removal activities.

Page 5.4-56, Section 5.4, Biological Resources. The following mitigation measure has been revised in
response to Comment A6-24 from U.S. Fish and Wildlife Services/California Department of Fish
and Wildlife (USFWS/CDFW), Kennon A. Corey, USFWS Assistant Field Supervisor, and Leslie
MacNair, CDFW Regional Manager.

4-9 Native trees to be impacted by development of projects pursuant to the Specific Plan shall
be assessed by a certified arborist as to the viability and value of the trees in order to
determine if mitigation and replacement are required. Removal of healthy, shade-providing,
and aesthetically valuable trees shall be strongly discouraged and shall conform with the
policies and programs of the City of Banning General Plan. A tree removal and replacement
plan shall be required for the removal and replacement of all trees in excess of 50 years of
age, unless their removal is required to protect the public health and safety. Each identified
tree removed shall be replaced with at least 15 one-gallon saplings of native riparian species
that occur naturally in the San Gorgonio Pass area one 36-inch box specimen tree, in addition
to any other required landscaping.

Page 5.4-61, Section 5.4, Biological Resources. The following text has been revised in response to
Comment A6-5 from U.S. Fish and Wildlife Services/California Department of Fish and Wildlife
(USFWS/CDFW), Kennon A. Corey, USFWS Assistant Field Supervisor, and Leslie MacNair,
CDFW Regional Manager.

Additional Design Features

The project design would conserve on site a total of 6277.7 acres of riverine and grassland habitat that is
known to be occupied by the species in and adjacent to Pershing and Smith Creeks.

The project would designate the 16.2 acres of rock outcrops/ridgeline with coastal sage scrub as open space.

To maintain connectivity opportunities for wildlife within Pershing Creek, the project would create a crossing
under the newly proposed road that would allow continued wildlife movement. The proposed arch or large
box culvert bridge would provide a line-of-sight wildlife crossing and would be suitable for large-sized wildlife
movement.
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Page 5.13-20, Section 5.13, Public Services. The following text has been revised in response to Comment O1-8 from Alvarez-Glasman & Colvin, Andrew L. Jared, General Counsel, Banning Library District.

As stated above, Banning Library District is a California Special District and is primarily funded by property tax revenue through the County of Riverside and a special property tax on residents in the district, which includes the future residents of the proposed project. Future project residents would be required to pay special property tax to the district. By doing so, existing library service deficiencies would not be resolved; however, future project residents would be required to pay special property tax to contribute towards the district’s funds and offset their individual impacts. The increase in funding would allow the district to expand its existing library facility or construct new facilities, such as the one described above, to accommodate future library service demands in the San Gorgonio Pass area. Nevertheless, a condition of approval is required of the project applicant to provide a dedicated space in the proposed Community Center for use by the Banning Library District. The size of the space shall be determined by the City’s Parks and Recreation Director at time of submittal of construction documents. Additionally, upon occupancy of the Community Center, the developer shall provide 14 computer station desks. Thus, project impacts on the Banning Library District would be less than significant.

Page 5.15-5, Section 5.15, Transportation and Traffic. The following text is revised in response to Comment A5-3 from the County of Riverside Transportation and Land Management Agency – Transportation Department, Russell Williams, Development Review Manager.

Riverside County General Plan Circulation Element

Since incorporation of the City in 1913, the County of Riverside’s General Plan Circulation Element has been utilized for the purposes of providing a transportation framework. The county’s General Plan, including the Circulation Element, was recently updated adopted in 2003 through the Riverside County Integrated Project (RCIP). The RCIP represented a comprehensive planning process to determine future placement of buildings, roads, and open spaces for Riverside County. The purpose of the RCIP was to create plans that are coherent and consistent for transportation, land use, and the environment. The Circulation Element creates a framework to accommodate a pattern of concentrated growth regionally and locally between the County’s many communities. The County’s circulation system also encompasses multimodal transportation, including transit, pedestrian systems, and bicycle facilities.

As part of the Circulation Element Update, the Interstate 10 Bypass located east of the project site in unincorporated Riverside County is designated as a Major Highway.
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Page 5.15-6, Section 5.15, *Transportation and Traffic*. The following text is added in response to Comment A5-4 from the County of Riverside Transportation and Land Management Agency – Transportation Department, Russell Williams, Development Review Manager.

**Local Regulations**

**County of Riverside Transportation Mitigation Uniform Fee**

The County of Riverside has a Transportation Mitigation Uniform Fee (TUMF), which is administered by the Western Regional Council of Governments (WRCOG). Under the TUMF, WRCOG collects fees from new development with the purpose of funding transportation improvements such as roadway widening, new roadways, intersection improvements, traffic signalization, etc. for the purpose of mitigating future growth through 2035.

**County of Riverside Ordinance No. 659 – Development Impact Fees**

Ordinance No. 659 establishes policies, regulations, and fees related to the funding and installation of public facilities, including open space land preserves, regional parkland and recreational trails, and the acquisition of open space and habitat necessary to address the direct and cumulative environmental effects generated by new development projects. It also establishes the authorized uses of the collected impact fees. Development impact fees shall be paid based on which Area Plan the project is located in and the type of land use is proposed (i.e., single family residential, multifamily residential, commercial, and industrial).
3. Revisions to the Draft EIR

Page 5.15-19, Section 5.15, *Transportation and Traffic*. Table 5.15-4 and the following text have been modified in response to Comment A2-2 from Caltrans, Mark Roberts, Office Chief, Intergovernmental Review, Community and Regional Planning.

Table 5.15-4 Existing Year Plus Project Intersection Delay and Level of Service

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3. Revisions to the Draft EIR

Table 5.15-4  Existing Year Plus Project Intersection Delay and Level of Service

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3. Revisions to the Draft EIR

Table 5.15-4  Existing Year Plus Project Intersection Delay and Level of Service

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|                               | operates at LOS F during the AM and PM peak hours
| Sunset Avenue (NS) at:        |               |                 |              |              |
| No 20 - I-10 WB Ramps (EW)    |               |                 |              |              |
|                               | operates at LOS F during the PM peak hour
| No. 21 - I-10 EB Ramps (EW)   |               |                 |              |              |
|                               | operates at LOS F during the AM and PM peak hours
| No. 23 - Westward Avenue (EW) |               |                 |              |              |
|                               | operates at LOS F during the PM peak hour

Source: Kunzman 2016, Table 1 and Table 9
Notes: NS = North South; EW = East West; TS = Traffic Signal; CSS = Cross Street Stop; AWS = All Way Stop

¹ Delay and level of service calculated using the Traffix, Version 7.9.0215 (2008) analysis software. Per the Highway Capacity Manual, overall average intersection delay and level of service are shown for intersections with traffic signal or all way stop control. For intersections with cross street stop control, the delay and level of service for the worst individual movement (or movements sharing a single lane) are shown.

² The unsignalized intersections were also evaluated for traffic signals using the California Department of Transportation Warrant 3 Peak Hour traffic signal warrant analysis, as specified in the California Manual on Uniform Traffic Control Devices (2014 Edition). Traffic signals are projected to be warranted at this intersection.

As shown in Table 5.15-4, the study area intersections are projected to operate within acceptable levels of service during the peak hours for the Existing Year Plus Project condition (when compared to the LOS standards and significant impact criteria specified above), with exception of the following intersections:

- Beaumont Avenue/SR-79 (NS) at:
  - No. 3 - California Avenue (EW); operates at LOS F during the AM and PM peak hours

- Sunset Avenue (NS) at:
  - No 20 - I-10 WB Ramps (EW); operates at LOS F during the PM peak hour
  - No. 21 - I-10 EB Ramps (EW); operates at LOS F during the AM and PM peak hours
  - No. 23 - Westward Avenue (EW); operates at LOS F during the PM peak hour
3. Revisions to the Draft EIR

Page 5.15-23, Section 5.15, *Transportation and Traffic*. Table 5.15-5 has been modified in response to Comment A2-2 from Caltrans, Mark Roberts, Office Chief, Intergovernmental Review, Community and Regional Planning.

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### Table 5.15-5 Opening Year (2017) Intersection Delay and Level of Service

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Source: Kunzman 2016, Table 11 and Table 12.

Notes: NS = North South; EW = East West; TS = Traffic Signal; CSS = Cross Street Stop; AWS = All Way Stop

Bold type indicates an unacceptable LOS.

¹ Delay and level of service calculated using the Traffix, Version 7.9.0215 (2008) analysis software. Per the Highway Capacity Manual, overall average intersection delay and level of service are shown for intersections with traffic signal or all way stop control. For intersections with cross street stop control, the delay and level of service for the worst individual movement (or movements sharing a single lane) are shown.

² The unsignalized intersections were also evaluated for traffic signals using the California Department of Transportation Warrant 3 Peak Hour traffic signal warrant analysis, as specified in the California Manual on Uniform Traffic Control Devices (2014 Edition). Traffic signals are projected to be warranted at this intersection.
3. Revisions to the Draft EIR

Page 5.15-29, Section 5.15, *Transportation and Traffic*. Table 5.15-7 has been modified in response to Comment A2-2 from Caltrans, Mark Roberts, Office Chief, Intergovernmental Review, Community and Regional Planning.

### Table 5.15-7  Interim Year (2022) Intersection Delay and Level of Service

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## Interim Year (2022) Intersection Delay and Level of Service

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Source: Kunzman 2016.

Notes: NS = North South; EW = East West; TS = Traffic Signal; CSS = Cross Street Stop; AWS = All Way Stop;
Bold type indicates an unacceptable LOS.

¹ Delay and level of service calculated using the Traffix, Version 7.9.0215 (2008) analysis software. Per the Highway Capacity Manual, overall average intersection delay and level of service are shown for intersections with traffic.

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3. Revisions to the Draft EIR

Table 5.15-7  Interim Year (2022) Intersection Delay and Level of Service

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Table 5.15-8  Interim Year (2025) Intersection Delay and Level of Service

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Page 5.15-32, Section 5.15, Transportation and Traffic. Table 5.15-8 has been modified in response to Comment A2-2 from Caltrans, Mark Roberts, Office Chief, Intergovernmental Review, Community and Regional Planning.
### 3. Revisions to the Draft EIR

Table 5.15-8  
**Interim Year (2025) Intersection Delay and Level of Service**

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3. Revisions to the Draft EIR

### Table 5.15-8  Interim Year (2025) Intersection Delay and Level of Service

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<td>PM Peak</td>
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<td>Delay¹</td>
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Source: Kunzman 2016. Table 20 and Table 21.

Notes: NS = North South; EW = East West; TS = Traffic Signal; CSS = Cross Street Stop; AWS = All Way Stop;
Bold type indicates an unacceptable LOS.
1 Delay and level of service calculated using the Traffix, Version 7.9.0215 (2008) analysis software. Per the Highway Capacity Manual, overall average intersection delay and level of service are shown for intersections with traffic signal or all way stop control. For intersections with cross street stop control, the delay and level of service for the worst individual movement (or movements sharing a single lane) are shown.
2 The unsignalized intersections were also evaluated for traffic signals using the California Department of Transportation Warrant 3 Peak Hour traffic signal warrant analysis, as specified in the California Manual on Uniform Traffic Control Devices (2014 Edition). Traffic signals are projected to be warranted at this intersection.

Page 5.15-39, Section 5.15, Transportation and Traffic. Table 5.15-10 has been modified in response to Comment A2-2 from Caltrans, Mark Roberts, Office Chief, Intergovernmental Review, Community and Regional Planning.

### Table 5.15-10  General Plan Buildout Year (2035) Intersection Delay and Level of Service

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<th>Project Impact?</th>
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### General Plan Buildout Year (2035) Intersection Delay and Level of Service

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3. Revisions to the Draft EIR

Table 5.15-10  General Plan Buildout Year (2035) Intersection Delay and Level of Service

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Source: Kunzman 2016. Table 26 and Table 27.
Notes: NS = North South; EW = East West; TS = Traffic Signal; CSS = Cross Street Stop; AWS = All Way Stop
Bold type indicates an unacceptable LOS.
¹Delay and level of service calculated using the Traffix, Version 7.9.0215 (2008) analysis software. Per the Highway Capacity Manual, overall average intersection delay and level of service are shown for intersections with traffic signal or all way stop control. For intersections with cross street stop control, the delay and level of service for the worst individual movement (or movements sharing a single lane) are shown.
²The unsignalized intersections were also evaluated for traffic signals using the California Department of Transportation Warrant 3 Peak Hour traffic signal warrant analysis, as specified in the California Manual on Uniform Traffic Control Devices (2014 Edition). No additional traffic signals other than identified previously are projected to be warranted at the following additional study area intersections for 2035 With Project traffic conditions.
Table 5.15-11  Summary of Project Impacts

<table>
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<tr>
<th>Intersection</th>
<th>Project Impacts</th>
<th>Jurisdictional Responsibility</th>
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<tr>
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<td>No. 2 - Potrero Boulevard (EW) - No. 2</td>
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<td>No. 23 - Westward Avenue (EW)</td>
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<td>22nd Street (NS) at:</td>
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<td>No. 27 - I-10 WB Ramps (EW)</td>
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<td>8th Street (NS) at:</td>
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<td>No. 35 - Lincoln Street (EW)</td>
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September 2016
Appendices

Table 5.15-11  Summary of Project Impacts

<table>
<thead>
<tr>
<th>Intersection</th>
<th>Project Impacts</th>
<th>Jurisdictional Responsibility</th>
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<tbody>
<tr>
<td>No. 36 - Westward Avenue (EW)</td>
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<td>Banning</td>
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Notes
E: Existing; C: cumulative impact; P: project impact; S: signal warrant; O: Other
1 Project impact during the AM peak hour and cumulative impact during the PM peak hour.
2 The traffic study identified this intersection warranted installation of a traffic signal for the without project conditions. The traffic study identified that the project would require fair share contributions for the installation of this traffic signal.
3 The traffic study identified that the project would require fair share contributions to the construction of this new intersection.
4 This is a new intersection at the project boundary that would require fair share contribution for its construction.

Page 5.15-46, Section 5.15, Transportation and Traffic. The following table has been modified in response to Comment A2-3 from Caltrans, Mark Roberts, Office Chief, Intergovernmental Review, Community and Regional Planning.

Table 5.15-14  Left Turn Pocket Queue Analysis

<table>
<thead>
<tr>
<th>Intersection</th>
<th>General Plan Buildout Year (2035) With Project</th>
<th>General Plan Buildout Year (2035) With Project</th>
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<tr>
<td></td>
<td>Northbound</td>
<td>Southbound</td>
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<tr>
<td>Sunset Avenue (NS) at:</td>
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<td></td>
</tr>
<tr>
<td>I-10 WB Ramps (EW) - No. 20</td>
<td>126/135 PM</td>
<td>151/255 PM</td>
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<tr>
<td>I-10 EB Ramps (EW) - No. 21</td>
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<tr>
<td>22nd Street (NS) at:</td>
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<td></td>
</tr>
<tr>
<td>I-10 WB Ramps (EW) - No. 27</td>
<td>77/130 PM</td>
<td>207/366 PM</td>
</tr>
<tr>
<td>I-10 EB Ramps (EW) - No. 28</td>
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<td>8 Street (NS) at:</td>
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<td>I-10 WB Ramps (EW) - No. 33</td>
<td>174/200 PM</td>
<td>218/975 PM</td>
</tr>
<tr>
<td>I-10 EB Ramps (EW) - No. 34</td>
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</table>

Notes: NS = North South; EW = East West
Bold type indicates deficiency.
1 All values are given in feet (queue length / turn bay length), (174/100) = Queue exceeds turn bay length, AM = Morning peak hour controls queue length, PM = morning peak hour controls queue length.
Page 5.15-52, Section 5.15, Transportation and Traffic. The following mitigation measure has been revised in response to Comment A2-1 from Caltrans, Mark Roberts, Office Chief, Intergovernmental Review, Community and Regional Planning.

Prior to issuance of any building permit, the project applicant shall provide fair share funding for the following improvements as determined by the City. Where the project’s fair share responsibility exceeds 50%, the project applicant shall be responsible for constructing the actual improvement and shall be entitled to reimbursement for any portion of the improvement exceeding their fair share responsibility.

- Michigan Avenue (NS) at 1st Street (EW): pay the fair share amount of 44.2% to install a traffic signal
- Pennsylvania Avenue (NS) at 1st Street (EW): pay the fair share of 37.7% to install a traffic signal
- 8th Street (NS) at I-10 Freeway Eastbound Ramps (EW): fair share responsibility is 83.0%; project applicant shall construct a southbound left turn lane and install a traffic signal.
- 8th Street (NS) at Westward Avenue (EW): fair share responsibility is 79.3%; project applicant shall construct a northbound thru lane and install a traffic signal.
- SR-243 (NS) at C Street (EW): fair share responsibility is 88.3%; project applicant shall construct an eastbound thru lane.

Additionally, per Condition of Approval No. 49, traffic improvements for each development phase shall be constructed prior to the issuance of a certificate of occupancy for any tract or development phase.
STATEMENT OF OVERRIDING CONSIDERATIONS

Introduction

The City is the Lead Agency under CEQA responsible for preparation, review, and certification of the Final EIR for the Rancho San Gorgonio Specific Plan. As the Lead Agency, the City is also responsible for determining the potential environmental impacts of the proposed action, which of those impacts are significant, and which can be mitigated—through imposition of mitigation measures—to avoid or minimize those impacts to a level of less than significant. CEQA then requires the Lead Agency to balance the benefits of a proposed action against its significant, unavoidable adverse environmental impacts in determining whether or not to approve the proposed project. In making this determination, the City is guided by State CEQA Guidelines Section 15093:

CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”

When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the Final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

In addition, Public Resources Code Section 21081(b) requires that where a public agency finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in an EIR and thereby leave significant unavoidable effects, the public agency must also find that overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects of the project.

Pursuant to Public Resources Code Section 21081(b) and the State CEQA Guidelines Section 15093, the City has balanced the benefits of the project against the unavoidable adverse impacts associated with the project (see below) and has adopted all feasible mitigation measures with respect to these impacts. The City has also examined alternatives to the project, none of which both meets the project objectives and is environmentally preferable to the proposed project for the reasons discussed in the Findings of Facts (Findings).

The City of Banning City Council, the Lead Agency for this project, having reviewed the Final EIR for the Rancho San Gorgonio Specific Plan, reviewed all written materials in the City’s public record, and heard all oral testimony presented at public hearings, has balanced the benefits of the proposed project against its significant unavoidable adverse environmental impacts in reaching its decision to approve the project and adopts this Statement of Overriding Considerations.
Significant Unavoidable Adverse Environmental Impacts

Although most potential project impacts have been substantially avoided or mitigated, as described in the Findings, some project impacts remain for which complete mitigation is not feasible. The Rancho San Gorgonio Specific Plan EIR identified the following unavoidable adverse impacts of the proposed project:

Air Quality

- **Impact 5.3-2.** From Phase 2 onward, operational activities of the proposed project would generate peak daily emissions in exceedance of the South Coast Air Quality Management District (SCAQMD) daily thresholds for volatile organic compounds (VOC), nitrous oxides (NO\(_x\)), carbon monoxide (CO), respirable coarse particulate matter (PM\(_{10}\)), and respirable fine particulate matter (PM\(_{2.5}\)). Implementation of Mitigation Measure 3-6 would reduce operation-related criteria air pollutants and encourage and accommodate use of alternative-fueled vehicles, multimodal transportation, and energy efficient technology. However, despite adherence to mitigation, Impact 5.3-2 would remain significant and unavoidable.

- **Impact 5.3-4.** The Rancho San Gorgonio Specific Plan would result in a substantial increase in growth compared to what was identified in the City's General Plan and would exceed SCAQMD's regional operational thresholds. As a result, the proposed project could potentially exceed the assumptions in the regional air quality management plan (AQMP) and would not be considered consistent. Mitigation measures applied for Impacts 5.3-1 and 5.3-2 and the design and regulatory standards of the Specific Plan would reduce the project's regional construction-related and operational phase criteria air pollutant emissions to the extent feasible. However, given the potential increase in growth and associated increase in criteria air pollutant emissions, the project would be potentially inconsistent with the assumptions in the AQMP. Thus, Impact 5.3-4 would remain significant and unavoidable.

Greenhouse Gas Emissions

- **Impact 5.7-1.** Development in accordance with the proposed project would generate GHG emissions in excess of SCAQMD's Tier 4 performance targets. Implementation of Mitigation Measures 7-1 through 7-3 and Project Design Features 7-1 through 7-5 would reduce GHG emissions from stationary and mobile sources to the extent feasible. Additionally, Mitigation Measures 3-1 through 3-6, detailed in Section 5.3, Air Quality, would also encourage and accommodate use of alternative-fueled vehicles, multimodal transportation, and energy efficient technology that would help reduce vehicle miles traveled and GHG emissions. However, due to the magnitude of GHG emissions associated with the proposed project, Impact 5.7-1 would remain significant and unavoidable.

Noise

- **Impact 5.11-1.** Noise from construction activities from implementation of projects within the Specific Plan area could result in substantial impacts to sensitive receptors. Mitigation Measure 11-1 would reduce potential noise impacts during construction to the extent feasible. However, due to the potential for construction to occur in close proximity to sensitive receptors, there would be a substantial noise increase over existing ambient noise levels. Although temporary construction barriers would reduce construction noise levels to the City's interior noise standard (of 55 A-weighted decibels [dBA] for 15 minutes or below) for residences and schools within 71 feet of construction activities, there would still be the potential for a readily perceptible noise increase at sensitive receptors in the vicinity of the project over the years the project is constructed. Therefore, impacts would be significant and unavoidable.

- **Impact 5.11-3.** Noise-sensitive uses would be exposed to elevated traffic noise levels that would result in substantial impacts. No individual mitigation measure and no combination of feasible or practical
mitigation measures is available to reduce project-generated traffic noise to less than significant levels. Thus, traffic noise impacts are significant and unavoidable.

**Population and Housing**

- **Impact 5.12-1.** Buildout of the proposed Specific Plan would introduce up to 9,038 residents, which would exceed the Southern California Association of Governments’ 2040 population projections for the City by approximately 1,041 residents. There are no feasible mitigation measures to reduce impacts of population growth. Thus, Impact 5.12-1 would be significant and unavoidable.

**Transportation and Traffic**

- **Impact 5.15-1.** The project combined with cumulative development would cause a significant impact at intersections under the jurisdiction of the cities of Banning and Beaumont and of Caltrans. With implementation of program improvements as well as the improvements listed in Mitigation Measures 15-1 to 15-7 at impacted study area intersections, the intersections would operate within acceptable levels of service. However, the primary responsibility for approving and/or completing certain improvements outside of Banning lies with agencies other than the City of Banning (i.e., City of Beaumont, Caltrans). Thus, there is potential that significant impacts may not be fully mitigated if improvements are not completed for reasons beyond the City of Banning’s control (i.e., the City cannot undertake or require improvements outside of Banning’s jurisdiction). Therefore, this impact would remain significant and unavoidable.

- **Impact 5.15-2.** The project combined with cumulative development would cause a significant impact at several freeway main-line segments and on freeway off-ramps on Interstate 10 (I-10). Additional high-occupancy-vehicle lanes and general use lanes would be required to improve freeway mainline operations. However, these improvements would require approval from Caltrans as the owner/operator of I-10. Caltrans currently does not have a funding mechanism for development projects to contribute to fair share fees to implement improvements on Caltrans facilities. Therefore, the City of Banning or the property owner/developer would not be able to guarantee the implementation of these measures. Thus, impacts would be significant and unavoidable.

  Improvements would also be required at several freeway ramps—No. 21, Sunset Avenue (NS) at I-10 EB ramps (EW); No. 33, 8th Street (NS) at I-10 WB ramps (EW); and No. 34, 8th Street (NS) at I-10 EB ramps (EW). However, the improvements would require approval from Caltrans as the owner/operator of these freeway ramps. Caltrans currently does not have a funding mechanism for development projects to contribute fair share fees to implement improvements on Caltrans facilities. Therefore, the City of Banning or the property owner/developer would not be able to guarantee the implementation of these measures. Therefore, impacts would be significant and unavoidable.

- **Impact 5.15-3.** The project in combination with cumulative development would result in freeway segments and intersections in the congestion management plan network exceeding level of service standards. Similar to Impact 5.15-1, several roadway improvements would be required outside the City’s jurisdiction. Thus, there is potential that significant impacts may not be fully mitigated. Impacts would therefore be significant and unavoidable.
Statement of Overriding Considerations

The City, after balancing the specific economic, legal, social, technological, and other benefits of the proposed project, including regionwide or statewide environmental benefits, has determined that the unavoidable adverse environmental impacts identified above may be considered acceptable due to the following specific considerations, which outweigh the unavoidable, adverse environmental impacts of the proposed project in accordance with CEQA Section 21081(b) and State CEQA Guidelines Section 15093.

1. **Provide recreational amenities for all residents in the City.**

As part of the proposed project, approximately 210 acres of public park and open space would be developed in Planning Areas (PAs) 10 through 15, including a community park, confluence park, neighborhood park, entry park, creek linear parks, and village paseos. The community park is conceptually planned to include a community center, basketball courts, softball/baseball sports fields, picnic facilities, shelters, and tot lots. The creek linear park would be developed along Pershing and Smith creeks as a buffer from residential development, and the village paseos would run east–west through the Specific Plan area to connect the residential and park developments.

Both Pershing and Smith creeks are proposed to remain in their natural condition, with enhanced trail systems on either side of their full frontage through the community. In addition, natural open space is proposed in PA 17 in and around the small hill at the southeast corner of the site and would connect with the creek linear park near Smith Creek in PA 15-B. The parks, multipurpose trails, village paseos, and open space areas would be accessible to the public, thereby increasing recreational opportunities for all Banning residents.

2. **Provide onsite drainage improvements that improve stormwater capture, decrease peak flow, and reduce flood hazard areas.**

Onsite drainage improvements would include 33 basins to be located in most of the PAs (mostly one basin per PA, except PAs 2-B and 7-A would each have two basins); 9 linear basins within the 100-foot setback areas from Smith Creek and Pershing Creek; and 3 confluence basins in Confluence Park in the eastern part of the site. The combination of retention and detention basins would reduce existing peak runoff—the retention basins capture and infiltrate runoff, and the detention basins release runoff downstream at a lower rate than is generated upstream. Compared to existing conditions, post-development conditions would decrease peak runoff by approximately 1.7 percent or 298 cubic feet per second. Additionally, all runoff would first drain into the proposed landscaped areas, which would include vegetated swales, biofilters, and pervious pavements, prior to flowing into the street catch basins or retention/detention basins.

The project also proposes undergrounding of Montgomery Creek and a segment of Gilman Home Channel. This would reduce the 100-year flood hazard zone along the perimeters of these creeks and reduce flood hazards in the project area (see Figure 5.9-6 in the DEIR).

By integrating the aforementioned drainage improvements onsite, the project would benefit the City’s overall drainage system by decreasing peak flows, infiltrating runoff, and reducing flood hazard zones.

3. **Include public service facilities in the Specific Plan area.**

The Specific Plan allows for development of public service facilities that would serve future residents in the Rancho San Gorgonio community as well as all Banning residents. PA 10 is designated for park use as the Rancho San Gorgonio Community Park site, but also allows for a potential fire station facility on the east side of PA 10. Additionally, PA 16-C is designated for school use and will be developed into the Rancho San Gorgonio Elementary School. Development of a fire station and elementary school in the Specific Plan area would improve Banning Fire Services/Riverside County Fire Department’s level of service and increase Banning Unified School District’s facility resources and student capacity.
4. Implement transportation and traffic improvements.

The traffic impact analysis prepared for the project analyzed traffic conditions during the six project phases with and without the proposed project. The following intersections would operate at unacceptable levels of service (LOS) under without-project conditions:

- **Opening Year (2017), Interim Year (2019), and Interim Year (2022) Without Project**
  - No. 3 - Beaumont Avenue/SR-79 at California Avenue
  - No. 34 - 8th Street at I-10 Freeway EB Ramps

- **Interim Year (2025) Without Project**
  - No. 3 - Beaumont Avenue/SR-79 at California Avenue
  - No. 15 - Highland Home Road at Ramsey Street
  - No. 34 - 8th Street at I-10 Freeway EB Ramps

- **Interim Year (2029) and Buildout Year (2035) Without Project**
  - No. 3 - Beaumont Avenue/SR-79 at California Avenue
  - No. 14 - Highland Home Road at Wilson Street
  - No. 15 - Highland Home Road at Ramsey Street
  - No. 18 - Sunset Avenue at Wilson Street
  - No. 34 - 8th Street at I-10 Freeway EB Ramps

The proposed project would result in additional delays at these (and other) intersections, and mitigation measures in the DEIR would require the project applicant to implement roadway improvements or contribute fair share impact fees under the City of Banning Development Impact Fee Program and County of Riverside Transportation Mitigation Uniform Fee, which would mitigate project impacts on intersections in the project vicinity. Without the proposed project, these improvements would not be implemented, and the above intersections would continue operating at unacceptable LOS.

Specifically, the project would be required to implement the following roadway improvements that would improve the impacted intersections mentioned above and benefit the City’s overall circulation system.

- **No. 3 - Beaumont Avenue/SR-79 at California Avenue:** Pay 14.0 percent fair share for future installation of a traffic signal.

- **No. 14 - Highland Home Road at Wilson Street:** Install a traffic signal.

- **No. 15 - Highland Home Road at Ramsey Street:** Install a traffic signal.

- **No. 18 - Sunset Avenue at Wilson Street:** Install a traffic signal.

- **No. 34 - 8th Street at I-10 Freeway EB Ramps:** Construct one SB left turn lane; pay 83.0 percent fair share for future construction of a second SB left turn lane; and pay 83.0 percent fair share for future installation of a traffic signal.

5. Encourage alternative transportation within the Specific Plan area and citywide.

The project includes a nonvehicular circulation plan (see Figure 3-7 in the DEIR) that includes extensive multipurpose trails, pedestrian sidewalk and bikeways, equestrian trails, and urban trails, some of which are included in the City of Banning Parks and Recreation Master Plan. The proposed trails and paseos encourage alternative transportation within the individual Rancho San Gorgonio residential villages, and they connect to
the City’s existing trail system for all residents to enjoy. The project’s nonvehicular circulation plan also encourages the creation of a walkable community with well-defined pedestrian linkages between existing and future neighborhoods, amenities, schools, and commercial uses.

6. **Provide a wide range of housing opportunities.**

The City of Banning is in need of additional housing for future generations. According to the Southern California Association of Governments’ Regional Housing Needs Assessment, Banning is required to provide for 3,792 units in the 2014–2021 planning period. The proposed Specific Plan would allow residential development of various types and densities (very-low, low, medium, and medium-high density). The project would also provide age-qualified housing for senior residents. Therefore, the development of up to 3,133 homes in accordance with the proposed Specific Plan would help the City meet its need to provide a wide range of housing opportunities for its citizens. The project would also be consistent with the City’s General Plan goal of providing “a broad range of housing types to fill the needs of the City's current and future residents.”

**Conclusion**

The City of Banning has balanced the project’s benefits against the project’s significant unavoidable impacts and finds that the project’s benefits outweigh the project’s significant unavoidable impacts. Those impacts, therefore, are considered acceptable in light of the project’s benefits. The City finds that each of the benefits described above is an overriding consideration, independent of the other benefits, that warrants approval of the project notwithstanding the project’s significant unavoidable impacts.
Rancho San Gorgonio Specific Plan
Final Environmental Impact Report
Mitigation Monitoring and Reporting Program
RANCHO SAN GORGONIO SPECIFIC PLAN
City of Banning

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1. **Mitigation Monitoring and Reporting Program**

1.1 **PURPOSE OF MITIGATION MONITORING PROGRAM**

This Mitigation Monitoring Program has been developed to provide a vehicle by which to monitor the mitigation measures outlined in the Draft Environmental Impact Report (Draft EIR), State Clearinghouse No. 2015041064. The Mitigation Monitoring Program has been prepared in conformance with Section 21081.6 of the Public Resources Code and the City of Banning Monitoring Requirements. Section 21081.6 states:

(a) When making findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead or responsible agency, prepare and submit a proposed reporting or monitoring program.

(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

The State CEQA Guidelines Section 15097 clarifies mitigation monitoring and reporting requirements and gives guidance to local lead agencies on implementing strategies. The reporting or monitoring program must be designed to ensure compliance during project implementation. The City of Banning is the lead agency for the Rancho San Gorgonio Specific Plan and is therefore responsible for implementing the Mitigation Monitoring and Reporting Program (MMRP).

The MMRP has been drafted to meet the requirements of Public Resources Code Section 21081.6 as a fully enforceable monitoring program. It consists of the mitigation program and the measures to implement and monitor the mitigation program. For each mitigation measure, Table 1, *Mitigation Monitoring Requirements*, identifies:
Mitigation Monitoring and Reporting Program

- **Definition of Mitigation.** The mitigation measure contains the criteria for mitigation, either in the form of adherence to certain adopted regulations or identification of the steps to be taken in mitigation.

- **Responsible Party or Designated Representative.** Unless otherwise indicated, the project applicant is the responsible party for implementing the mitigation, and the City of Banning or another designated representative is responsible for monitoring the performance and implementation of the mitigation measures. To guarantee that the mitigation measure will not be inadvertently overlooked, a supervising public official acting as the Designated Representative is the official who grants the permit or authorization called for in the performance. Where more than one official is identified, permits or authorization from all officials shall be required.

- **Time Frame.** A time frame is provided for performance of the mitigation measure or review of evidence that mitigation has taken place. The performance points selected are designed to ensure that impact-related components of project implementation do not proceed without establishing that the mitigation is implemented or ensured. All activities are subject to the approval of all required permits from local, state, and federal agencies with permitting authority over the specific activity.

The numbering system in Table 1 corresponds with the numbering system used in the Draft EIR. The last column of the MMRP table will be used by the City to document that implementation of the mitigation measure is complete. The completed MMRP and supplemental documents will be kept on file at the Planning Division of the City of Banning Community Development Department.

### 1.2 PROJECT LOCATION

The project site covers approximately 831 acres—670 acres in the southern portion of the City of Banning and 161 acres in unincorporated Riverside County, California. The San Bernardino National Forest borders Banning to the north; the City of Palm Springs lies 17 miles to the east; the City of San Jacinto is 9 miles to the south; and the City of Beaumont borders Banning on the west. The Morongo Indian Reservation is northeast of Banning, and areas of unincorporated Riverside County border Banning on the north, east, and south.

The Rancho San Gorgonio Specific Plan site is an irregularly shaped area on the southern edge of the City, about 0.4 mile south of Interstate 10 (I-10), which runs east–west through the City and provides regional access to the site.

The project site is bounded by Westward Avenue on the north, Sunset Avenue and Turtle Dove Lane on the west, San Gorgonio Avenue (State Route 243, SR-243) on the east, and Coyote Trail and Old Idyllwild Road on the south. Access to the site from I-10 is via ramps at Sunset Avenue, 22nd Street, and 8th Street, from west to east. A portion of the site (approximately 161 acres) is in the City’s sphere of influence and is anticipated to be annexed as part of the development process.
1.3 PROJECT SUMMARY

The proposed project is an 831-acre master-planned community organized into 44 planning areas (PAs) that include a mixture of residential, commercial, open space, and recreational uses and up to 3,133 residential units, or 3,385 residential units if the commercial and school sites are not developed. Parks and paseos are incorporated to buffer the natural creeks onsite and to provide nonmotorized access throughout the planned community.

The following land uses are proposed for the project site:

- **Residential**: Encompasses 62.2 percent of the site and includes Very Low Density, Low Density, Medium Density – Age-Qualified, and Medium-High Density Residential. A maximum of 3,385 dwelling units would be allowed in the Specific Plan area, with an average density of 4.1 dwelling units per acre.

- **Parks/Open Space**: Encompasses 25.2 percent of the site and includes the RSG Community Park, Confluence Park, Neighborhood Park, Entry Park, Village Paseos, Creeks/Creek Edge Linear Parks, and Natural Open Space.

- **Other**: Encompasses 12.5 percent of the site and includes Neighborhood Commercial, Public Facility, School, Backbone Roadways Right-of-Way, and Storm Drain Easement. Development would allow up to 101,300 square feet of commercial use, an elementary school, and a wastewater treatment plant.
Mitigation Monitoring and Reporting Program

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Table 1  Mitigation Monitoring Requirements

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<tr>
<th>Mitigation Measure</th>
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<td><strong>AIR QUALITY</strong></td>
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<tr>
<td>3-1 Application of Architectural Coatings. Prior to issuance of any grading permits, the City of Banning Public Works Department, or designee, shall verify that construction contracts provided by future applicants include a statement specifying that the Construction Contractor shall comply with the SCAQMD Rule 1113 and any other SCAQMD rules and regulations on the use of architectural coatings or high-volume, low-pressure (HVLP) spray methods. Emissions associated with architectural coatings would be reduced by complying with these rules and regulations, which include using pre-coated/natural colored building materials, using water-based or low-VOC coating, and using coating transfer or spray equipment with high transfer efficiency. As the emissions from architectural coatings will exceed the SCAQMD’s thresholds, the use of low-VOC (e.g., 50 grams per liter [g/L] of VOC content or lower) shall be required for interior and exterior painting using an HVLP method.</td>
<td>Project Applicant</td>
<td>Prior to issuance of any grading permits</td>
<td>City of Banning Public Works Department</td>
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<tr>
<td>3-2 EPA Tier 4-Final Emissions Standards. The applicant shall make available to the City of Banning, or designee, for review and approval, a comprehensive inventory of all off-road construction equipment equal to or greater than 50 horsepower that will be used an aggregate of 40 or more hours during any portion of construction activities for the project. The inventory shall include the horsepower rating, engine production year, and certification of the specified tier standard. A copy of each such unit’s certified tier specification, Best Available Control Technology documentation, and ARB or SCAQMD operating permit shall be provided on site at the time of mobilization of each applicable unit of equipment. Off-road diesel-powered equipment that will be used an aggregate of 40 or more hours during any portion of the construction activities for the project shall meet the EPA Tier 4 final emissions standards.</td>
<td>Project Applicant</td>
<td>Prior to issuance of any grading permits</td>
<td>City of Banning Public Works Department</td>
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<tr>
<td>In the event that such equipment is not available, the use of Tier 3 construction equipment is sufficient so long as it can be demonstrated to the City that similar Tier 4 construction equipment is not readily available.</td>
<td>Project Applicant, Construction Contractors</td>
<td>During construction activities</td>
<td>City of Banning Public Works Department</td>
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<tr>
<td>3-3 Equipment Maintenance. All construction equipment shall be properly tuned and maintained in accordance with manufacturer’s specifications.</td>
<td>Project Applicant, Construction Contractors</td>
<td>During construction activities</td>
<td>City of Banning Public Works Department</td>
<td>Monitor (Signature and Date of Compliance Required)</td>
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<tr>
<td>3-4 Equipment Operation. General contractors shall maintain and operate construction equipment so as to minimize exhaust emissions. During construction, trucks and vehicles in loading and unloading queues would turn their engines off when not in use to reduce vehicle emissions. Construction emissions should be phased and scheduled to avoid emissions peaks and discontinued during second-stage smog alerts.</td>
<td>Project Applicant, Construction Contractors</td>
<td>During construction activities</td>
<td>City of Banning Public Works Department</td>
<td>Monitor (Signature and Date of Compliance Required)</td>
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<tr>
<td>3-5 Generator Use. Electricity from power poles rather than temporary diesel- or gasoline-powered generators shall be used to the extent feasible.</td>
<td>Project Applicant, Construction Contractors</td>
<td>During construction activities</td>
<td>City of Banning Public Works Department</td>
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<td>3-6 SCAQMD Rule 403(e). The proposed project is considered a large operation (50 acre sites or more of disturbed surface area; or daily earth-moving operations of 3,850 cubic yards or more on three days in any year) in the South Coast Air Basin; therefore, the project applicant is required to comply with SCAQMD Rule 403(e) – Additional Requirements for Large Operations. Prior to issuance of grading permits, the City of Banning Public Works Department shall ensure the project applicant complies with the regulations detailed in SCAQMD Rule 403(e). This may include, but is not limited to, Large Operation Notification, appropriate signage, additional dust control measures, and employment of a dust control supervisor that has successfully completed the Dust Control in the South Coast Air Basin training class.</td>
<td>Project Applicant, Construction Contractors</td>
<td>During construction activities</td>
<td>City of Banning Public Works Department</td>
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<td>Additional requirements include, but are not limited to:</td>
<td>Project Applicant, Construction Contractors</td>
<td>Prior to issuance of grading permits</td>
<td>City of Banning Public Works Department</td>
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<td>- Implementation of Table 2 of Rule 403 at all times and implementation of the actions specified in Table 3 of Rule 403 when applicable.</td>
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<td>- Submittal of a fully executed Large Operation Notification to the Executive Officer.</td>
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<td>- Maintenance of daily records to document the specific dust control actions taken.</td>
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<td>- Installation and maintenance of project signage with project contact person that meets the minimum standards of Rule 403 Implementation Handbook.</td>
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<td>- Identification of a dust control supervisor that has completed the AQMD Fugitive Dust Control Class.</td>
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<td>3-7  <strong>2010 Diesel Haul Trucks.</strong> The project’s construction contractors shall use 2010 and newer diesel haul trucks (e.g., material delivery trucks and import/export). If the City of Banning determines 2010 or newer diesel trucks cannot be obtained, the construction contractor shall use trucks that meet EPA 2007 model year NOx emissions requirements.</td>
<td>Project Applicant, Construction Contractors</td>
<td>Prior to issuance of grading permits</td>
<td>City of Banning Public Works Department</td>
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<tr>
<td>3-8  <strong>SCAQMD SOON Program Funds.</strong> The City of Banning shall encourage future developers to apply for SCAQMD’s Surplus Off-Road Opt-In for NOx (SOON) Program to receive funding assistance to purchase commercially-available low-emission heavy-duty engines to achieve near-term reduction of NOx emissions from in-use off-road diesel vehicles.</td>
<td>City of Banning, Project Applicant</td>
<td>Prior to issuance of grading permits</td>
<td>City of Banning Public Works Department</td>
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<tr>
<td>3-9  <strong>Operational Mitigation Measures.</strong> Prior to issuance of any construction permits, future development applicants shall submit for review and approval by the City of Banning, building plans that incorporate operational mitigation measures such as, but not limited to, the following:</td>
<td>Project Applicant</td>
<td>Prior to issuance of any construction permits</td>
<td>City of Banning Community Development Department</td>
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## Mitigation Monitoring and Reporting Program

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<td><strong>Transportation</strong></td>
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<td>− Applicants for future development projects shall provide evidence to the City that they would provide one electric car charging station for every 10 high-density residence and provisions for electric car charging stations in the garages of all very low density, low density, medium density, and medium-high density housing.</td>
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<td>− Applicants for future development projects shall provide evidence to the City that they would provide at least two designated parking spots for parking of zero-emission vehicles (ZEVs) or for car-sharing programs in all employee/worker parking areas.</td>
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<td>− Applicants for future development projects shall provide evidence to the City that they would provide incentives for employees and the public to use public transportation such as discounted transit passes, reduced ticket prices at local events, and/or other incentives.</td>
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<td>− Applicants for future development projects shall provide evidence to the City that they would implement a rideshare program for employees at retail/commercial sites.</td>
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<td><strong>Energy Efficiency</strong></td>
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<td>− Applicants for future development projects shall provide evidence to the City that they would design all structures to use passive heating, natural cooling, and reduced pavement to the extent feasible. All residences shall use either high-efficiency or solar hot water systems.</td>
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<td>− Applicants for future development projects shall provide evidence to the City that they would limit the hours of operation of outdoor lighting in publicly accessible areas.</td>
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<td>− Applicants for future development projects shall provide evidence to the City that they would install light-colored</td>
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| “cool” roofs on all commercial structures and cool pavements throughout the project site.  
– Applicants for future development projects shall provide evidence to the City that they would require the use of electric/energy-efficient appliances (e.g., stoves) in all residences.  
• Other  
– Prior to issuance of a building permit, the applicant shall submit a Construction Plan to the City for review and approval that demonstrates that the development will install photovoltaic panels on a minimum of 25 percent of the units within the development. The panels shall be capable of generating 25 percent of the projected electricity demand of each proposed housing unit. For non-residential projects, photovoltaic panels shall be installed, which shall provide a minimum of 25 percent of the electrical demand of the non-residential building.  
– Applicants for future development projects shall provide evidence to the City that they would provide outlets for electric and propane barbecues in every residence with an outside patio.  
– Applicants for future development projects shall provide evidence to the City that they would require that all homeowner associations’ covenants, conditions and restrictions (CC&Rs) mandate the use of electric lawn mowers and leaf blowers by all residents.                                                                                                                                                                                                                      |                                  |        |                               |                                                 |

5.4 BIOLOGICAL RESOURCES

4-1 To ensure direct mortality of burrowing owls is avoided, a preconstruction survey shall be conducted by a qualified biologist within 30 days prior to ground disturbance at the site and submitted to the City. If construction is to be initiated during the

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<th>Project Applicant, Qualified Biologist</th>
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## Mitigation Monitoring and Reporting Program

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<td>breeding season (February 1 through August 31) and burrowing owl is determined to occupy any portion of the study area during the 30-day preconstruction survey, consultation with the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) shall take place, and no construction activity shall take place within a buffer zone of a minimum of 300 feet except when a smaller buffer is determined to be adequate to protect nesting activity by a qualified biologist and in consultation with CDFW and/or USFWS, until it has been determined that the nest/burrow is no longer active and all juveniles have fledged the nest/burrow. To avoid active nests, no grading or heavy equipment activity shall take place in the buffer zone during the breeding season (February 1 through August 31). Indirect impacts of exotic plant and animal infestations, litter, fire, and increased light and glare will be minimized by use of native plants for landscaping, removal of litter during construction, and by incorporating shielded lighting at the boundary of the conservation area. If active burrowing owl burrows are detected outside the breeding season (March 1 through August 31, according to the Western Riverside County Regional Conservation Authority Burrowing Owl Survey Instructions, dated 2006), or within the breeding season but owls are not nesting or in the process of nesting, passive relocation may be conducted following consultation with the CDFW and USFWS. If occupied burrows are identified in a development area, the burrows shall be avoided or the owls passively relocated. If burrowing owls are identified during the pre-construction surveys and cannot be avoided, a burrowing owl relocation/translocation plan will be prepared for submittal to the wildlife agencies for approval 90 days prior to ground-disturbing activities. One-way doors shall be installed as part of a passive relocation program. Burrowing owl burrows shall be excavated with hand tools by a qualified biologist when determined to be...</td>
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<td>Unoccupied and backfilled to ensure that animals do not reenter the holes/dens. Disturbance to active burrows shall be minimized to the extent practicable and shall not occur without necessary approvals from the USFWS and/or CDFW. Prior to construction of the project development areas, the following mitigation measures shall be implemented to minimize impacts to burrowing owls:</td>
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<td>1. On site conservation of habitat at economically feasible quantity, and not more than a 1:1 mitigation ratio,</td>
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<td>2. Off-site land conservation, at economically feasible quantity, and not more than a 1:1 mitigation ratio</td>
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<tr>
<td>• A burrowing owl relocation plan will be developed in cooperation with CDFW, USFWS and Regional Conservation Authority (RCA). The owls will be relocated to an MSHCP Core Area or other public/quasi-public land protected and managed for the conservation of the species at a ratio of 1:1. Total costs for the management associated with translocation, tracking to establish a new breeding pairs, and for monitoring will be the responsibility of the project applicant and shall be discussed between the project applicant and the regulatory agencies.</td>
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<td>• Additionally, the applicant may contribute funds to an existing RCA land purchase or for the management of burrowing owl, thus providing equivalent preservation of habitat for the species (1:1 ratio).</td>
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<td>• Purchasing private land and dedicating a conservation easement over suitable burrowing owl habitat such land in the Smith Creek watershed and San Gorgonio River Valley are preferred options. The Smith Creek watershed conservation study area is located downstream from the project site south of Interstate 10 and east of Banning Municipal Airport. The 2,700-acre</td>
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<td>study area contains coastal sage scrub, desert scrub, grassland, riparian scrub woodland forest and Riversidean alluvial fan sage scrub habitats. Other suitable locations in western Riverside County will also be considered opportunities for conserving habitat for the burrowing owl.</td>
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<td>The riparian/riverine habitat mitigation may also be complementary mitigation to serve the habitat needs for the burrowing owl through the Clean Water Act Section 404 and California Fish and Game Code Section 1602 permit process.</td>
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<td>The contribution of land or funding must be completed before issuance of grading permits by the City of Banning.</td>
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<td>4-2 Because greater than 90 percent avoidance of occupied Los Angeles pocket mouse (LAPM) grassland habitat is not feasible, the project is obligated to contribute to the conservation of the species through land conservation on- or off-site. The mitigation alternatives at 1:1 mitigation ratio are: (1) contribution of land containing LAPM occupied habitat to the Reserve; or (2) LAPM-occupied land dedicated to the Regional Conservation Authority (RCA) in fee-title toward conservation and managed by third-party conservation entity; or (3) monetary contribution to the RCA for direct purchase of land for LAPM long-term conservation; or 4) Purchasing private land and dedicating a conservation easement over suitable LAPM habitat such land as in Smith Creek watershed. The Smith Creek watershed conservation study area is located downstream from the project site south of Interstate 10 and east of Banning Municipal Airport. The 2,700 acre plus study area contains coastal sage scrub, desert scrub, grassland, riparian scrub woodland forest and Riversidean alluvial fan sage scrub habitats. Contribution of land or funding, or dedication of land, must be completed before issuance of grading permits by the City of Banning.</td>
<td>Project Applicant</td>
<td>Prior to issuance of any grading permits</td>
<td>City of Banning Community Development Department</td>
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<td>4-3</td>
<td>Project Applicant, Construction Contractors</td>
<td>Prior to issuance of any construction permits and during construction activities</td>
<td>City of Banning Community Development Department</td>
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<td></td>
<td>To reduce potential impacts to Stephens’ kangaroo rat (SKR) and Los Angeles pocket mouse, project proponents and construction contractors shall adhere to the following best management practices:</td>
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<td>- Construction personnel will refrain from entering within 100 feet, on foot or by vehicle, the sandy wash adjacent to the project area. The 100-foot buffer adjacent to the sandy wash shall be clearly marked.</td>
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<td>- Vehicle and equipment staging areas will be established away from the creeks and also away from the terraces that separate the project area from the creek.</td>
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<td>- Construction fencing will be used to clearly demarcate where sensitive habitat shall be avoided.</td>
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<td>- To mitigate for impacts to SKR the project proponent will pay funds into the SKR mitigation fund.</td>
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<td>4-4</td>
<td>Project Applicant, Qualified Bat Biologist</td>
<td>Prior to issuance of any grading permits</td>
<td>City of Banning Community Development Department</td>
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<td></td>
<td>Before the beginning of ground-disturbing or site clearance activities by a project developed pursuant to the Specific Plan, focused bat preconstruction surveys shall be performed by a qualified bat biologist using acoustic bat detection equipment to gather more information about bat species occupancy and to determine the numbers and species of bat(s) present. The information gained from these preconstruction surveys will be used to determine appropriate mitigation and minimization measures if needed, in consultation with the CDFW.</td>
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<td>Replacement bat roosting structures, per most current recommended standards, such as California Department of Transportation bat box specifications, can be installed as mitigation for impacts (California Bat Mitigation Techniques, Solutions, and Effectiveness prepared for Caltrans and CSU-Sacramento Foundation, by H. T. Harvey and Associates, dated Dec. 29, 2004). The most appropriate design will be selected in coordination with a bat biologist to ensure it is appropriate for the</td>
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Mitigation Monitoring and Reporting Program

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<td>target bat species (e.g., size, adjacency to forage, orientation, material, color, type of roost). Other mitigation strategies for minimizing impacts to night-roosting bats include prohibition or certain restrictions on work on, or within 100 feet of, a bridge structure from sunset to sunrise or from 10:00 pm to sunrise. Mitigation strategies for minimizing impacts to day-roosting bats include prohibition on work within 100 feet of, or directly under, an active roost; exclusion of bats from seasonal colonies (for work before April 15); and replacement roosting structures.</td>
<td>Project Applicant</td>
<td>Prior to issuance of any grading permits</td>
<td>City of Banning Community Development Department</td>
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4-5 Mitigation for fill placed into waters of the U.S. or streambeds under CDFW jurisdiction, and for removal of associated alluvial fan sage scrub and other riparian/riverine wildlife habitat, shall include any combination of the following measures:

- Native landscaping shall be used in temporarily disturbed areas.
- Native landscaping shall be used in transition buffers in open space areas.
- Nonnative vegetation within the creeks shall be removed and replaced with native riparian trees and shrubs.
- Stormwater basin discharges due to seasonal rains shall be used to support additional riparian vegetation and alluvial fan sage scrub downstream.
- Jurisdictional areas on-site shall be avoided where feasible.
- Mitigation on-site at 2:1 ratio, where feasible.
- Mitigation off-site at 3:1 ratio for remaining compensatory requirements in Corps-approved mitigation bank or applicant created conservation area, either
  - Within the Pass Area,
  - Within the Whitewater River watershed, or
  - Outside the watershed.
### Table 1  Mitigation Monitoring Requirements

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<tr>
<td>• Actual mitigation ratios and mitigation plan will be negotiated and authorized through consultation with the Corps and CDFW.</td>
<td>Project Applicant</td>
<td>Prior to issuance of any grading permits</td>
<td>City of Banning Community Development Department</td>
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<tr>
<td>4-6 Mitigation for impacts to Riparian/Riverine areas for MSHCP Consistency would be through several options: (1) contribution of land at 2:1 ratio containing similar habitat and jurisdictional areas to the Reserve; or (2) land dedicated at 2:1 mitigation ratio in fee-title toward conservation and managed by third-party conservation entity; or (3) fee payment made to mitigation bank of in-lieu fee program at 2:1 mitigation ratio; or (4) through creation and enhancement of riparian habitat at 2:1 mitigation ratio within the project area using the increased surface runoff from the developed areas expected to be received via the storm drain outlets into Smith and Pershing Creeks.</td>
<td>Project Applicant</td>
<td>During construction activities</td>
<td>City of Banning Community Development Department</td>
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<td>4-7 The following measures shall be implemented during project construction to mitigate impacts to birds nesting and bats roosting in large trees: • Prior to site preparation or ground-disturbing activities by a project developed pursuant to the Specific Plan, a qualified bat biologist shall conduct a focused bat roosting habitat suitability assessment of all structures (including, but not limited to, bridges, culverts, and buildings) and trees that may be removed, altered, or indirectly impacted by the proposed project. Any locations with potential for roosting or suitable as a maternity roost will be surveyed by the qualified bat biologist using an appropriate combination of structure inspection, exit counts, and acoustic surveys. Surveys shall be conducted during the appropriate season and time of day/night to ensure detection of bats. If bats are found using any structures or trees within the project area, the qualified bat biologist shall identify the bats to the species level, and evaluate the colony to determine its size and significance. The bat survey shall include: 1) the exact location of all roosting sites (location shall</td>
<td>Project Applicant, Construction Contractor, Biological Monitor (if needed)</td>
<td>During construction activities</td>
<td>City of Banning Community Development Department</td>
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Mitigation Monitoring and Reporting Program

Table 1  Mitigation Monitoring Requirements

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<td>be adequately described and drawn on a map); 2) the number of bats present at the time of visit (count or estimate); 3) each species of bat present shall be named (include how the species was identified); and 4) the type of roost, i.e., a night roost (rest at night while out feeding) versus a day roost (resting during the day). A report containing the bat survey findings shall be submitted to the City and to CDFW at the following address: 3602 Inland Empire Blvd., Suite C-220, Ontario, CA 91764.</td>
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<td>• If a roosting site and/or maternity colony(s) is detected, and the qualified bat biologist determines that impacts (either direct or indirect, including disturbance from noise, vibration, dust, exhaust) from project-related activities may occur, the applicant shall consult with CDFW to determine the most appropriate type of avoidance, minimization, and mitigation measures to implement. Examples of avoidance and minimization strategies may include daily work timing restrictions and buffer distances. Work timing restrictions and buffer distances will be determined based on the expert opinion of the qualified bat biologist, as approved by the Department. Mitigation measures may include replacement of impacted roosting sites with alternate roosting structures, such as those described in the “California Bat Mitigation Techniques, Solutions, and Effectiveness” (H. T. Harvey and Associates, 2004). Alternate roosting structures shall be designed to ensure use by bats impacted by the project. For example, designs will take into consideration the thermal and crevice/structure roosting requirements of the impacted bats.</td>
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<td>• The removal of mature trees and snags will be minimized to the greatest extent practicable. Avoidance of mature native trees such as western cottonwood, black willow, and western sycamore, as well as ornamental fan palms that may serve as roost sites will minimize impacts to roosting bats.</td>
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<tr>
<td>• The qualified bat biologist, in consultation with CDFW, shall</td>
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<td>oversees and direct the trimming and/or removal of all trees, including snags from the project site. • To avoid direct impacts to flightless young, tree trimming/removal activities associated with project construction shall be performed outside of the bat maternity season, which coincides with the bird nesting season of March 15 through September 15, thereby reducing impacts to nesting birds. To further reduce impacts to all age classes of bats, all trees subject to impacts from project construction will be inspected by the qualified bat biologist, regardless of time of year. • If tree trimming/removal activities cannot be avoided during the bat maternity season (April 1 through August 31) and roosting bats have been documented by CDFW-approved qualified bat biologist, then a biological monitor shall be present during removal of any mature trees or snags containing roosting habitat during the bat maternity season to monitor for the presence of flightless juvenile bats. If any flightless juvenile or injured adult bats are found during the trimming or removal of those trees, these bats will be transported to a CDFW-licensed rehabilitator according to accepted protocol. • Bridges constructed for the project can include roosting features suitable for use by crevice and cavity-roosting bats; these bridge features would simulate rock crevices or cave-like spaces and may be part of the bridge structure or consist of bolted-on features. Any bat roosting structures, per most current recommended standards, such as California Department of Transportation bat box specifications, can be installed as mitigation for impacts. The most appropriate will be selected in coordination with a qualified bat biologist to ensure it is appropriate for the target bat species (e.g., size, adjacency to forage, orientation, material, color, type of roost). The inclusion of mature plantings of cottonwood, willow, and sycamore in the landscaping plan (mitigation Measure 4-9) for</td>
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## Mitigation Monitoring Requirements

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<td>the project would serve to mitigate for loss of these roost sites because they would provide suitable habitat for tree-roosting bat species. Native habitat enhancement, if implemented as part of the riparian/riverine and jurisdictional waters mitigation plan in Pershing and Smith Creek areas, will improve the quality of the foraging habitat currently available and the overall quantity of the foraging habitat currently available to the local bat population.</td>
<td>Project Applicant, Construction Contractor</td>
<td>During construction activities</td>
<td>City of Banning Community Development Department</td>
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<tr>
<td>4-8 If any previously undiscovered roosting bats are discovered during construction activities, all work shall stop on, under, around, or within an appropriate buffer as determined by the CDFW-approved qualified bat biologist, based on the following factors: the species of bat discovered, the type of roost, and the type of construction activities that will occur near that roost.</td>
<td>Project Applicant, Certified Arborist</td>
<td>Prior to issuance of any grading permits</td>
<td>City of Banning Community Development Department</td>
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<td>4-9 Native trees to be impacted by development of projects pursuant to the Specific Plan shall be assessed by a certified arborist as to the viability and value of the trees in order to determine if mitigation and replacement are required. Removal of healthy, shade-providing, and aesthetically valuable trees shall be strongly discouraged and shall conform with the policies and programs of the City of Banning General Plan. A tree removal and replacement plan shall be required for the removal and replacement of all trees in excess of 50 years of age, unless their removal is required to protect the public health and safety. Each identified tree removed shall be replaced with at least 15 one-gallon saplings of native riparian species that occur naturally in the San Gorgonio Pass area, in addition to any other required landscaping.</td>
<td>Project Applicant, Qualified Biologist</td>
<td>Prior to issuance of any grading permits and during construction activities</td>
<td>City of Banning Community Development Department</td>
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<td>4-10 To mitigate impacts to nesting birds including raptors and non-raptors: Within 3 days prior to the commencement of construction, a qualified biologist shall perform a raptor nesting survey that will consist of a single visit to ascertain whether there are active raptor nests within 500 feet or other protected bird nests within</td>
<td>Project Applicant, Qualified Biologist</td>
<td>Prior to issuance of any grading permits and during construction activities</td>
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<td>300 feet of the project footprint. Nests will be searched for in unused structures, trees and shrubs, and on the ground. This survey will also identify the species of nesting bird and, to the degree feasible, nesting stage (e.g., incubation of eggs, feeding of young, near fledging). Nests will be mapped (not by using GPS because close encroachment may cause nest abandonment). Work shall be avoided in riparian areas during active breeding season, typically designated as March 1 through August 31 by the Burrowing Owl Survey Instructions for the Western Riverside Multiple Species Habitat Conservation Plan Area, dated March 29, 2006. If vegetation removal must occur during this avoidance period, then a nest survey by a qualified biologist is required. The nest survey shall be conducted for five consecutive days and no more than three days prior to clearing. If an active nest is observed, then the nest location shall be fenced off surrounding a radius buffer zone of 300 feet for all bird species and 500 feet for raptors, including the burrowing owl; the buffer zone shall not be disturbed until the nest is inactive; and biological monitoring shall occur during vegetation removal activities.</td>
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| 4-11 The following measures shall be implemented to mitigate potential impacts of encroachments—such as light, pets, and invasive plant species—from the Smith Creek and Pershing Creek linear parks and proposed adjacent developments into Smith Creek and Pershing Creek:  
  - During project construction and project operation, lighting shall be directed away from the creeks.  
  - During project operation, pets shall be required to be on leash at all times in the linear parks along Smith Creek and Pershing Creek, as well as in natural open space areas within the Specific Plan site. | Project Applicant | During construction activities and during project operation | City of Banning Community Development Department |
Mitigation Monitoring and Reporting Program

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<tr>
<td>• During project design and project operation, native vegetation shall be used in the Smith Creek and Pershing Creek linear parks to provide wildlife movement, cover, and screening.</td>
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5.5 CULTURAL RESOURCES

5-1 If avoidance is not feasible, prior to grading activities, a certified archaeologist shall conduct an archaeological test excavation at the three potentially eligible sites (CA-RIV-8990, CA-RIV-8991, and CA-RIV-9190) to determine whether the sites are considered “historical resources” under CEQA. The excavation shall be conducted through controlled hand-excavations and collection and analysis of artifacts. Archaeological mechanical trenching shall be conducted as part of the archaeological test excavations to test for deeply buried cultural deposits that are not accessible during hand excavations. A trenching program is not necessary if hand excavations reveal that site soils do not exceed 40 centimeters in depth.

Research shall be conducted regarding CA-RIV-9190 to apprehend primary references and specific information regarding the historic quarrying activities that took place on that site, and to exhaust the data potential of the site’s historic component. If the prescribed archaeological test excavation and additional research indicate California Register eligibility for any of the potentially eligible resources subject to project impacts, the eligible resources would be considered “historical resources” under CEQA and shall be preserved in place.

If preservation in place is not feasible for the potentially eligible sites (CA-RIV-8990, CA-RIV-8991, and CA-RIV-9190), a Phase III data recovery plan, which provides for adequately recovering scientifically consequential information from and about the historical resource(s), shall be prepared and adopted prior to any undertaking/project-related excavation.

Project Applicant, Certified Archaeologist | Prior to issuance of any grading permits | City of Banning Community Development Department |
# Table 1 Mitigation Monitoring Requirements

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<td>5-2</td>
<td>A qualified archaeological monitor shall be present during all ground-disturbing activities related to the Rancho San Gorgonio Specific Plan project. The monitor shall work under the direct supervision of a cultural resource professional who meets the Secretary of the Interior’s Professional Qualification Standards for archaeology. The monitor shall be empowered to temporarily halt or redirect construction work in the vicinity of any find until the project archaeologist can evaluate it. In the event of a new find, salvage excavation and reporting shall be required.</td>
<td>Project Applicant, Qualified Archaeological Monitor</td>
<td>During ground-disturbing activities</td>
<td>City of Banning Community Development Department</td>
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<tr>
<td>5-3</td>
<td>During grading activities, excavation of areas identified as likely to contain paleontological resources (e.g., any undisturbed subsurface Pleistocene sediments), shall be monitored by a qualified paleontological monitor. If paleontological resources are discovered during project grading, work shall be halted in that area until a qualified paleontologist can assess the significance of the find. The project paleontologist shall monitor remaining earth-moving activities at the project site and shall be equipped to record and salvage fossil resources that may be unearthed during grading activities. The paleontologist shall be empowered to temporarily halt or divert grading equipment to allow recording and removal of the unearthed resources. Any fossils found shall be evaluated in accordance with the CEQA Guidelines and offered for curation at an accredited facility approved by the City of Banning. A report of findings, including, when appropriate, an itemized inventory of recovered specimens and a discussion of their significance, should be prepared upon completion of the steps outlined above. The report and inventory, when submitted to the appropriate lead agency, would signify completion of the program to mitigate impacts on paleontological resources. This measure shall be implemented to the satisfaction of the City of Banning Planning Department.</td>
<td>Project Applicant, Qualified Paleontological Monitor</td>
<td>During grading activities</td>
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<tr>
<td>5.6 GEOLOGY AND SOILS</td>
<td>All vegetation, trash and debris shall be cleared from the grading area and removed from the site. Prior to placement of compacted fills, all non-engineered fills and loose, porous, or compressible soils shall be removed down to competent ground. Depths of removals will be dependent upon the nature of the underlying soils and proposed land use. In general, it is anticipated that the following removals are required for areas to receive fill or support structures:</td>
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<tr>
<td>Artificial fills (No Map Symbol): Complete removal of artificial fills to competent natural ground is anticipated.</td>
<td>Project Applicant, Construction Contractor</td>
<td>During grading activities</td>
<td>City of Banning Community Development Department</td>
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<tr>
<td>Wash deposits (Map Symbol Qw): Complete removal to underlying competent alluvial or older alluvial deposits. Depth of removal shall be determined after jurisdictional drainage issues are resolved and anticipated grades have been established.</td>
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<td>Alluvium (Map Symbol Qal): The in situ density of alluvial soils within the site varies laterally and with depth. Removals of alluvium typically need to extend to a minimum depth of five feet with deeper removals in some areas, possibly extending up to maximum depth of 20 to 30 feet. Alluvial removals will need to be evaluated in greater detail when grading plans are developed.</td>
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<td>Older alluvium (Map Symbol Qoal): Removals of older alluvium are expected to be on the order of two to five feet, depending upon the nature of the proposed development and near surface weathering of the older alluvial soils, although deeper removals might be needed in some areas.</td>
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<td>Granitic and Metamorphic Bedrock (Map Symbol Kqd-ms): No grading is currently proposed within the bedrock hill in the southeast corner of the site. Consequently, removal requirements for bedrock are not applicable at this time.</td>
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RANCHO SAN GORGONIO SPECIFIC PLAN MITIGATION MONITORING AND REPORTING PROGRAM  
CITY OF BANNING

Mitigation Monitoring and Reporting Program

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<td>Specific recommendations shall be developed if grading is proposed within the hill at a later date. More detail evaluation of removals and overexcavation recommendations shall be developed once grading plans are available. Typically, footing areas that are not in deep fill areas are undercut, moistened, and compacted to a minimum of 90 percent relative compaction to a depth equal to the width of the footing below the bottom of the footing or to a depth of three feet below the bottom of the footing, whichever is less. Footing areas are typically defined as extending from the edge of the footing for a distance of five feet. Floor slabs, concrete flatwork and paved areas are typically underlain by a minimum of 12 inches of soil compacted to a minimum of 90 percent relative compaction. Removal and overexcavation depths shall be confirmed or adjusted, if necessary, at the time of grading.</td>
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### 5.7 GREENHOUSE GAS EMISSIONS

#### 7-1 Energy Efficient Street Lights and Traffic Signals
The City shall identify energy-efficient streetlights, which are currently available and which, when installed, will provide a 10 percent reduction beyond the 2010 baseline energy use for this infrastructure, and shall require the use of this technology in all new development. All new traffic lights installed within the project shall use LED technology.

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<th>City of Banning Public Works Department, Project Applicant</th>
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#### 7-2 Construction Waste Management Plan
Prior to issuance of a building permit, the applicant shall submit a Construction Waste Management Plan to the City for review and approval. The plan shall include procedures to recycle and/or salvage at least 50 percent of nonhazardous construction and demolition debris and shall identify materials to be diverted from disposal and whether the materials will be stored on site or commingled. Excavated soil and land-clearing debris do not contribute to this credit. Calculation can be done by weight or by volume but must be documented.

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<td>7-3  Vehicle Idling Limits. All commercial and retail development shall be required to post signs and limit idling time for commercial vehicles, including delivery trucks, to no more than 5 minutes of “non-essential” idling in compliance with the Diesel-Fueled Commercial Motor Vehicle Idling Airborne Toxic Control Measure (ATCM). This condition shall be included on future site development plans for review and approval by the City Development Services Director.</td>
<td>Project Applicant</td>
<td>During site development review</td>
<td>City of Banning Community Development Department</td>
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<td>5.11 NOISE</td>
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<td>11-1  Prior to issuance of demolition, grading, and/or building permits, a note shall be provided on plans indicating that ongoing during grading, demolition, and construction, the property owner/developer shall be responsible for requiring contractors to implement the following measures to limit construction-related noise:</td>
<td>Project Applicant, Construction Contractor</td>
<td>Prior to issuance of any demolition, grading, and/or building permits</td>
<td>City of Banning Community Development Department</td>
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<tr>
<td>* The project applicant shall limit construction activities to the daytime hours between 7 AM to 6 PM, as prescribed in Section 8.44.090(E) of the City’s Municipal Code.</td>
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<td>* For construction activity within 71 feet of any noise-sensitive receptors, a temporary noise barrier shall be installed by the applicant/developer. This temporary noise barrier shall be installed prior to the onset of construction, and located between the construction zone and all receptors. The temporary sound barrier shall have a minimum height of 8 feet and be free of gaps and holes and must achieve a Sound Transmission Class (STC) of 35 or greater. The barrier can be either (a) a ¾-inch-thick plywood wall OR (b) a hanging blanket/curtain with a surface density of at least 2 pounds per square foot (Thalheimer 2000). For either configuration, the construction side of the barrier shall have an exterior lining of sound absorption material with a Noise Reduction Coefficient (NRC) rating of 0.7 or higher.</td>
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<td>• For all project construction zones, all internal combustion engines on construction equipment and trucks are fitted with properly maintained mufflers consistent with manufacturer’s standards.</td>
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<td>• For all project construction zones, stationary equipment such as generators, air compressors shall be located as far as feasible from nearby noise-sensitive uses. If such stationary equipment produces noise emissions that are directional, said equipment shall be oriented so as to direct noise emissions away from sensitive receptors.</td>
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<td>• For all project construction zones, stockpiling and staging should be located as far as feasible from nearby noise-sensitive receptors.</td>
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<td>• For all project construction zones, construction traffic—both worker commuting and all material haul-off, haul-on, and/or delivery—shall be limited to the haul routes established by the City of Banning and/or the County of Riverside.</td>
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<tr>
<td>11-2 Prior to issuance of building permits for future residential units on-site adjacent to Westward Avenue, Sunset Avenue, 22nd Street, 8th Street, and San Gorgonio Avenue, the Applicant/Developer shall submit an acoustical study to the City of Banning that demonstrates that the proposed building design would provide an interior noise level of 45 dBA CNEL or less and include a means of mechanical ventilation, as required by the California Building Code for occupancy with windows closed.</td>
<td>Project Applicant</td>
<td>Prior to issuance of any building permits</td>
<td>City of Banning Community Development Department</td>
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<tr>
<td>11-3 Prior to issuance of the first building permit for any project within the PA 9 Neighborhood Commercial Area, the property owner/developer shall submit a final acoustical report prepared to the satisfaction of the Planning Director to address potential noise impacts to nearby residences. The report shall demonstrate that the development within PA 9 incorporates sufficient noise-attenuation features so that the City’s exterior and interior standards in Municipal Code Sections 8.44.070 and 8.44.090(E) and in the City’s Noise Element are reached.</td>
<td>Project Applicant</td>
<td>Prior to issuance of the first building permit for any project in Planning Area 9</td>
<td>City of Banning Community Development Department</td>
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<td>maintained at nearby residences. Compliance can be achieved with (a) sufficient</td>
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<td>buffering distances so that nearby sensitive receptors are not significantly</td>
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<td>impacted by future commercial development OR (b) sufficiently high and long</td>
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<td>sound barrier wall(s) that are placed between commercial noise sources and</td>
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<td>receptors (for example, in the case of garbage compactor equipment) OR (c) other</td>
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<td>adequate noise reduction methods that are approved by the Planning Director or</td>
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<td>their designee. In all cases, the noise reduction measures shall be technically</td>
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<td>demonstrated to achieve the appropriate target noise level(s) for both exterior</td>
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<td>and interior environments for nearby residences, as appropriate (e.g., sufficient</td>
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<td>wall or berm height, sufficient buffering distance, appropriate sound encapsulation/</td>
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<td>insulation methods, etc.). The individual project owner/developer shall submit the</td>
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<td>noise mitigation report to the Planning Director for review and approval. Upon</td>
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<td>approval by the City, the project acoustical design features shall be incorporated</td>
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<td>into the future commercial development.</td>
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</tbody>
</table>

5.15 TRANSPORTATION AND TRAFFIC

15-1 Prior to the approval of any tentative tract map, the project applicant shall    | Project Applicant | Prior to approval of any tentative tract map | City of Banning Public Works Department |
| demonstrate that the street improvement plans for on-site traffic improvements      |                                   |        |                              |                                                  |
| within said tentative tract map are consistent with the recommendations contained  |                                   |        |                              |                                                  |
| in Section 8 of the traffic study prepared for the proposed project (Rancho San   |                                   |        |                              |                                                  |
| dated April 20, 2016).                                                          |                                   |        |                              |                                                  |

15-2 Prior to issuance of any building permit, the project applicant shall provide    | Project Applicant | Prior to issuance of any building permit | City of Banning Public Works Department |
| fair share funding for the following improvements as determined by the City. Where  |                                   |        |                              |                                                  |
| the project’s fair share responsibility exceeds 50%, the project applicant shall   |                                   |        |                              |                                                  |
| be responsible for constructing the actual improvement and shall be entitled to     |                                   |        |                              |                                                  |
| reimbursement for any portion of the improvement exceeding their fair share        |                                   |        |                              |                                                  |
| responsibility.                                                                  |                                   |        |                              |                                                  |
### Mitigation Monitoring Requirements

<table>
<thead>
<tr>
<th>Mitigation Measure</th>
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<th>Timing</th>
<th>Responsibility for Monitoring</th>
<th>Monitor (Signature and Date of Compliance Required)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michigan Avenue (NS) at 1st Street (EW): pay the fair share amount of 44.2% to install a traffic signal</td>
<td>Project Applicant</td>
<td>Prior to issuance of any building permit in Phase 3</td>
<td>City of Banning Public Works Department</td>
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<tr>
<td>Pennsylvania Avenue (NS) at 1st Street (EW): pay the fair share of 37.7% to install a traffic signal</td>
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<tr>
<td>8th Street (NS) at I-10 Freeway Eastbound Ramps (EW): fair share responsibility is 83.0%; project applicant shall construct a southbound left turn lane and install a traffic signal.</td>
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<tr>
<td>8th Street (NS) at Westward Avenue (EW): fair share responsibility is 79.3%; project applicant shall construct a northbound thru lane and install a traffic signal.</td>
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<tr>
<td>SR-243 (NS) at C Street (EW): fair share responsibility is 88.3%; project applicant shall construct an eastbound thru lane. Additionally, per Condition of Approval No. 49, traffic improvements for each development phase shall be constructed prior to the issuance of a certificate of occupancy for any tract or development phase.</td>
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<tr>
<td>15-3 Prior to issuance of any building permit within Phase 3, the project applicant shall provide fair share funding for the following improvements as determined by the City. Where the project’s fair share responsibility exceeds 50%, the project applicant shall be responsible for constructing the actual improvement and shall be entitled to reimbursement for any portion of the improvement exceeding their fair share responsibility. The timing of implementation of the improvements shall be determined by the City and be completed in the timeframe necessary to avoid identified significant cumulative impacts.</td>
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<tr>
<td>Highland Springs Avenue/14th Street (EW): pay the fair share amount of 4.9% to construct a westbound through lane.</td>
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<tr>
<td>22nd Street (NS) at I-10 Freeway Westbound Ramps (EW): fair share responsibility is 70.2%; the project applicant shall</td>
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</table>
Mitigation Monitoring and Reporting Program

Table 1  Mitigation Monitoring Requirements

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</tr>
</thead>
</table>
| • install a traffic signal.  
• 22nd Street (NS) at I-10 Freeway Eastbound Ramps (EW): fair share responsibility is 88.4%; the project applicant shall install a traffic signal. | Project Applicant | Prior to issuance of any building permit in Phase 4 | City of Banning Public Works Department |
| 15-4 Prior to issuance of any building permit within Phase 4, the project applicant shall provide fair share funding for the following improvements as determined by the City. Where the project’s fair share responsibility exceeds 50%, the project applicant shall be responsible for constructing the actual improvement and shall be entitled to reimbursement for any portion of the improvement exceeding their fair share responsibility. The timing of implementation of the improvements shall be determined by the City and be completed in the timeframe necessary to avoid identified significant cumulative impacts.  
• 22nd Street (NS) at Westward Avenue (EW): fair share responsibility is 86.4%; the project applicant shall install a traffic signal. | Project Applicant | Prior to issuance of any building permit in Phase 4 | City of Banning Public Works Department |
| 15-5 Prior to issuance of any building permit within Phase 5, the project applicant shall provide fair share funding for the following improvements as determined by the City. Where the project’s fair share responsibility exceeds 50%, the project applicant shall be responsible for constructing the actual improvement and shall be entitled to reimbursement for any portion of the improvement exceeding their fair share responsibility. The timing of implementation of the improvements shall be determined by the City and be completed in the timeframe necessary to avoid identified significant cumulative impacts.  
• Sunset Avenue (NS) at D Street (EW): fair share responsibility is 91.8%; the project applicant shall construct a northbound thru lane, construct a southbound thru lane, and construct a westbound thru lane.  
• Sunset Avenue (NS) at Westward Avenue (EW): fair share | Project Applicant | Prior to issuance of any building permit in Phase 5 | City of Banning Public Works Department |
### Table 1 Mitigation Monitoring Requirements

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<tr>
<td>responsibility is 83.0%; the project applicant shall construct a southbound left turn lane and install a traffic signal.</td>
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<tr>
<td>- Highland Springs Avenue/14th Street (EW): pay the fair share amount of 4.9% to install a traffic signal</td>
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<tr>
<td>- A Street (NS) at Westward Avenue (EW): fair share responsibility is 82.1%; the project applicant shall construct a northbound through lane and install a traffic signal.</td>
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<tr>
<td>- 22nd Street (NS) at Westward Avenue (EW): fair share responsibility is 86.4%; the project applicant shall construct a southbound left turn lane.</td>
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<tr>
<td>15-6 Prior to issuance of any building permit within Phase 6, the project applicant shall provide fair share funding for the following improvements as determined by the City. Where the project’s fair share responsibility exceeds 50%, the project applicant shall be responsible for constructing the actual improvement and shall be entitled to reimbursement for any portion of the improvement exceeding their fair share responsibility. The timing of implementation of the improvements shall be determined by the City and be completed in the timeframe necessary to avoid identified significant cumulative impacts.</td>
<td>Project Applicant</td>
<td>Prior to issuance of any building permit within Phase 6</td>
<td>City of Banning Public Works Department</td>
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<tr>
<td>- Beaumont Avenue/SR-79 (NS) at California Avenue (EW): pay the fair share amount of 14.4% to install a traffic signal, construct a northbound left turn lane, construct a southbound left turn lane, and construct a westbound left turn lane.</td>
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<tr>
<td>- Sunset Avenue/Westward Avenue (EW): fair share responsibility is 83.0%; the project applicant shall construct a northbound left turn lane, an eastbound left turn lane, and a westbound left turn lane.</td>
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<tr>
<td>- 8th Street (NS) at I-10 Freeway Westbound Ramps (EW): fair share responsibility is 69.1%; the project applicant shall construct a second northbound left turn lane.</td>
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<tr>
<td>- 8th Street (NS) at I-10 Freeway Eastbound Ramps (EW): fair share responsibility is 69.1%; the project applicant shall construct a second eastbound left turn lane.</td>
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Mitigation Monitoring and Reporting Program

Table 1  Mitigation Monitoring Requirements

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<tbody>
<tr>
<td>Share responsibility is 83.0%; the project applicant shall construct a second southbound left turn lane.</td>
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<tr>
<td>8th Street (NS) at Westward Avenue (EW); fair share responsibility is 79.3%; the project applicant shall construct a northbound left turn lane.</td>
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<td>15-7</td>
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<tr>
<td>On-site circulation and access recommendations are depicted on Figure 5.15-2 through Figure 5.15-7. The City of Banning shall require implementation of the following measures:</td>
<td>Project Applicant</td>
<td>Prior to issuance of any building permit</td>
<td>City of Banning Public Works Department</td>
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<tr>
<td>Construct Sunset Avenue from the north project boundary to the south project boundary at its ultimate half-section width including landscaping and parkway improvements in conjunction with adjacent development (Secondary Highway).</td>
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<tr>
<td>Construct Rancho San Gorgonio Parkway north of A Street at 22nd Street to Westward Avenue at its ultimate half-section width including landscaping and parkway improvements in conjunction with adjacent development (116-foot right-of-way).</td>
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<tr>
<td>Construct Rancho San Gorgonio Parkway south of Westward Avenue at 8th Street along the project boundary at its ultimate cross-section width including landscaping and parkway improvements in conjunction with adjacent development (146-foot right-of-way).</td>
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<tr>
<td>Construct Westward Avenue along the project boundaries at its ultimate half-section width including landscaping and parkway improvements in conjunction with adjacent development (Collector Highway). Construction of Westward Avenue should be coordinated with other land owners’ so that improvements are done simultaneously along Westward Avenue from Sunset Avenue to San Gorgonio Avenue.</td>
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<tr>
<td>Construct Victory Avenue from Rancho San Gorgonio Parkway to Lovell Street at its ultimate half-section width</td>
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### Table 1 Mitigation Monitoring Requirements

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<tbody>
<tr>
<td>Including landscaping and parkway improvements in conjunction with adjacent development (Local Street).</td>
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<tr>
<td>• Construct Old Idyllwild Road from C Street to the south project boundary at its ultimate half-section width including landscaping and parkway improvements in conjunction with adjacent development. Obtain the necessary right-of-way to construct C Street from the east project boundary to State Route 243 (SR-243). C Street shall intersect SR-243 at a right angle and adequate sight distance shall be provided. Engineering design standards and safety features shall be maintained including traffic signalization and high speed signage as identified by the City of Banning Transportation Department staff.</td>
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<tr>
<td>• Sight distance at project accesses shall comply with standard California Department of Transportation and City of Banning sight distance standards. The final grading, landscaping, and street improvement plans shall demonstrate that sight distance standards are met. Such plans must be reviewed by the City and approved as consistent with this measure prior to issue of grading permits.</td>
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<tr>
<td>• Separate on-site traffic signing and striping shall be implemented in conjunction with detailed construction plans for the project.</td>
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Mitigation Monitoring and Reporting Program

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I. INTRODUCTION

The California Environmental Quality Act (CEQA) requires that a number of written findings be made by the lead agency in connection with certification of an environmental impact report (EIR) prior to approval of the project pursuant to Sections 15091 and 15093 of the CEQA Guidelines and Section 21081 of the Public Resources Code. The CEQA Guidelines Section 15091 provides:

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the EIR.

2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can or should be adopted by such other agency.

3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.

(c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

(d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.
(e) The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.

(f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

Public Resources Code Section 21061.1 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” CEQA Guidelines Section 15364 adds another factor: “legal” considerations. (See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565 (*Goleta II*).)

The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001 [“an alternative ‘may be found infeasible on the ground it is inconsistent with the project objectives as long as the finding is supported by substantial evidence in the record’.”] An alternative may also be rejected because it “would not ‘entirely fulfill’ [a] project objective.” *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 314-315. “[F]easibility” under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.)

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project’s “benefits” rendered “acceptable” its “unavoidable adverse environmental effects.” (CEQA Guidelines, §§ 15093, 15043, subd. (b); see also Pub. Resources Code, § 21081, subd. (b).) The California Supreme Court has stated, “[t]he wisdom of approving . . . any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced.” (*Goleta II*, supra, 52 Cal.3d at p. 576.)

When adopting Statements of Overriding Considerations, CEQA Guidelines Section 15093 further provides:

(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”

(b) Where the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. This statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.
Having received, independently reviewed, and considered the Draft Environmental Impact Report (DEIR) and the Final Environmental Impact Report (FEIR) for the Rancho San Gorgonio Specific Plan, SCH No. 2015041064 (collectively, the EIR), as well as all other information in the record of proceedings on this matter, the following Findings of Facts (Findings) are hereby adopted by the City of Banning (City) in its capacity as the CEQA Lead Agency.

These Findings set forth the environmental basis for the discretionary actions to be undertaken by the City for adoption and implementation of the Rancho San Gorgonio Specific Plan. This action includes the approval of the following:

- Rancho San Gorgonio Specific Plan Environmental Impact Report SCH No. 2015041064

A. DOCUMENT FORMAT

These Findings have been organized into the following sections:

1) Section 1 provides an introduction.

2) Section 2 provides a summary of the project, overview of the discretionary actions required for approval of the project, and a statement of the project’s objectives.

3) Section 3 provides a summary of previous environmental reviews related to the project area that took place prior to the environmental review done specifically for the project, and a summary of public participation in the environmental review for the project.

4) Section 4 sets forth findings regarding the environmental impacts that were determined to be—as a result of the Initial Study, Notice of Preparation (NOP), and consideration of comments received during the NOP comment period—either not relevant to the project or clearly not at levels that were deemed significant for consideration given the nature and location of the proposed project.

5) Section 5 sets forth findings regarding significant or potentially significant environmental impacts identified in the DEIR that the City has determined are either not significant or can feasibly be mitigated to a less than significant level through the imposition of project design features and/or mitigation measures. In order to ensure compliance and implementation, all of these measures are included in the Mitigation Monitoring and Reporting Program (MMRP) for the project and adopted as conditions of the project by the Lead Agency. Where potentially significant impacts can be reduced to less than significant levels through adherence to project design features and/or mitigation measures, these findings specify how those impacts were reduced to an acceptable level. Section 5 also includes findings regarding those significant or potentially significant environmental impacts identified in the DEIR that will or may result from the project and which the City has determined cannot feasibly be mitigated to a less than significant level.

6) Section 6 sets forth findings regarding alternatives to the proposed project.

B. RECORD OF PROCEEDINGS

For purposes of CEQA and these Findings, the Record of Proceedings for the proposed project consists of the following documents and other evidence, at a minimum:

- The NOP and all other public notices issued by the City in conjunction with the proposed project

- The DEIR for the proposed project
The FEIR for the proposed project

All written comments submitted by agencies or members of the public during the public review comment period on the DEIR

All responses to written comments submitted by agencies or members of the public during the public review comment period on the DEIR

All written and verbal public testimony presented during a noticed public hearing for the proposed project

The Mitigation Monitoring and Reporting Program

The reports and technical memoranda included or referenced in the Response to Comments

All documents, studies, EIRs, or other materials incorporated by reference in the DEIR and FEIR

The Resolutions adopted by the City of Banning in connection with the proposed project, and all documents incorporated by reference therein, including comments received after the close of the comment period and responses thereto

Matters of common knowledge to the City of Banning, including but not limited to federal, state, and local laws and regulations

Any documents expressly cited in these Findings

Any other relevant materials required to be in the record of proceedings by Public Resources Code Section 21167.6(e)

The documents and other material that constitute the record of proceedings on which these findings are based are located at the City of Banning Community Development Department. The custodian for these documents is the City of Banning. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and 14 California Code of Regulations (CEQA Guidelines) Section 15091(e).

C. CUSTODIAN AND LOCATION OF RECORDS

The documents and other materials that constitute the administrative record for the City’s actions related to the project are at the City of Banning Community Development Department, 99 E. Ramsey Street, Banning, California 92220. The City’s Community Development Department is the custodian of the administrative record for the project. Copies of these documents, which constitute the record of proceedings, are and at all relevant times have been and will be available upon request at the offices of the Community Development Department. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and CEQA Guidelines Section 15091(e).

II. PROJECT SUMMARY

A. PROJECT LOCATION

The project site covers approximately 831 acres—670 acres in the southern portion of the City of Banning and 161 acres in unincorporated Riverside County, California. The San Bernardino National Forest borders Banning to the north; the City of Palm Springs lies 17 miles to the east; the City of San Jacinto is 9 miles to the south; and the City of Beaumont borders Banning on the west. The Morongo Indian Reservation is
northeast of Banning, and areas of unincorporated Riverside County also border Banning on the north, east, and south.

The Rancho San Gorgonio Specific Plan site is an irregularly shaped area on the southern edge of the City, about 0.4 mile south of Interstate 10 (I-10), which runs east–west through the City and provides regional access to the site.

The project site is bounded by Westward Avenue on the north, Sunset Avenue and Turtle Dove Lane on the west, San Gorgonio Avenue (State Route 243, SR-243) on the east, and Coyote Trail and Old Idyllwild Road on the south. Access to the site from I-10 is via ramps at Sunset Avenue, 22nd Street, and 8th Street, from west to east. A portion of the site (approximately 161 acres) is in the City’s sphere of influence and is anticipated to be annexed as part of the development process.

B. PROJECT DESCRIPTION

The proposed project is an 831-acre master-planned community organized into 44 planning areas (PAs) that include a mixture of residential, commercial, open space, and recreational uses and up to 3,133 residential units. Parks and paseos are incorporated to buffer the natural creeks onsite and to provide non-motorized access throughout the planned community.

The following land uses are proposed for the project site:

- **Residential:** Encompasses 62.2 percent of the site and includes Very Low Density, Low Density, Medium Density – Age-Qualified, and Medium-High Density Residential. In total, 3,133 dwelling units would be allowed in the Specific Plan area, with an average density of 4.1 dwelling units per acre.

- **Parks/Open Space:** Encompasses 25.2 percent of the site and includes the RSG Community Park, Confluence Park, Neighborhood Park, Entry Park, Village Paseos, Creeks/Creek Edge Linear Parks, and Natural Open Space.

- **Other:** Encompasses 12.5 percent of the site and includes Neighborhood Commercial, Public Facility, School, Backbone Roadways Right-of-Way, and Storm Drain Easement. Development would allow up to 101,300 square feet of commercial use, an elementary school, and a wastewater treatment plant.

C. DISCRETIONARY ACTIONS

Implementation of the project in the City of Banning will require several actions by the City, including:

- Certification of the Rancho San Gorgonio Specific Plan EIR
- Adoption of the Rancho San Gorgonio Specific Plan
- Approval of General Plan Amendment/Zone Change to reflect the proposed Specific Plan
- Approval of Master Tentative Tract Map No. 36586 and Conditions of Approval
- Approval of Development Agreement
- Annexation of 161 acres in the sphere of influence into City limits

D. STATEMENT OF PROJECT OBJECTIVES

The statement of objectives sought by the project and set forth in the EIR is as follows:
1. **Master Planned Community:** Design and implement the development of a creatively designed master planned community that expresses and embodies the City’s vision of its future as articulated in the fundamental land use principles, policies, and objectives of the City’s General Plan.

2. **Update the City of Banning’s General Plan:** as it relates to the project site based on current and projected market conditions while maintaining the underlying concept of comprehensive and cohesive development planning that allows for the appropriate physical and economic development of the property.

3. **Provide a Quality, Livable Community:** Provide a quality, livable community through the implementation of a Specific Plan that will ensure a consistent quality of design, allow for the provision and maintenance of community amenities, and create a collection of cohesive, well-defined neighborhoods that provide residents with a clear sense of place and identity within the diverse fabric of the larger community.

4. **Provide a Wide Range of Housing Opportunities:** Provide a range of high quality housing opportunities by developing a diverse range of housing types available at a variety of price points, responsive to market demand, and varying lifestyles.

5. **Promote Sustainability:** Promote the concept of sustainable community development by implementing green building practices in the selection of construction materials, the recycling of construction waste, and the use of energy and water efficient building practices.

6. **Incorporate Water and Energy Efficiency:** Incorporate energy and water efficient design and technology into the homes, commercial buildings, and landscape of the Specific Plan development.

7. **Ease of Navigation:** Create a community that is easy to navigate through careful use of landscape, signage, and entry design based on the Specific Plan’s design objectives.

8. **Recreational Amenities:** Provide recreational amenities which will serve the needs of neighborhood residents and others in the City of Banning as well as nearby communities.

9. **Safe and Efficient Circulation:** Provide a safe and efficient roadway network, linking all internal elements of the planned community with the rest of the City of Banning to the north, west and east.

10. **Address Drainage and Water Quality Issues:** Provide adequate drainage, flood control and water quality improvements, which satisfy applicable local, state and federal criteria while respecting and enhancing/preserving natural drainage functions and features.

11. **Ensure Provision of Public Services:** Ensure provision of adequate public services, utilities and infrastructure in a timely manner as development occurs.

12. **Encourage Alternative Transportation:** Encourage alternative transportation through the creation of a walkable community with well-defined pedestrian linkages between neighborhoods, amenities, schools, and commercial uses, the provision of bike paths, the creation of Low Speed Vehicle or Neighborhood Electric Vehicle (electric carts) linkages, electric vehicle charging stations, transportation coordination with local transit services, and the development of multi-purpose trails.

13. **Promote Community Security:** Promote community security and safety through appropriate outdoor design, the incorporation of “defensible space” concepts in the design of residential developments, and by encouraging community involvement through the area’s proposed homeowners associations.
III. ENVIRONMENTAL REVIEW AND PUBLIC PARTICIPATION PROCESS

In conformance with CEQA, the State CEQA Guidelines, and the City of Banning CEQA Guidelines, the City conducted an extensive environmental review of the proposed project.

- The City of Banning determined that an EIR would be required for the proposed project and issued a Notice of Preparation (NOP) and Initial Study on April 20, 2015. The NOP was sent to all responsible agencies, trustee agencies, and the Office of Planning Research and posted at the Riverside County Assessor-County Clerk-Recorder's office and on the City’s website on April 20, 2015. The 30-day public review period extended from April 20, 2015, to May 19, 2015.

- A scoping meeting was held during the NOP review period to solicit additional suggestions on the scope of the DEIR. Attendees were given the opportunity to identify verbally or in writing the issues they felt should be addressed in the DEIR. The scoping meeting was held on Wednesday, April 29, 2015, at the City of Banning Council Chambers at 99 E. Ramsey Street, Banning, CA 92220. The notice of the public scoping meeting was included in the NOP.

- The scope of the DEIR was determined based on the City’s Initial Study, comments received in response to the NOP, and comments received at the scoping meeting conducted by the City on April 29, 2015. Section 2.3 of the DEIR describes the issues identified for analysis in the DEIR.

- The City of Banning prepared a DEIR, which was made available for a 45-day public review period beginning June 20, 2016, and ending August 3, 2016.

  - The complete DEIR consists of the analysis of the Rancho San Gorgonio Specific Plan project and all referenced appendices. The Notice of Availability (NOA) for the DEIR was sent to all interested persons, agencies and organizations. The Notice of Completion (NOC) was sent to the State Clearinghouse in Sacramento for distribution to public agencies. The NOA was posted at the Riverside County Assessor-County Clerk-Recorder's office on June 20, 2016. Copies of the DEIR were made available for public review at the City of Banning Community Development Department and Banning Library District. The DEIR was also made available for download via the City’s website: www.ci.banning.ca.us.

  - One study session was held by the Planning Commission on August 31, 2016, in the Banning City Council Chambers, at 99 E. Ramsey Street, Banning, California 92220. Notice of time, place, and purpose of the aforesaid meetings was provided in accordance with CEQA and the City’s Municipal Code. The Rancho San Gorgonio Specific Plan and staff report were presented to the Planning Commission at this study session. Public comments regarding the Specific Plan were also taken. The agenda for the study session was posted at City Hall and on the City’s website.

  - Preparation of the FEIR includes comments on the DEIR, responses to those comments, clarifications/revisions to the DEIR, and revised figures. The FEIR was released on September xx, 2016, and posted on the City’s website. A Planning Commission Public Hearing was held on September 7, 2016, in the Banning City Council Chambers, at 99 E. Ramsey Street, Banning, California 92220. Notice of time, place, and purpose of the aforementioned meeting was provided in accordance with CEQA and the City’s Municipal Code. The Draft and Final EIR, staff report, and evidence, both written and oral, were presented to and considered by the Planning Commission at this hearing.

  - Notice of the Planning Commission Public Hearing was a one-eighth page advertisement in two local newspapers, the Press Enterprise and Record Gazette, on June 17, 2016 (in conjunction with the Notice of Availability of the Draft EIR), and August 26, 2016.
Additionally, notices were mailed to nearby property owners and interested parties consistent with the environmental review process required under the California Environmental Quality Act. The item was on the agenda for the noticed Planning Commission Public Hearing, which was posted at City Hall and on the City’s website.

- In compliance with Section 15088(b) of Title 14 of the California Code of Regulations (State CEQA Guidelines), the City has met its obligation to provide written Responses to Comments to public agencies at least 10 days prior to certifying the FEIR.

- The City Council Public Hearing was held on September 27, 2016, in the Banning City Council Chambers, at 99 E. Ramsey Street, Banning, California 92220. Notice of the time, place, and purpose of the aforementioned meeting was provided in accordance with CEQA and the City’s Municipal Code. The FEIR, staff report, and evidence, both written and oral, were presented to and considered by the City Council at this hearing.

- Notice of the City Council Public Hearing was a one-eighth page advertisement in two local newspapers, the Press Enterprise and Record Gazette on September xx, 2016.

- Additionally, notices were mailed to nearby property owners and interested parties consistent with the environmental review process required under the California Environmental Quality Act. The item was on the agenda for the noticed City Council Public Hearing, which was posted at City Hall and on the City’s website.

IV. ENVIRONMENTAL ISSUES THAT WERE DETERMINED NOT TO BE POTENTIALLY AFFECTED BY THE PROPOSED PROJECT

A. IMPACTS DETERMINED TO BE LESS THAN SIGNIFICANT IN THE INITIAL STUDY

As a result of the project scoping process—including the NOP circulated by the City on April 20, 2015, in connection with preparation of the DEIR, the preparation of the Initial Study, and the public scoping meeting—the City determined, based upon the threshold criteria for significance, that the project would have no impact or a less than significant impact on the following potential environmental issues, and therefore determined that these potential environmental issues would not be addressed in the DEIR. Based upon the environmental analysis in the DEIR and the comments received by the public on the DEIR, no substantial evidence was submitted to or identified by the City which indicated that the project would have an impact on the following environmental areas:

(a) Agriculture and Forestry Resources: The project area does not contain Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. No portion of the project area includes forest resources, and the site is not zoned for forest land, timberland, or timberland production.

(b) Cultural Resources: The project would not disturb any human remains.

(c) Geology and Soils: The project would not expose people or structure to potential substantial adverse effects involving rupture of a known earthquake fault as delineated on the most recent Alquist-Priolo Earthquake Zoning Map or based on other substantial evidence of a known fault. Impacts related to seismic-related ground failure (e.g., liquefaction) and landslides would be less than significant, and the proposed project would not use septic systems or alternative waste water disposal systems.

(d) Hazards and Hazardous Materials: The project would not create a significant hazard to the public or environment through routine transport, use, or disposal of hazardous materials or through reasonably foreseeable upset and accident conditions. The project also would not handle or operate hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school. The site is not
on a list of hazardous materials sites per Government Code Section 65962.5 and is not within the vicinity of a private airstrip that may cause safety hazards for people residing or working in the project area.

(e) **Hydrology and Water Quality:** The project would not expose people or structures to flood hazards as a result of dam or levee failure.

(f) **Land Use and Planning:** The project would not physically divide an established community.

(g) **Mineral Resources:** The project would not result in the loss of availability of a known mineral resource or locally important mineral resource recovery site.

(h) **Noise and Vibration:** The project would not be located within the vicinity of a private airstrip, and thus would not expose people residing or working in the project area to excessive noise levels.

(i) **Population and Housing:** The project would not displace any housing or residents.

All other topical areas of evaluation in Appendix G of the CEQA Guidelines (Environmental Checklist) were determined to require further assessment in the DEIR.

**B. IMPACTS DETERMINED TO BE LESS THAN SIGNIFICANT IN THE DEIR**

This section identifies impacts of the proposed project determined to be less than significant without implementation of project-specific mitigation measures. This determination, however, assumes compliance with existing regulations and relevant General Plan policies, as detailed in each respective topical section of Chapter 5 in the DEIR.

(a) **Aesthetics:** The project would not have a substantial adverse effect on scenic resources along State Route 243 or degrade the existing visual character or quality of the area. The project would generate new sources of light and glare; however, compliance with lighting standards and regulations would minimize impacts to less than significant levels.

(b) **Agriculture and Forestry Resources:** The project would not conflict with the existing Light Agriculture zoning of 161 acres within the Specific Plan area.

(c) **Air Quality:** The project would not expose sensitive receptors to substantial pollutant concentrations and would not create objectionable odors.

(d) **Biological Resources:** The project would not impact upland vegetation communities, narrow endemic plants, fairy shrimp species, vernal pool plant species, riverine plant species, or bat breeding colonies or colonial roosting sites.

(e) **Geology and Soils:** The project would not expose people and structures to strong seismic groundshaking and would not cause substantial soil erosion or loss of topsoil during development. Additionally, expansive soils onsite would not cause a substantial hazard to persons or structures.

(f) **Greenhouse Gas Emissions:** The project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases.

(g) **Hazards and Hazardous Materials:** The project would not result in a safety hazard (i.e., air traffic safety, building height limits, land use compatibility) for people residing or working in the project area per the Riverside County Airport Land Use Compatibility Plan; affect the implementation of an evacuation plan; or expose people or structures to significant hazards from wildland fires.

(h) **Hydrology and Water Quality:** The project would not violate any water quality standards or waste discharge requirements or otherwise substantially degrade water quality. Additionally, the project would not adversely alter the existing drainage patterns onsite; impact groundwater recharge in the project area;
or expose people or structures to substantial risk from 100-year flood hazard zones, seiche, tsunami, or mudflow.

(i) **Land Use and Planning:** The project would not conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating an environmental effect (including the City of Banning General Plan and Zoning Code, Southern California Association of Governments’ 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy, Banning Municipal Airport Comprehensive Land Use Plan, and Western Riverside County Multiple-Species Habitat Conservation Plan).

(j) **Noise:** The project would not expose sensitive uses to strong levels of groundborne vibration and would not expose people to substantial airport-related noise.

(k) **Public Services:** The project would not create significant impacts related to fire protection and emergency services, police protection, school services, or library services.

(l) **Recreation:** Development of the proposed project would not cause an adverse impact on existing park or recreational facilities and would not require the construction or expansion of facilities that might have an adverse effect on the environment.

(m) **Transportation and Traffic:** The project would not increase hazards due to design features; result in inadequate emergency access; conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities or otherwise decrease the performance or safety of such facilities.

(n) **Utilities and Service Systems:** Project-generated wastewater would not exceed the capacity of existing and proposed sewer pipelines and treatment plants; the project would be adequately served by existing and proposed water supply and delivery systems; stormwater flow would be adequately served by existing and proposed drainage systems; the Riverside County Waste Management Department solid waste facilities would have sufficient capacity to accommodate project-generated solid waste; and the project demand for electricity and natural gas would be adequately served by Southern California Edison and Southern California Gas Company.

V. **FINDINGS REGARDING POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS**

The following potentially significant environmental impacts were analyzed in the DEIR, and the effects of the project were considered. Because of environmental analysis of the project and the identification of relevant General Plan policies; compliance with existing laws, codes, and statutes; and the identification of feasible mitigation measures, some potentially significant impacts have been determined by the City to be reduced to a level of less than significant, and the City has found—in accordance with CEQA Section 21081(a)(1) and CEQA Guidelines Section 15091(a) (1)—that “Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.” This is referred to herein as “Finding 1.”

Where the City has determined—pursuant to CEQA Section 21081(a)(2) and CEQA Guidelines Section 15091(a)(2)—that “Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency,” the City’s finding is referred to herein as “Finding 2.”

Where, as a result of the environmental analysis of the project, the City has determined that either (1) even with the identification of project design features; compliance with existing laws, codes and statutes; and/or the identification of feasible mitigation measures, potentially significant impacts cannot be reduced to a level of less than significant or (2) no feasible mitigation measures or alternatives are available to mitigate the potentially significant impact, the City has found in accordance with CEQA Section 21081(a)(3) and CEQA Guidelines Section 15091(a)(3) that “Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make...
infeasible the mitigation measures or alternatives identified in the environmental impact report.” This is referred to herein as “Finding 3.”

A. IMPACTS MITIGATED TO LESS THAN SIGNIFICANT

The following summary describes impacts of the proposed project that, without mitigation, would result in significant adverse impacts. Upon implementation of the mitigation measures provided in the DEIR, the impacts would be considered less than significant.

1. Air Quality

**Impact 5.3-1:** Construction activities associated with the proposed project would generate short-term emissions in exceedance of the South Coast Air Quality Management District's threshold criteria for NOx in Phases 1 through 4.

Implementation of Mitigation Measures 3-1 through 3-5 would reduce all short-term emissions associated with construction activities to less than significant levels.

**Mitigation Measures**

3-1 **Application of Architectural Coatings.** Prior to issuance of any grading permits, the City of Banning Public Works Department, or designee, shall verify that construction contracts provided by future applicants include a statement specifying that the Construction Contractor shall comply with the SCAQMD Rule 1113 and any other SCAQMD rules and regulations on the use of architectural coatings or high-volume, low-pressure (HVLP) spray methods. Emissions associated with architectural coatings would be reduced by complying with these rules and regulations, which include using pre-coated/natural colored building materials, using water-based or low-VOC coating, and using coating transfer or spray equipment with high transfer efficiency. As the emissions from architectural coatings will exceed the SCAQMD’s thresholds, the use of low-VOC (e.g., 50 grams per liter [g/L] of VOC content or lower) shall be required for interior and exterior painting using an HVLP method.

3-2 **EPA Tier 4-Final Emissions Standards.** The applicant shall make available to the City of Banning, or designee, for review and approval, a comprehensive inventory of all off-road construction equipment equal to or greater than 50 horsepower that will be used an aggregate of 40 or more hours during any portion of construction activities for the project. The inventory shall include the horsepower rating, engine production year, and certification of the specified tier standard. A copy of each such unit’s certified tier specification, Best Available Control Technology documentation, and ARB or SCAQMD operating permit shall be provided on site at the time of mobilization of each applicable unit of equipment. Off-road diesel-powered equipment that will be used an aggregate of 40 or more hours during any portion of the construction activities for the project shall meet the EPA Tier 4 final emissions standards.

In the event that such equipment is not available, the use of Tier 3 construction equipment is sufficient so long as it can be demonstrated to the City that similar Tier 4 construction equipment is not readily available.

3-3 **Equipment Maintenance.** All construction equipment shall be properly tuned and maintained in accordance with manufacturer’s specifications.
3-4 **Equipment Operation.** General contractors shall maintain and operate construction equipment so as to minimize exhaust emissions. During construction, trucks and vehicles in loading and unloading queues would turn their engines off when not in use to reduce vehicle emissions. Construction emissions should be phased and scheduled to avoid emissions peaks and discontinued during second-stage smog alerts.

3-5 **Generator Use.** Electricity from power poles rather than temporary diesel- or gasoline-powered generators shall be used to the extent feasible.

3-6 **SCAQMD Rule 403(e).** The proposed project is considered a large operation (50 acre sites or more of disturbed surface area; or daily earth-moving operations of 3,850 cubic yards or more on three days in any year) in the South Coast Air Basin; therefore, the project applicant is required to comply with SCAQMD Rule 403(e) – Additional Requirements for Large Operations. Prior to issuance of grading permits, the City of Banning Public Works Department shall ensure the project applicant complies with the regulations detailed in SCAQMD Rule 403(e).

This may include, but is not limited to, Large Operation Notification, appropriate signage, additional dust control measures, and employment of a dust control supervisor that has successfully completed the Dust Control in the South Coast Air Basin training class.

Additional requirements include, but are not limited to:

Implementation of Table 2 of Rule 403 at all times and implementation of the actions specified in Table 3 of Rule 403 when applicable.

Submittal of a fully executed Large Operation Notification to the Executive Officer.

Maintenance of daily records to document the specific dust control actions taken.

Installation and maintenance of project signage with project contact person that meets the minimum standards of Rule 403 Implementation Handbook.

Identification of a dust control supervisor that has completed the AQMD Fugitive Dust Control Class.

3-7 **2010 Diesel Haul Trucks.** The project’s construction contractors shall use 2010 and newer diesel haul trucks (e.g., material delivery trucks and import/export). If the City of Banning determines 2010 or newer diesel trucks cannot be obtained, the construction contractor shall use trucks that meet EPA 2007 model year NOx emissions requirements.

3-8 **SCAQMD SOON Program Funds.** The City of Banning shall encourage future developers to apply for SCAQMD’s Surplus Off-Road Opt-In for NOx (SOON) Program to receive funding assistance to purchase commercially-available low-emission heavy-duty engines to achieve near-term reduction of NOx emissions from in-use off-road diesel vehicles.

**Finding**

**Finding 1.** The City hereby makes Finding 1. Changes or alterations have been required in or incorporated into the project that avoid or substantially lessen the significant environmental effect, as identified in the DEIR. These changes are identified in the form of the mitigation measures above. The City of Banning hereby finds that implementation of the mitigation measures is feasible, and the measures are therefore adopted.
2. Biological Resources

Impact 5.4-1: Development of the proposed project would impact sensitive species.

Implementation of Mitigation Measures 4-1 through 4-6 would ensure that impacts to sensitive species of plants and animals are reduced to less than significant levels.

Mitigation Measures

4-1 To ensure direct mortality of burrowing owls is avoided, a preconstruction survey shall be conducted by a qualified biologist within 30 days prior to ground disturbance at the site and submitted to the City. If construction is to be initiated during the breeding season (February 1 through August 31) and burrowing owl is determined to occupy any portion of the study area during the 30-day preconstruction survey, consultation with the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) shall take place, and no construction activity shall take place within a buffer zone of a minimum of 300 feet except when a smaller buffer is determined to be adequate to protect nesting activity by a qualified biologist and in consultation with CDFW and/or USFWS, until it has been determined that the nest/burrow is no longer active and all juveniles have fledged the nest/burrow. To avoid active nests, no grading or heavy equipment activity shall take place in the buffer zone during the breeding season (February 1 through August 31). Indirect impacts of exotic plant and animal infestations, litter, fire, and increased light and glare will be minimized by use of native plants for landscaping, removal of litter during construction, and by incorporating shielded lighting at the boundary of the conservation area.

If active burrowing owl burrows are detected outside the breeding season (March 1 through August 31, according to the Western Riverside County Regional Conservation Authority Burrowing Owl Survey Instructions, dated 2006), or within the breeding season but owls are not nesting or in the process of nesting, passive relocation may be conducted following consultation with the CDFW and USFWS. If occupied burrows are identified in a development area, the burrows shall be avoided or the owls passively relocated.

If burrowing owls are identified during the pre-construction surveys and cannot be avoided, a burrowing owl relocation/translocation plan will be prepared for submittal to the wildlife agencies for approval 90 days prior to ground-disturbing activities. One-way doors shall be installed as part of a passive relocation program. Burrowing owl burrows shall be excavated with hand tools by a qualified biologist when determined to be unoccupied and backfilled to ensure that animals do not reenter the holes/dens. Disturbance to active burrows shall be minimized to the extent practicable and shall not occur without necessary approvals from the USFWS and/or CDFW.

Prior to construction of the project development areas, the following mitigation measures shall be implemented to minimize impacts to burrowing owl:

- On site conservation of habitat at economically feasible quantity, and not more than a 1:1 mitigation ratio,
- Off-site land conservation, at economically feasible quantity, and not more than a 1:1 mitigation ratio
- A burrowing owl relocation plan will be developed in cooperation with CDFW, USFWS and Regional Conservation Authority (RCA). The owls will be relocated to an MSHCP Core Area or other public/quasi-public land protected and managed for the conservation of the species at a ratio of 1:1. Total costs for the management
associated with translocation, tracking to establish new breeding pairs, and monitoring will be the responsibility of the project applicant and shall be discussed between the project applicant and the regulatory agencies.

- Additionally, the applicant may contribute funds to an existing RCA land purchase or for the management of burrowing owl, thus providing equivalent preservation of habitat for the species (1:1 ratio).

- Purchasing private land and dedicating a conservation easement over suitable burrowing owl habitat such as land in the Smith Creek watershed and San Gorgonio River Valley are preferred options. The Smith Creek watershed conservation study area is located downstream from the project site south of Interstate 10 and east of Banning Municipal Airport. The 2,700-acre study area contains coastal sage scrub, desert scrub, grassland, riparian scrub woodland forest and Riversidean alluvial fan sage scrub habitats. Other suitable locations in western Riverside County will also be considered opportunities for conserving habitat for the burrowing owl.

- The riparian/riverine habitat mitigation may also be complementary mitigation to serve the habitat needs for the burrowing owl through the Clean Water Act Section 404 and California Fish and Game Code Section 1602 permit process.

The contribution of land or funding must be completed before issuance of grading permits by the City of Banning.

4-2

Because greater than 90 percent avoidance of occupied Los Angeles pocket mouse (LAPM) grassland habitat is not feasible, the project is obligated to contribute to the conservation of the species through land conservation on- or off-site. The mitigation alternatives at 1:1 mitigation ratio are: (1) contribution of land containing LAPM occupied habitat to the Reserve; or (2) LAPM-occupied land dedicated to the Regional Conservation Authority (RCA) in fee-title toward conservation and managed by third-party conservation entity; or (3) monetary contribution to the RCA for direct purchase of land for LAPM long-term conservation; or (4) Purchasing private land and dedicating a conservation easement over suitable LAPM habitat such as in Smith Creek watershed. The Smith Creek watershed conservation study area is located downstream from the project site south of Interstate 10 and east of Banning Municipal Airport. The 2,700 acre plus study area contains coastal sage scrub, desert scrub, grassland, riparian scrub woodland forest and Riversidean alluvial fan sage scrub habitats. Contribution of land or funding, or dedication of land, must be completed before issuance of grading permits by the City of Banning.

4-3

To reduce potential impacts to Stephens’ kangaroo rat (SKR) and Los Angeles pocket mouse, project proponents and construction contractors shall adhere to the following best management practices:

- Construction personnel will refrain from entering within 100 feet, on foot or by vehicle, the sandy wash adjacent to the project area. The 100-foot buffer adjacent to the sandy wash shall be clearly marked.

- Vehicle and equipment staging areas will be established away from the creeks and also away from the terraces that separate the project area from the creek.

- Construction fencing will be used to clearly demarcate where sensitive habitat shall be avoided.

- To mitigate for impacts to SKR the project proponent will pay funds into the SKR mitigation fund.
Before the beginning of ground-disturbing or site clearance activities by a project developed pursuant to the Specific Plan, focused bat preconstruction surveys shall be performed by a qualified bat biologist using acoustic bat detection equipment to gather more information about bat species occupancy and to determine the numbers and species of bat(s) present. The information gained from these preconstruction surveys will be used to determine appropriate mitigation and minimization measures if needed, in consultation with the CDFW.

Replacement bat roosting structures, per most current recommended standards, such as California Department of Transportation bat box specifications, can be installed as mitigation for impacts (California Bat Mitigation Techniques, Solutions, and Effectiveness prepared for Caltrans and CSU-Sacramento Foundation, by H. T. Harvey and Associates, dated Dec. 29, 2004). The most appropriate design will be selected in coordination with a bat biologist to ensure it is appropriate for the target bat species (e.g., size, adjacency to forage, orientation, material, color, type of roost). Other mitigation strategies for minimizing impacts to night-roosting bats include prohibition or certain restrictions on work on, or within 100 feet of a bridge structure from sunset to sunrise or from 10:00 pm to sunrise. Mitigation strategies for minimizing impacts to day-roosting bats include prohibition on work within 100 feet of, or directly under, an active roost; exclusion of bats from seasonal colonies (for work before April 15); and replacement roosting structures.

Mitigation for fill placed into waters of the U.S. or streambeds under CDFW jurisdiction, and for removal of associated alluvial fan sage scrub and other riparian/riverine wildlife habitat, shall include any combination of the following measures:

- Native landscaping shall be used in temporarily disturbed areas.
- Native landscaping shall be used in transition buffers in open space areas.
- Nonnative vegetation within the creeks shall be removed and replaced with native riparian trees and shrubs.
- Stormwater basin discharges due to seasonal rains shall be used to support additional riparian vegetation and alluvial fan sage scrub downstream.
- Jurisdictional areas on-site shall be avoided where feasible.
- Mitigation on-site at 2:1 ratio, where feasible.
- Mitigation off-site at 3:1 ratio for remaining compensatory requirements in Corps-approved mitigation bank or applicant created conservation area, either
  - within the Pass Area,
  - within the Whitewater River watershed, or
  - outside the watershed.
- Actual mitigation ratios and mitigation plan will be negotiated and authorized through consultation with the Corps and CDFW.

Mitigation for impacts to Riparian/Riverine areas for MSHCP Consistency would be through several options: (1) contribution of land at 2:1 ratio containing similar habitat and jurisdictional areas to the Reserve; or (2) land dedicated at 2:1 mitigation ratio in fee-title toward conservation and managed by third-party conservation entity; or (3) fee payment made to mitigation bank in-lieu fee program at 2:1 mitigation ratio; or (4) through creation and enhancement of riparian habitat at 2:1 mitigation ratio within the project area using the...
Finding

Finding 1. The City hereby makes Finding 1. Changes or alterations have been required in or incorporated into the project that avoid or substantially lessen the significant environmental effect, as identified in the DEIR. These changes are identified in the form of the mitigation measures above. The City of Banning hereby finds that implementation of the mitigation measures is feasible, and the measures are therefore adopted.

Impact 5.4-2: Specific Plan buildout would impact nesting birds and large trees suitable for raptor nesting and bat roosting.

Implementation of Mitigation Measures 4-7 through 4-10 would reduce impacts to nesting birds, bats, and raptors to less than significant levels.

Mitigation Measures

4-7 The following measures shall be implemented during project construction to mitigate impacts to birds nesting and bats roosting in large trees:

- Prior to site preparation or ground-disturbing activities by a project developed pursuant to the Specific Plan, a qualified bat biologist shall conduct a focused bat roosting habitat suitability assessment of all structures (including, but not limited to, bridges, culverts, and buildings) and trees that may be removed, altered, or indirectly impacted by the proposed project. Any locations with potential for roosting or suitable as a maternity roost will be surveyed by the qualified bat biologist using an appropriate combination of structure inspection, exit counts, and acoustic surveys. Surveys shall be conducted during the appropriate season and time of day/night to ensure detection of bats. If bats are found using any structures or trees within the project area, the qualified bat biologist shall identify the bats to the species level, and evaluate the colony to determine its size and significance. The bat survey shall include: 1) the exact location of all roosting sites (location shall be adequately described and drawn on a map); 2) the number of bats present at the time of visit (count or estimate); 3) each species of bat present shall be named (include how the species was identified); and 4) the type of roost, i.e., a night roost (rest at night while out feeding) versus a day roost (resting during the day). A report containing the bat survey findings shall be submitted to the City and to CDFW at the following address: 3602 Inland Empire Blvd., Suite C-220, Ontario, CA 91764.

- If a roosting site and/or maternity colony(s) is detected, and the qualified bat biologist determines that impacts (either direct or indirect, including disturbance from noise, vibration, dust, exhaust) from project-related activities may occur, the applicant shall consult with CDFW to determine the most appropriate type of avoidance, minimization, and mitigation measures to implement. Examples of avoidance and minimization strategies may include daily work timing restrictions and buffer distances. Work timing restrictions and buffer distances will be determined based on the expert opinion of the qualified bat biologist, as approved by the Department. Mitigation measures may include replacement of impacted roosting sites with alternate roosting structures, such as those described in the “California Bat Mitigation Techniques, Solutions, and Effectiveness” (H. T. Harvey and Associates, 2004). Alternate roosting structures shall be designed to ensure use by bats impacted by the project. For example,
designs will take into consideration the thermal and crevice/structure roosting requirements of the impacted bats.

- The removal of mature trees and snags will be minimized to the greatest extent practicable. Avoidance of mature native trees such as western cottonwood, black willow, and western sycamore, as well as ornamental fan palms that may serve as roost sites will minimize impacts to roosting bats.

- The qualified bat biologist, in consultation with CDFW, shall oversee and direct the trimming and/or removal of all trees, including snags from the project site.

- To avoid direct impacts to flightless young, tree trimming/removal activities associated with project construction shall be performed outside of the bat maternity season, which coincides with the bird nesting season of March 15 through September 15, thereby reducing impacts to nesting birds. To further reduce impacts to all age classes of bats, all trees subject to impacts from project construction will be inspected by the qualified bat biologist, regardless of time of year.

- If tree trimming/removal activities cannot be avoided during the bat maternity season (April 1 through August 31) and roosting bats have been documented by CDFW-approved qualified bat biologist, then a biological monitor shall be present during removal of any mature trees or snags containing roosting habitat during the bat maternity season to monitor for the presence of flightless juvenile bats. If any flightless juvenile or injured adult bats are found during the trimming or removal of those trees, these bats will be transported to a CDFW-licensed rehabilitator according to accepted protocol.

- Bridges constructed for the project can include roosting features suitable for use by crevice and cavity-roosting bats; these bridge features would simulate rock crevices or cave-like spaces and may be part of the bridge structure or consist of bolted-on features. Any bat roosting structures, per most current recommended standards, such as California Department of Transportation bat box specifications, can be installed as mitigation for impacts. The most appropriate will be selected in coordination with a qualified bat biologist to ensure it is appropriate for the target bat species (e.g., size, adjacency to forage, orientation, material, color, type of roost). The inclusion of mature plantings of cottonwood, willow, and sycamore in the landscaping plan (Mitigation Measure 4-9) for the project would serve to mitigate the loss of these roost sites because they would provide suitable habitat for tree-roosting bat species.

- Native habitat enhancement, if implemented as part of the riparian/riverine and jurisdictional waters mitigation plan in Pershing and Smith Creek areas, will improve the quality of the foraging habitat currently available and the overall quantity of the foraging habitat currently available to the local bat population.

4-8 If any previously undiscovered roosting bats are discovered during construction activities, all work shall stop on, under, around, or within an appropriate buffer as determined by the CDFW-approved qualified bat biologist, based on the following factors: the species of bat discovered, the type of roost, and the type of construction activities that will occur near that roost.

4-9 Native trees to be impacted by development of projects pursuant to the Specific Plan shall be assessed by a certified arborist as to the viability and value of the trees in order to determine if mitigation and replacement are required. Removal of healthy, shade-providing, and aesthetically valuable trees shall be strongly discouraged and shall conform with the policies and programs of the City of Banning General Plan. A tree removal and replacement plan shall be required for the removal and replacement of all trees in excess of 50 years of age.
age, unless their removal is required to protect the public health and safety. Each identified tree removed shall be replaced with at least 15 one-gallon saplings of native riparian species that occur naturally in the San Gorgonio Pass area, in addition to any other required landscaping.

To mitigate impacts to nesting birds including raptors and non-raptors: Within 3 days prior to the commencement of construction, a qualified biologist shall perform a raptor nesting survey that will consist of a single visit to ascertain whether there are active raptor nests within 500 feet or other protected bird nests within 300 feet of the project footprint. Nests will be searched for in unused structures, trees and shrubs, and on the ground. This survey will also identify the species of nesting bird and, to the degree feasible, nesting stage (e.g., incubation of eggs, feeding of young, near fledging). Nests will be mapped (not by using GPS because close encroachment may cause nest abandonment).

Work shall be avoided in riparian areas during active breeding season, typically designated as March 1 through August 31 by the Burrowing Owl Survey Instructions for the Western Riverside Multiple Species Habitat Conservation Plan Area, dated March 29, 2006. If vegetation removal must occur during this avoidance period, then a nest survey by a qualified biologist is required. The nest survey shall be conducted for five consecutive days and no more than three days prior to clearing. If an active nest is observed, then the nest location shall be fenced off surrounding a buffer zone of 300 feet for all bird species and 500 feet for raptors, including the burrowing owl; the buffer zone shall not be disturbed until the nest is inactive; and biological monitoring shall occur during vegetation removal activities.

Finding

Finding 1. The City hereby makes Finding 1. Changes or alterations have been required in or incorporated into the project that avoid or substantially lessen the significant environmental effect, as identified in the DEIR. These changes are identified in the form of the mitigation measures above. The City of Banning hereby finds that implementation of the mitigation measures is feasible, and the measures are therefore adopted.

Impact 5.4-5: Specific Plan buildout would impact riparian habitats and sensitive natural communities, including 26.8 acres of Riversidean alluvial fan sage scrub, 27.1 acres of upland Riversidean sage scrub, 0.2 acre of wetland with nonnative grasses, and 0.06 acre of mulefat scrub.

Mitigation Measures

Mitigation Measures 4-5 and 4-6, above, would also apply to this impact. Implementation of these mitigation measures would require on- and/or offsite habitat mitigation or payment of mitigation banking fees to minimize impacts to sensitive natural communities. Impacts would be less than significant.

Finding

Finding 1. The City hereby makes Finding 1. Changes or alterations have been required in or incorporated into the project that avoid or substantially lessen the significant environmental effect, as identified in the DEIR. These changes are identified in the form of the mitigation measures above. The City of Banning hereby finds that implementation of the mitigation measures is feasible, and the measures are therefore adopted.
Impact 5.4-6: Project development would impact 28,126 linear feet of ephemeral streams, 6.9 acres of waters jurisdictional to the US Army Corps of Engineers, and 26.3 acres of streambed jurisdictional to the California Department of Fish and Wildlife.

Mitigation Measures

Mitigation Measures 4-5 and 4-6, above, would also apply to this impact. Implementation of these mitigation measures would require habitat restoration, land dedication, or fee payment to a mitigation bank and reduce impacts to less than significant levels.

Finding

**Finding 1.** The City hereby makes Finding 1. Changes or alterations have been required in or incorporated into the project that avoid or substantially lessen the significant environmental effect, as identified in the DEIR. These changes are identified in the form of the mitigation measures above. The City of Banning hereby finds that implementation of the mitigation measures is feasible, and the measures are therefore adopted.

Impact 5.4-8: Specific Plan buildout would impact wildlife movement and dispersal routes.

Implementation of Mitigation Measure 4-11 would reduce impacts to existing wildlife corridors to less than significant levels.

Mitigation Measures

4-11 The following measures shall be implemented to mitigate potential impacts of encroachments—such as light, pets, and invasive plant species—from the Smith Creek and Pershing Creek linear parks and proposed adjacent developments into Smith Creek and Pershing Creek:

- During project construction and project operation, lighting shall be directed away from the creeks.
- During project operation, pets shall be required to be on leash at all times in the linear parks along Smith Creek and Pershing Creek, as well as in natural open space areas within the Specific Plan site.

During project design and project operation, native vegetation shall be used in the Smith Creek and Pershing Creek linear parks to provide wildlife movement, cover, and screening.

Finding

**Finding 1.** The City hereby makes Finding 1. Changes or alterations have been required in or incorporated into the project that avoid or substantially lessen the significant environmental effect, as identified in the DEIR. These changes are identified in the form of the mitigation measure above. The City of Banning hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.
Impact 5.4-10: Specific Plan buildout would involve the removal of trees requiring replacement pursuant to City of Banning ordinance.

Mitigation Measures

Mitigation Measure 4-9, above, would also apply to this impact. Implementation of this mitigation measure would ensure that impacted native trees are removed and replaced based on protocol established in a tree removal and replacement plan. Impacts would be less than significant.

Finding

Finding 1. The City hereby makes Finding 1. Changes or alterations have been required in or incorporated into the project that avoid or substantially lessen the significant environmental effect, as identified in the DEIR. These changes are identified in the form of the mitigation measure above. The City of Banning hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

Impact 5.4-11: Project buildout would require measures for compliance with the Western Riverside County Multiple Species Habitat Conservation Plan and payment of fees pursuant to the Stephens’ Kangaroo Rat Habitat Conservation Plan.

Mitigation Measures

Mitigation Measures 4-1 through 4-11, above, would also apply to this impact. Implementation of these mitigation measures would ensure the project is consistent with the MSHCP. Impacts would be less than significant.

Finding

Finding 1. The City hereby makes Finding 1. Changes or alterations have been required in or incorporated into the project that avoid or substantially lessen the significant environmental effect, as identified in the DEIR. These changes are identified in the form of the mitigation measures above. The City of Banning hereby finds that implementation of the mitigation measures is feasible, and the measures are therefore adopted.

3. Cultural Resources

Impact 5.5-1: Development of the project could impact identified historic and archaeological resources, including milling slicks, a historic quarry, and a historic refuse scatter.

Implementation of Mitigation Measures 5-1 through 5-2 would minimize impacts to historic and archaeological resources to less than significant levels.

Mitigation Measures

5-1 If avoidance is not feasible, prior to grading activities, a certified archaeologist shall conduct an archaeological test excavation at the three potentially eligible sites (CA-RIV-8990, CA-RIV-8991, and CA-RIV-9190) to determine whether the sites are considered “historical resources” under CEQA. The excavation shall be conducted through controlled hand-excavations and collection and analysis of artifacts. Archaeological mechanical trenching shall be conducted as part of the archaeological test excavations to test for deeply buried cultural deposits that are not accessible during hand excavations. A trenching program is not necessary if hand excavations reveal that site soils do not exceed 40 centimeters in depth.
Research shall be conducted regarding CA-RIV-9190 to apprehend primary references and specific information regarding the historic quarrying activities that took place on that site, and to exhaust the data potential of the site’s historic component. If the prescribed archaeological test excavation and additional research indicate California Register eligibility for any of the potentially eligible resources subject to project impacts, the eligible resources would be considered “historical resources” under CEQA and shall be preserved in place.

If preservation in place is not feasible for the potentially eligible sites (CA-RIV-8990, CA-RIV-8991, and CA-RIV-9190), a Phase III data recovery plan, which provides for adequately recovering scientifically consequential information from and about the historical resource(s), shall be prepared and adopted prior to any undertaking/project-related excavation.

5-2 A qualified archaeological monitor shall be present during all ground-disturbing activities related to the Rancho San Gorgonio Specific Plan project. The monitor shall work under the direct supervision of a cultural resource professional who meets the Secretary of the Interior’s Professional Qualification Standards for archaeology. The monitor shall be empowered to temporarily halt or redirect construction work in the vicinity of any find until the project archaeologist can evaluate it. In the event of a new find, salvage excavation and reporting shall be required.

Finding

Finding 1. The City hereby makes Finding 1. Changes or alterations have been required in or incorporated into the project that avoid or substantially lessen the significant environmental effect, as identified in the DEIR. These changes are identified in the form of the mitigation measures above. The City of Banning hereby finds that implementation of the mitigation measures is feasible, and the measures are therefore adopted.

Impact 5-5-2: The proposed project could adversely impact undiscovered paleontological resources.

Implementation of Mitigation Measure 5-3 would minimize impacts to potentially undiscovered paleontological resources to less than significant levels.

Mitigation Measures

5-3 During grading activities, excavation of areas identified as likely to contain paleontological resources (e.g., any undisturbed subsurface Pleistocene sediments), shall be monitored by a qualified paleontological monitor. If paleontological resources are discovered during project grading, work shall be halted in that area until a qualified paleontologist can assess the significance of the find. The project paleontologist shall monitor remaining earth-moving activities at the project site and shall be equipped to record and salvage fossil resources that may be unearthed during grading activities. The paleontologist shall be empowered to temporarily halt or divert grading equipment to allow recording and removal of the unearthed resources.

Any fossils found shall be evaluated in accordance with the CEQA Guidelines and offered for curation at an accredited facility approved by the City of Banning. A report of findings, including, when appropriate, an itemized inventory of recovered specimens and a discussion of their significance, should be prepared upon completion of the steps outlined above. The report and inventory, when submitted to the appropriate lead agency, would signify completion of the program to mitigate impacts on paleontological resources. This measure shall be implemented to the satisfaction of the City of Banning Planning Department.
Finding

Finding 1. The City hereby makes Finding 1. Changes or alterations have been required in or incorporated into the project that avoid or substantially lessen the significant environmental effect, as identified in the DEIR. These changes are identified in the form of the mitigation measure above. The City of Banning hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

4. Geology and Soils

Impact 5.6-3: Future development within the project site could subject persons or structures to hazards arising from unstable soils or geologic units.

Implementation of Mitigation Measure 6-1 would ensure soil conditions onsite are fit for future development, and impacts related to unstable geologic unit hazards are less than significant.

Mitigation Measures

6-1 All vegetation, trash and debris shall be cleared from the grading area and removed from the site. Prior to placement of compacted fills, all non-engineered fills and loose, porous, or compressible soils shall be removed down to competent ground. Depths of removals will be dependent upon the nature of the underlying soils and proposed land use. In general, it is anticipated that the following removals are required for areas to receive fill or support structures:

- Artificial fills (No Map Symbol): Complete removal of artificial fills to competent natural ground is anticipated.
- Wash deposits (Map Symbol Qw): Complete removal to underlying competent alluvial or older alluvial deposits. Depth of removal shall be determined after jurisdictional drainage issues are resolved and anticipated grades have been established.
- Alluvium (Map Symbol Qa): The in situ density of alluvial soils within the site varies laterally and with depth. Removals of alluvium typically need to extend to a minimum depth of five feet with deeper removals in some areas, possibly extending up to maximum depth of 20 to 30 feet. Alluvial removals will need to be evaluated in greater detail when grading plans are developed.
- Older alluvium (Map Symbol Qo): Removals of older alluvium are expected to be on the order of two to five feet, depending upon the nature of the proposed development and near surface weathering of the older alluvial soils, although deeper removals might be needed in some areas.
- Granitic and Metamorphic Bedrock (Map Symbol Kq): No grading is currently proposed within the bedrock hill in the southeast corner of the site. Consequently, removal requirements for bedrock are not applicable at this time. Specific recommendations shall be developed if grading is proposed within the hill at a later date.

More detail evaluation of removals and overexcavation recommendations shall be developed once grading plans are available. Typically, footing areas that are not in deep fill areas are undercut, moistened, and compacted to a minimum of 90 percent relative compaction to a depth equal to the width of the footing below the bottom of the footing or to a depth of three feet below the bottom of the footing, whichever is less. Footing areas are typically defined as extending from the edge of the footing for a distance of five feet. Floor slabs, concrete flatwork and paved areas are typically underlain by a minimum of 12 inches of soil compacted to a minimum of 90 percent
relative compaction. Removal and overexcavation depths shall be confirmed or adjusted, if necessary, at the time of grading.

Finding

Finding 1. The City hereby makes Finding 1. Changes or alterations have been required in or incorporated into the project that avoid or substantially lessen the significant environmental effect, as identified in the DEIR. These changes are identified in the form of the mitigation measure above. The City of Banning hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.

5. Noise

Impact 5.11-4: Noise-sensitive uses could be exposed to elevated noise levels from stationary sources.

Implementation of Mitigation Measure 11-3 would reduce noise levels near sensitive uses to acceptable levels. Impact would be less than significant.

Mitigation Measures

11-3 Prior to issuance of the first building permit for any project within the PA 9 Neighborhood Commercial Area, the property owner/developer shall submit a final acoustical report prepared to the satisfaction of the Planning Director to address potential noise impacts to nearby residences. The report shall demonstrate that the development within PA 9 incorporates sufficient noise-attenuation features so that the City’s exterior and interior standards in Municipal Code Sections 8.44.070 and 8.44.090(E) and in the City’s Noise Element are maintained at nearby residences. Compliance can be achieved with (a) sufficient buffering distances so that nearby sensitive receptors are not significantly impacted by future commercial development OR (b) sufficiently high and long sound barrier wall(s) that are placed between commercial noise sources and receptors (for example, in the case of garbage compactor equipment) OR (c) other adequate noise reduction methods that are approved by the Planning Director or their designee. In all cases, the noise reduction measures shall be technically demonstrated to achieve the appropriate target noise level(s) for both exterior and interior environments for nearby residences, as appropriate (e.g., sufficient wall or berm height, sufficient buffering distance, appropriate sound encapsulation/insulation methods, etc.).

The individual project owner/developer shall submit the noise mitigation report to the Planning Director for review and approval. Upon approval by the City, the project acoustical design features shall be incorporated into the future commercial development.

Finding

Finding 1. The City hereby makes Finding 1. Changes or alterations have been required in or incorporated into the project that avoid or substantially lessen the significant environmental effect, as identified in the DEIR. These changes are identified in the form of the mitigation measure above. The City of Banning hereby finds that implementation of the mitigation measure is feasible, and the measure is therefore adopted.
B. SIGNIFICANT UNAVOIDABLE ADVERSE IMPACTS

The following summary describes the significant, unavoidable adverse impacts of the proposed project.

1. Air Quality

| Impact 5.3-2: | Long-term operation of the project would generate additional vehicle trips and associated emissions in exceedance of the South Coast Air Quality Management District’s threshold criteria for VOC, NO\textsubscript{x}, CO, PM\textsubscript{10}, and PM\textsubscript{2.5}. |

Long-term project operations produce air pollutant emissions from the proposed mix of residential and commercial land uses. Based on the project traffic study, long-term operational emissions associated with the proposed project by phase were calculated with CalEEMod. Area sources include architectural coatings, consumer products, and landscaping maintenance performed on the project site. Energy sources include natural gas consumption for heating and electricity for lighting in the buildings and outdoor areas. Mobile sources (vehicles associated with the proposed residential and commercial land uses) combine traffic volumes from the traffic study with regional data on typical trip lengths to derive vehicle miles traveled.

Phase 1 operations of the proposed project would not exceed any SCAQMD daily thresholds. However, from Phase 2 onwards, operational activities of the proposed project would generate peak daily emissions in exceedance of the SCAQMD daily thresholds for volatile organic compounds (VOC), nitrous oxides (NO\textsubscript{x}), carbon monoxide (CO), respirable coarse particulate matter (PM\textsubscript{10}), and respirable fine particulate matter (PM\textsubscript{2.5}), as detailed below:

- Phase 2 – NO\textsubscript{x}
- Phase 3 – VOC and NO\textsubscript{x}
- Phase 4 – VOC, NO\textsubscript{x}, CO, PM\textsubscript{10}
- Phase 5 – VOC, NO\textsubscript{x}, CO, PM\textsubscript{10}, PM\textsubscript{2.5}
- Phase 6 – VOC, NO\textsubscript{x}, CO, PM\textsubscript{10}, PM\textsubscript{2.5}

Implementation of Mitigation Measure 3-6 would reduce operation-related criteria air pollutants and encourage and accommodate use of alternative-fueled vehicles, multimodal transportation, and energy efficient technology. However, despite adherence to mitigation, Impact 5.3-2 would remain significant and unavoidable.

Mitigation Measures

Operational Mitigation Measures. Prior to issuance of any construction permits, future development applicants shall submit for review and approval by the City of Banning, building plans that incorporate operational mitigation measures such as, but not limited to, the following:

- Transportation
  - Applicants for future development projects shall provide evidence to the City that they would provide one electric car charging station for every 10 high-density residence and provisions for electric car charging stations in the garages of all very low density, low density, medium density, and medium-high density housing.
  - Applicants for future development projects shall provide evidence to the City that they would provide at least two designated parking spots for parking of zero-emission vehicles (ZEVs) or for car-sharing programs in all employee/worker parking areas.
• Applicants for future development projects shall provide evidence to the City that they would provide incentives for employees and the public to use public transportation such as discounted transit passes, reduced ticket prices at local events, and/or other incentives.

• Applicants for future development projects shall provide evidence to the City that they would implement a rideshare program for employees at retail/commercial sites.

• Energy Efficiency
  • Applicants for future development projects shall provide evidence to the City that they would design all structures to use passive heating, natural cooling, and reduced pavement to the extent feasible. All residences shall use either high-efficiency or solar hot water systems.
  • Applicants for future development projects shall provide evidence to the City that they would limit the hours of operation of outdoor lighting in publicly accessible areas.
  • Applicants for future development projects shall provide evidence to the City that they would install light-colored “cool” roofs on all commercial structures and cool pavements throughout the project site.
  • Applicants for future development projects shall provide evidence to the City that they would require the use of electric/energy-efficient appliances (e.g., stoves) in all residences.

• Other
  • Prior to issuance of a building permit, the applicant shall submit a Construction Plan to the City for review and approval that demonstrates that the development will install photovoltaic panels on a minimum of 25 percent of the units within the development. The panels shall be capable of generating 25 percent of the projected electricity demand of each proposed housing unit. For non-residential projects, photovoltaic panels shall be installed, which shall provide a minimum of 25 percent of the electrical demand of the non-residential building.
  • Applicants for future development projects shall provide evidence to the City that they would provide outlets for electric and propane barbecues in every residence with an outside patio.
  • Applicants for future development projects shall provide evidence to the City that they would require that all homeowner associations’ Covenants, Conditions and Restrictions (CC&Rs) mandate the use of electric lawn mowers and leaf blowers by all residents.

Finding

Finding 3. The City makes Finding 3, having concluded that there are no other feasible mitigation measures—taking into consideration specific economic, legal, social, technological, or other factors—that would mitigate this impact to a less-than-significant level, and further, that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR (CEQA Section 21081(a)(3) and CEQA Guidelines Section 15091(a)(3)).

As described in the Statement of Overriding Considerations, the City has determined that this impact is acceptable because specific overriding economic, legal, social, technological, or other benefits of the proposed project, including regionwide or statewide environmental benefits, outweigh its significant effects on the environment.
Impact 5.3-4: Development of the proposed project would not be consistent with applicable air quality management plans.

A measure of determining if the project is consistent with applicable air quality management plans (AQMPs) is if the project would not result in an increase in the frequency or severity of existing air quality violations, cause or contribute to new violations, or delay timely attainment of air quality standards of the interim emission reductions specified in the AQMPs.

The region has a nonattainment status for \( \text{O}_3 \), \( \text{PM}_{2.5} \), and \( \text{PM}_{10} \). Therefore, if project-generated emissions of \( \text{O}_3 \) precursors (i.e., VOCs and \( \text{NO}_x \)), \( \text{PM}_{2.5} \) or \( \text{PM}_{10} \) would exceed the SCAQMD significance thresholds, the project would conflict with the attainment plans.

The proposed project would require a general plan amendment to allow the land uses proposed under the Rancho San Gorgonio Specific Plan. In addition, the proposed project would exceed several SCAQMD emission thresholds during both construction and operation. Therefore, the emissions associated with occupation and uses of the project are expected to exceed the general plan projections and could contribute to air quality deterioration beyond current SCAQMD projections. Impacts are therefore potentially significant.

Mitigation measures applied for Impacts 5.3-1 and 5.3-2 and the design and regulatory standards of the Specific Plan would reduce the project’s regional construction-related and operational-phase criteria air pollutant emissions to the extent feasible. However, given the project’s construction and operational increase in criteria air pollutant emissions, the project would be inconsistent with the assumptions in the AQMP. Thus, Impact 5.3-4 would be significant and unavoidable.

Mitigation Measures

Mitigation Measures 3-1 through 3-6, above, would also apply to this impact.

Finding

Finding 3. The City makes Finding 3, having concluded that there are no other feasible mitigation measures—taking into consideration specific economic, legal, social, technological, or other factors—that would mitigate this impact to a less-than-significant level, and further, that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR (CEQA Section 21081(a)(3) and CEQA Guidelines Section 15091(a)(3)).

As described in the Statement of Overriding Considerations, the City has determined that this impact is acceptable because specific overriding economic, legal, social, technological, or other benefits of the proposed project, including regionwide or statewide environmental benefits, outweigh its significant effects on the environment.

2. Greenhouse Gas Emissions

Impact 5.7-1: Development of the proposed land uses in the Rancho San Gorgonio Specific Plan would result in a substantial increase of GHG emissions that would exceed the South Coast Air Quality Management District’s proposed efficiency target of 4.8 metric tons of \( \text{CO}_2 \)-equivalent (MTCO\( \text{2}_\text{e} \)) emissions.

The proposed development would contribute to global climate change through direct emissions of GHG from onsite area sources and vehicle trips generated by the project, and indirectly through offsite energy production required for onsite activities, water use, and waste disposal. Overall, the following activities associated with the proposed project could directly or indirectly contribute to the generation of GHG.
emissions: construction activities (using equipment requiring fossil-based fuels); gas, electric, and water use (combustion of natural gas or fossil fuels); solid waste disposal (release of methane [CH₄] through landfiling); and motor vehicle use (combustion of fossil fuels in automobile and truck trips).

The total construction GHG emissions for the six construction phases are approximately 19,980 MTCO₂e, 2.0 MTCH₄, and 19,980 MTCO₂e. The SCAQMD treatment for construction-related GHG emissions is to amortize them over the life of the project (30 years) and include them in the evaluation of yearly operations—670 MTCO₂, 0.066 MTCH₄, and 670 MTCO₂e. Construction and long-term operational emissions of the proposed project would produce 46,000 MTCO₂e at completion.

The proposed project is evaluated using the SCAQMD Tier 4 GHG screening significance threshold, which requires the project to be less than or equal to both the 2020 and 2035 efficiency thresholds in order to be considered less than significant. The 2020 threshold for projects is 4.8 tons per year (tpy) per service population (residents and employees), and the 2035 threshold for projects is 3.0 tpy per service population. The total service population of the proposed project is planned to be approximately 8,461 persons. This translates to a 2020 threshold of 4.8 × 8,461, or 40,613, which the total project would exceed. For the 2035 threshold, the result is 3.0 × 8,461, or 25,383, which the total project would also exceed. Therefore, the project would exceed this Tier 4 threshold, and the emissions of GHGs would be significant.

The Climate Action Team and Air Resources Board (ARB) have developed several reports to achieve the governor’s GHG targets that rely on voluntary actions of California businesses, local government and community groups, and State incentive and regulatory programs. These reports identify strategies to reduce California’s emissions to the levels proposed in Executive Order S-3-05 and Assembly Bill 32 that are applicable to the proposed project. The Subregional Climate Action Plan is the most recent document, and its strategies are either part of the Specific Plan or requirements under local or state regulations or ordinances. With implementation of these strategies/measures, the project’s contribution to cumulative GHG emissions would be reduced.

Implementation of Mitigation Measures 7-1 through 7-3 and applicable project design features would reduce GHG emissions from stationary and mobile sources to the extent feasible. Additionally, Mitigation Measures 3-1 through 3-6 would also encourage and accommodate use of alternative-fueled vehicles, multimodal transportation, and energy efficient technology that would help reduce vehicle miles traveled and GHG emissions. However, due to the magnitude of GHG emissions associated with the proposed project, Impact 5.7-1 would remain significant and unavoidable.

**Mitigation Measures**

7-1 **Energy Efficient Street Lights and Traffic Signals.** The City shall identify energy-efficient streetlights, which are currently available and which, when installed, will provide a 10 percent reduction beyond the 2010 baseline energy use for this infrastructure, and shall require the use of this technology in all new development. All new traffic lights installed within the project shall use LED technology.

7-2 **Construction Waste Management Plan.** Prior to issuance of a building permit, the applicant shall submit a Construction Waste Management Plan to the City for review and approval. The plan shall include procedures to recycle and/or salvage at least 50 percent of nonhazardous construction and demolition debris and shall identify materials to be diverted from disposal and whether the materials will be stored on site or commingled. Excavated soil and land-clearing debris do not contribute to this credit. Calculation can be done by weight or by volume but must be documented.

7-3 **Vehicle Idling Limits.** All commercial and retail development shall be required to post signs and limit idling time for commercial vehicles, including delivery trucks, to no more than 5 minutes of “non-essential” idling in compliance with the Diesel-Fueled Commercial Motor
Vehicle Idling Airborne Toxic Control Measure (ATCM). This condition shall be included on future site development plans for review and approval by the City Development Services Director.

Finding

Finding 3. The City makes Finding 3, having concluded that there are no other feasible mitigation measures—taking into consideration specific economic, legal, social, technological, or other factors—that would mitigate this impact to a less-than-significant level, and further, that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR (CEQA Section 21081(a)(3) and CEQA Guidelines Section 15091(a)(3)).

As described in the Statement of Overriding Considerations, the City has determined that this impact is acceptable because specific overriding economic, legal, social, technological, or other benefits of the proposed project, including regionwide or statewide environmental benefits, outweigh its significant effects on the environment.

3. Noise

Impact 5.11-1: Construction activities would result in temporary noise increases in the vicinity of the project site.

Two types of short-term noise impacts could occur during the construction of the proposed project. First, construction crew commutes and the transport of construction equipment and materials to the site for the proposed project would incrementally increase noise levels on access roads leading to the site. Although there would be a relatively high single-event noise exposure potential causing intermittent noise nuisance (passing trucks at 50 feet would generate up to 75 dBA Lmax), the effect on longer-term (hourly or daily) ambient noise levels would be small. Therefore, short-term construction-related impacts associated with worker commutes and equipment transport to the project site would be less than significant.

The second type of short-term noise impact is related to noise generated during construction activities on the project site. Construction is completed in discrete steps, each of which has its own mix of equipment, and consequently, its own noise characteristics. These various sequential phases would change the character of the noise generated on the site, and therefore, the noise levels surrounding the site as construction progresses. Construction equipment generates high levels of noise, with maximums ranging from 74 dBA to 101 dBA. Typical noise levels range up to 87 dBA Lmax at 50 feet during the noisiest construction phases.

Construction of the proposed project is expected to require the use of scrapers, bulldozers, water trucks, and pickup trucks. Noise associated with the use of construction equipment is estimated to be between 75 and 84 dBA Lmax at a distance of 50 feet from the active construction area for the grading phase. The maximum noise level generated by each scraper is assumed to be approximately 84 dBA Lmax at 50 feet from the scraper in operation. Each bulldozer would generate approximately 82 dBA Lmax at 50 feet. The maximum noise level generated by water trucks and pickup trucks is approximately 75 dBA Lmax at 50 feet from these vehicles. Two pieces of equipment with equal sound levels increase the noise level by 3 dB. Assuming that each piece of construction equipment operates with a usage factor of 40 percent at some distance from the other equipment, the worst-case combined noise level during this phase of construction would be 87 dBA Lmax at a distance of 50 feet and 82 dBA Leq at a distance of 50 feet from the active construction area. The offsite and onsite short-term construction noise impacts are discussed below.

Offsite Short-Term Construction Noise Impacts

The following discusses potential noise impacts during construction at offsite sensitive receptors in the City of Banning and unincorporated Riverside County.
City of Banning: The City’s municipal code restricts noise levels related to construction to the hours between 7:00 a.m. to 6:00 p.m. The restriction would apply to the noise due to construction activities as measured in the interior of the nearest occupied residences or schools to no more than 55 dBA for intervals of more than 15 minutes per hour. Outside those hours, the more restrictive noise criteria in Section 8.44.070 of the municipal code would apply.

The closest residences and classroom building in the City of Banning are approximately 50 feet and 540 feet, respectively, from the project construction area. The residences are along the north side of West Westward Avenue between 22nd Street and 8th Street, along the west side of Lovell Street (south of West Westward Avenue), and along the east side of 22nd Street (south of West Westward Avenue). The closest classroom building is at Banning High School. The closest residences and classroom building may be subject to short-term noise of 87 and 77 dBA $L_{\text{max}}$, respectively, generated by construction activity in the project area. Also, based on the usage factor of 40 percent for construction equipment, the closest residences and classroom building may be subject to short-term noise of 82 and 72 dBA $L_{\text{eq}}$, respectively.

Standard building construction in southern California would provide 24 dBA or more in noise reduction from exterior to interior with windows and doors closed. Therefore, with the exterior-to-interior noise attenuation of 24 dBA, the interior noise levels of the closest residences and classroom building would be 58 and 48 dBA $L_{\text{eq}}$, respectively. Construction activities at the closest residences would exceed the City’s interior noise standard of 55 dBA for 15 minutes, while the closest classroom building would not exceed the City’s interior noise standard. Thus, project construction would have the potential to substantially increase the ambient noise level for an extended period at nearby residential uses, and construction noise impacts would be considered potentially significant for nearby residences.

County of Riverside: The closest residences in the County of Riverside are approximately 50 feet from the project construction area. These residences are on the west side of Turtledove Lane between Bobcat Road and Coyote Trail. The closest residences may be subject to short-term noise of 87 dBA $L_{\text{max}}$ generated by construction activities.

As with the City of Banning Municipal Code, the County of Riverside Code generally restricts construction activities to what can be considered daytime hours, between 6:00 a.m. and 6:00 p.m. from June through September and between 7:00 a.m. and 6:00 p.m. from October through May (Section 9.52.020). However, unlike the City code, there are no specified noise level limits in the county code for construction activities during these hours. For activities outside of the allowed hours, the regular noise limits from Section 9.52.040 would apply. Given the proximity to sensitive offsite receptors that would result in a substantial noise increase over ambient noise and the potential duration of construction activities, project construction may result in potentially significant impacts.

Onsite Short-Term Construction Noise Impacts

After the completion of the first phase, construction activities for the subsequent phases of the project could affect onsite noise-sensitive land uses constructed and occupied in earlier phases. While these later-phase developments are part of the overall Specific Plan project and would not be strictly subject to CEQA assessment (the project cannot produce impacts on itself), the length of time between phases, coupled with the desire for functional consistency in applying noise protection for sensitive receptors that may experience construction noise, a noise reduction approach for onsite receptors should be similar to the above approach for offsite receptors.

While there are no detailed plans showing the specific locations and distances between the construction areas and the potentially affected receptors within the Specific Plan area, it is anticipated that construction would occur within 50 feet of occupied residents. Construction activities between the hours of 7:00 a.m. and 6:00 p.m. for subsequent phases of the project would generate a noise level of 87 dBA $L_{\text{max}}$ or 82 dBA $L_{\text{eq}}$ at a distance of 50 feet. Assuming 24 dBA exterior-to-interior attenuation from the structure, construction noise levels would exceed the City’s interior noise standard of 55 dBA for 15 minutes if onsite residences and
schools are within approximately 71 feet of construction activities. Without mitigation, this would be considered a significant impact.

Mitigation Measure 11-1 would reduce potential noise impacts during construction to the extent feasible. However, due to the potential for construction in close proximity to sensitive receptors, there would be a substantial noise increase over existing ambient interior noise levels. Temporary construction barriers would reduce construction noise levels to the City’s interior noise standard (of 55 dBA for 15 minutes or below) for residences and schools within 71 feet of construction activities; however, there would still be the potential for a readily perceptible noise increase at sensitive receptors in the vicinity of the project over the years the project is constructed. Therefore, impacts would be significant and unavoidable.

**Mitigation Measures**

11-1 Prior to issuance of demolition, grading, and/or building permits, a note shall be provided on plans indicating that ongoing during grading, demolition, and construction, the property owner/developer shall be responsible for requiring contractors to implement the following measures to limit construction-related noise:

- The project applicant shall limit construction activities to the daytime hours between 7 AM to 6 PM, as prescribed in Section 8.44.090(E) of the City’s Municipal Code.

- For construction activity within 71 feet of any noise-sensitive receptors, a temporary noise barrier shall be installed by the applicant/developer. This temporary noise barrier shall be installed prior to the onset of construction, and located between the construction zone and all receptors. The temporary sound barrier shall have a minimum height of 8 feet and be free of gaps and holes and must achieve a Sound Transmission Class (STC) of 35 or greater. The barrier can be either (a) a ¾-inch-thick plywood wall or (b) a hanging blanket/curtain with a surface density of at least 2 pounds per square foot (Thalheimer 2000). For either configuration, the construction side of the barrier shall have an exterior lining of sound absorption material with a Noise Reduction Coefficient (NRC) rating of 0.7 or higher.

- For all project construction zones, all internal combustion engines on construction equipment and trucks are to be fitted with properly maintained mufflers consistent with manufacturer’s standards.

- For all project construction zones, stationary equipment such as generators, air compressors shall be located as far as feasible from nearby noise-sensitive uses. If such stationary equipment produces noise emissions that are directional, said equipment shall be oriented so as to direct noise emissions away from sensitive receptors.

- For all project construction zones, stockpiling and staging should be located as far as feasible from nearby noise-sensitive receptors.

- For all project construction zones, construction traffic—both worker commuting and all material haul-off, haul-on, and/or delivery—shall be limited to the haul routes established by the City of Banning and/or the County of Riverside.

**Finding**

**Finding 3.** The City makes Finding 3, having concluded that there are no other feasible mitigation measures—taking into consideration specific economic, legal, social, technological, or other factors—that would mitigate this impact to a less-than-significant level, and further, that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR (CEQA Section 21081(a)(3) and CEQA Guidelines Section 15091(a)(3)).
As described in the Statement of Overriding Considerations, the City has determined that this impact is acceptable because specific overriding economic, legal, social, technological, or other benefits of the proposed project, including regionwide or statewide environmental benefits, outweigh its significant effects on the environment.

**Impact 5.11-3:** Buildout of the Rancho San Gorgonio Specific Plan would cause a substantial noise increase related to traffic on local roadways in the City of Banning.

Future development in accordance with the Specific Plan would cause increases in traffic and associated traffic noise along local roadways.

**Offsite Traffic Noise Impacts**

A significant impact could occur if the proposed project would result in an ambient noise increase of more than 5 dBA CNEI at sensitive receptors for areas that are not designated as “noise impacted,” or an ambient noise increase of more than 3 dBA CNEI at sensitive receptors for areas that are designated as “noise impacted.”

Several roadway segments have been identified as locations where sensitive receptors would be potentially affected by traffic noise increases. The following roadway segments would experience traffic increases resulting in a potentially significant traffic noise impact to sensitive receptors along roadways:

- 8th Street from north of Westward Street to south of Lincoln Street
- 8th Street south of Westward Street
- Sunset Avenue north and south of Lincoln Street
- Westward Avenue east of Sunset Avenue and west of 22nd Street
- Westward Avenue from east of Sunset Avenue to west of 8th Street
- Sunset Avenue from south of Westward Avenue to north of Lincoln Street
- 22nd Street north of Westward Avenue
- 22nd Street north and south of Lincoln Street
- 22nd Street from south of Westward Avenue to north of Lincoln Street

Several single-family residential homes along the roadway segments listed above would experience potentially significant noise impacts. There are no side yard or backyard walls at the receptors along the roadway segments listed above, except along Sunset Avenue. The receptors along Sunset Avenue north and south of Lincoln Street have backyard walls that provide a noise reduction from street traffic to the side-yard and backyard areas. The 16 homes along that segment—with side and back yards facing the street—are buffered by a solid cement block wall at least six feet high. This wall can be expected to decrease the final noise levels at the residences by approximately 5 dBA. For the Existing Conditions scenario, noise levels along this segment would range from 66.1 to 66.5 dBA CNEI, and for 2035 Conditions, the noise levels would range from 67.8 to 68.7 dBA CNEI. Even with the reduction of 5 dBA provided by the existing backyard walls, noise levels would be anticipated to remain above 60 dBA CNEI. Therefore, noise increases along this segment—Sunset Avenue north and south of Lincoln Street—would remain significant.

Implementation of Mitigation Measure 11-2 would reduce traffic noise on local roadways in the project vicinity. However, noise-sensitive uses would still be exposed to significantly elevated traffic noise levels. No individual mitigation measure and no combination of feasible or practical mitigation measures are available to reduce project-generated traffic noise to less than significant levels. Thus, traffic noise impacts are significant and unavoidable.
Mitigation Measures

11-2 Prior to issuance of building permits for future residential units on-site adjacent to Westward Avenue, Sunset Avenue, 22nd Street, 8th Street, and San Gorgonio Avenue, the Applicant/Developer shall submit an acoustical study to the City of Banning that demonstrates that the proposed building design would provide an interior noise level of 45 dBA CNEL or less and include a means of mechanical ventilation, as required by the California Building Code for occupancy with windows closed.

Finding

Finding 3. The City makes Finding 3, having concluded that there are no other feasible mitigation measures—taking into consideration specific economic, legal, social, technological, or other factors—that would mitigate this impact to a less-than-significant level, and further, that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR (CEQA Section 21081(a)(3) and CEQA Guidelines Section 15091(a)(3)).

As described in the Statement of Overriding Considerations, the City has determined that this impact is acceptable because specific overriding economic, legal, social, technological, or other benefits of the proposed project, including regionwide or statewide environmental benefits, outweigh its significant effects on the environment.

4. Population and Housing

**Impact 5.12-1:** The proposed project would allow development of up to 3,385 residential units, which would directly result in a population growth of 9,038 residents in the Specific Plan area.

Buildout of the proposed Specific Plan would introduce up to 9,038 residents, which would exceed SCAG’s population projections for the City in 2040 by approximately 1,041 residents. There are no feasible mitigation measures to reduce impacts of population growth. Thus, Impact 5.12-1 would be significant and unavoidable.

Mitigation Measures

No feasible mitigation measures are available.

Finding

Finding 3. The City makes Finding 3, having concluded that there are no other feasible mitigation measures—taking into consideration specific economic, legal, social, technological, or other factors—that would mitigate this impact to a less-than-significant level, and further, that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR (CEQA Section 21081(a)(3) and CEQA Guidelines Section 15091(a)(3)).

As described in the Statement of Overriding Considerations, the City has determined that this impact is acceptable because specific overriding economic, legal, social, technological, or other benefits of the proposed project, including regionwide or statewide environmental benefits, outweigh its significant effects on the environment.
5. Transportation and Traffic

Impact 5.15-1: Project-related trip generation would impact levels of service on the local roadway system.

Table 1 summarizes the project impacts on the local roadway system during existing conditions, 2017, 2019, 2022, 2025, 2029, and 2035 conditions, and jurisdictional responsibility for intersection improvements. As shown, the project would cause a significant impact at intersections under different jurisdictions, including the cities of Banning and Beaumont and Caltrans.

<table>
<thead>
<tr>
<th>Intersection</th>
<th>Project Impacts</th>
<th>Jurisdictional Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2019</td>
</tr>
<tr>
<td>Beaumont Avenue/SR-79 (NS) at:</td>
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<tr>
<td>No. 2 - Potrero Boulevard (EW)</td>
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<td>No. 3 - California Avenue (EW)</td>
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<td>C</td>
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<tr>
<td>Michigan Avenue (NS) at</td>
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<td>No. 4 - 1st Street (EW); No. 3</td>
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<td>Pennsylvania Avenue (NS) at</td>
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<td>No. 5 - 1st Street (EW)</td>
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<tr>
<td>Highland Springs Avenue (NS) at:</td>
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<td>No. 6 - 14th Street (EW)</td>
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<tr>
<td>Highland Home Road (NS) at</td>
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<td>No. 14 - Wilson Street (EW)</td>
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<td>No. 15 - Ramsey Street (EW)</td>
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<td>No. 16 - Sun Lakes Boulevard (EW)</td>
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<td>Sunset Avenue (NS) at:</td>
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<td>No. 18 - Wilson Street (EW)</td>
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<td>No. 20 - I-10 WB Ramps (EW)</td>
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<td>No. 21 - I-10 EB Ramps (EW)</td>
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<td>No. 22 - Lincoln Street (EW); No. 23 - Westward Avenue (EW)</td>
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<td>No. 24 - D Street (EW)</td>
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<td>A Street (NS) at:</td>
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<td>No. 25 - Westward Avenue (EW)</td>
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<td>22nd Street (NS) at:</td>
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<td>No. 27 - I-10 WB Ramps (EW)</td>
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<td>S</td>
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<td>No. 28 - I-10 EB Ramps (EW)</td>
<td>S</td>
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<td>No. 29 - Lincoln Street (EW)</td>
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<td>No. 30 - Westward Avenue (EW)</td>
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<td>P/S</td>
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<tr>
<td>8th Street (NS) at:</td>
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<td>No. 31 - Wilson Street (EW)</td>
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<td>No. 33 - I-10 WB Ramps (EW)</td>
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<td>No. 34 - I-10 EB Ramps (EW)</td>
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<td>C/P⁵</td>
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<td>No. 35 - Lincoln Street (EW)</td>
<td>P/S</td>
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<td>No. 36 - Westward Avenue (EW)</td>
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Table 1 Project Impacts on Local Roadway System

<table>
<thead>
<tr>
<th>Intersection</th>
<th>Project Impacts</th>
<th>Jurisdictional Responsibility</th>
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<tr>
<td></td>
<td>E</td>
<td>2017</td>
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<tr>
<td>Notes</td>
<td></td>
<td></td>
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<tr>
<td>E: Existing; C: cumulative impact; P: project impact; S: signal warrant; O: Other</td>
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<tr>
<td>1 The traffic study identified this intersection warranted installation of a traffic signal for the without project conditions. The traffic study identified that the project would require fair share contributions for the installation of this traffic signal.</td>
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<tr>
<td>2 The traffic study identified that the project would require fair share contributions to the construction of this new intersection.</td>
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<tr>
<td>3 Project impact during the AM peak hour and cumulative impact during the PM peak hour.</td>
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<tr>
<td>4 This is a new intersection at the project boundary that would require fair share contribution for its construction.</td>
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<tr>
<td>5 Cumulative impact during the AM peak hour and project impact during the PM peak hour.</td>
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</tbody>
</table>

With implementation of program improvements combined with the improvements listed in Mitigation Measures 15-1 to 15-7 at impacted study area intersections, the intersections would operate within acceptable levels of service. However, the primary responsibility for approving and/or completing certain improvements outside of Banning lies with agencies other than the City of Banning (i.e., City of Beaumont, Caltrans) (see Table 1). Thus, there is potential that significant impacts may not be fully mitigated if the improvements are not completed for reasons beyond the City of Banning’s control (i.e., the City cannot undertake or require improvements outside of Banning’s jurisdiction). Therefore, this impact would remain significant and unavoidable.

Mitigation Measures

15-1 Prior to the approval of any tentative tract map, the project applicant shall demonstrate that the street improvement plans for on-site traffic improvements within said tentative tract map are consistent with the recommendations contained in Section 8 of the traffic study prepared for the proposed project (Rancho San Gorgonio Specific Plan Traffic Impact Analysis, prepared Kunzman Associates, Inc., dated April 20, 2016).

15-2 Prior to issuance of any building permit, the project applicant shall provide fair share funding for the following improvements as determined by the City. Where the project’s fair share responsibility exceeds 50%, the project applicant shall be responsible for constructing the actual improvement and shall be entitled to reimbursement for any portion of the improvement exceeding their fair share responsibility.

- Michigan Avenue (NS) at 1st Street (EW): pay the fair share amount of 44.2% to install a traffic signal
- Pennsylvania Avenue (NS) at 1st Street (EW): pay the fair share of 37.7% to install a traffic signal
- 8th Street (NS) at I-10 Freeway Eastbound Ramps (EW): fair share responsibility is 83.0%; project applicant shall construct a southbound left turn lane and install a traffic signal.
- 8th Street (NS) at Westward Avenue (EW): fair share responsibility is 79.3%; project applicant shall construct a northbound thru lane and install a traffic signal.
- SR-243 (NS) at C Street (EW): fair share responsibility is 88.3%; project applicant shall construct an eastbound thru lane.

15-3 Prior to issuance of any building permit within Phase 3, the project applicant shall provide fair share funding for the following improvements as determined by the City. Where the project’s fair share responsibility exceeds 50%, the project applicant shall be responsible for constructing the actual improvement and shall be entitled to reimbursement for any portion of the improvement exceeding their fair share responsibility. The timing of implementation...
of the improvements shall be determined by the City and be completed in the timeframe necessary to avoid identified significant cumulative impacts.

- Highland Springs Avenue/14th Street (EW): pay the fair share amount of 4.9% to construct a westbound through lane.

- 22nd Street (NS) at I-10 Freeway Westbound Ramps (EW): fair share responsibility is 70.2%; the project applicant shall install a traffic signal.

- 22nd Street (NS) at I-10 Freeway Eastbound Ramps (EW): fair share responsibility is 88.4%; the project applicant shall install a traffic signal.

15-4 Prior to issuance of any building permit within Phase 4, the project applicant shall provide fair share funding for the following improvements as determined by the City. Where the project’s fair share responsibility exceeds 50%, the project applicant shall be responsible for constructing the actual improvement and shall be entitled to reimbursement for any portion of the improvement exceeding their fair share responsibility. The timing of implementation of the improvements shall be determined by the City and be completed in the timeframe necessary to avoid identified significant cumulative impacts.

- 22nd Street (NS) at Westward Avenue (EW): fair share responsibility is 86.4%; the project applicant shall install a traffic signal.

15-5 Prior to issuance of any building permit within Phase 5, the project applicant shall provide fair share funding for the following improvements as determined by the City. Where the project’s fair share responsibility exceeds 50%, the project applicant shall be responsible for constructing the actual improvement and shall be entitled to reimbursement for any portion of the improvement exceeding their fair share responsibility. The timing of implementation of the improvements shall be determined by the City and be completed in the timeframe necessary to avoid identified significant cumulative impacts.

- Sunset Avenue (NS) at D Street (EW): fair share responsibility is 91.8%; the project applicant shall construct a northbound thru lane, construct a southbound thru lane, and construct a westbound thru lane.

- Sunset Avenue (NS) at Westward Avenue (EW): fair share responsibility is 83.0%; the project applicant shall construct a southbound left turn lane and install a traffic signal.

- Highland Springs Avenue/14th Street (EW): pay the fair share amount of 4.9% to install a traffic signal

- A Street (NS) at Westward Avenue (EW): fair share responsibility is 82.1%; the project applicant shall construct a northbound through lane and install a traffic signal.

- 22nd Street (NS) at Westward Avenue (EW): fair share responsibility is 86.4%; the project applicant shall construct a southbound left turn lane.

15-6 Prior to issuance of any building permit within Phase 6, the project applicant shall provide fair share funding for the following improvements as determined by the City. Where the project’s fair share responsibility exceeds 50%, the project applicant shall be responsible for constructing the actual improvement and shall be entitled to reimbursement for any portion of the improvement exceeding their fair share responsibility. The timing of implementation of the improvements shall be determined by the City and be completed in the timeframe necessary to avoid identified significant cumulative impacts.
- Beaumont Avenue/SR-79 (NS) at California Avenue (EW): pay the fair share amount of 14.4% to install a traffic signal, construct a northbound left turn lane, construct a southbound left turn lane, and construct a westbound left turn lane.

- Sunset Avenue/Westward Avenue (EW): fair share responsibility is 83.0%; the project applicant shall construct a northbound left turn lane, an eastbound left turn lane, and a westbound left turn lane.

- 8th Street (NS) at I-10 Freeway Westbound Ramps (EW): fair share responsibility is 69.1%; the project applicant shall construct a second northbound left turn lane.

- 8th Street (NS) at I-10 Freeway Eastbound Ramps (EW): fair share responsibility is 83.0%; the project applicant shall construct a second southbound left turn lane.

- 8th Street (NS) at Westward Avenue (EW): fair share responsibility is 79.3%; the project applicant shall construct a northbound left turn lane.

On-site circulation and access recommendations are depicted on Figure 5.15-2 through Figure 5.15-7. The City of Banning shall require implementation of the following measures:

- Construct Sunset Avenue from the north project boundary to the south project boundary at its ultimate half-section width including landscaping and parkway improvements in conjunction with adjacent development (Secondary Highway).

- Construct Rancho San Gorgonio Parkway north of A Street at 22nd Street to Westward Avenue at its ultimate half-section width including landscaping and parkway improvements in conjunction with adjacent development (116-foot right-of-way).

- Construct Rancho San Gorgonio Parkway south of Westward Avenue at 8th Street along the project boundary at its ultimate cross-section width including landscaping and parkway improvements in conjunction with adjacent development (146-foot right-of-way).

- Construct Westward Avenue along the project boundaries at its ultimate half-section width including landscaping and parkway improvements in conjunction with adjacent development (Collector Highway). Construction of Westward Avenue should be coordinated with other land owners' so that improvements are done simultaneously along Westward Avenue from Sunset Avenue to San Gorgonio Avenue.

- Construct Victory Avenue from Rancho San Gorgonio Parkway to Lovell Street at its ultimate half-section width including landscaping and parkway improvements in conjunction with adjacent development (Local Street).

- Construct Old Idyllwild Road from C Street to the south project boundary at its ultimate half-section width including landscaping and parkway improvements in conjunction with adjacent development. Obtain the necessary right-of-way to construct C Street from the east project boundary to State Route 243 (SR-243). C Street shall intersect SR-243 at a right angle and adequate sight distance shall be provided. Engineering design standards and safety features shall be maintained including traffic signalization and high speed signage as identified by the City of Banning Transportation Department staff.

- Sight distance at project accesses shall comply with standard California Department of Transportation and City of Banning sight distance standards. The final grading, landscaping, and street improvement plans shall demonstrate that sight distance
standards are met. Such plans must be reviewed by the City and approved as consistent with this measure prior to issue of grading permits.

- Separate on-site traffic signing and striping shall be implemented in conjunction with detailed construction plans for the project.

Finding

Finding 2. The City makes Finding 2, having determined that changes or alterations that could mitigate several roadway impacts are within the responsibility and jurisdiction of other public agencies and have been, or can and should be, adopted by these other agencies. The City of Banning cannot guarantee implementation of recommended improvements at the following intersections and arterial segments:

**Opening Year (2017)**

- Michigan Avenue (NS) at:
  - No. 4, 1st Street (EW); Beaumont jurisdiction

- Pennsylvania Avenue (NS) at:
  - No. 5, 1st Street (EW); Beaumont jurisdiction

- 8th Street (NS) at:
  - No. 33, I-10 Freeway Westbound Ramps (EW); Caltrans jurisdiction
  - No. 34, I-10 Freeway Eastbound Ramps (EW); Caltrans jurisdiction

Additionally, the project would require connection to San Gorgonio Avenue/SR-243 at Old Idyllwild Road for site access. The proposed new intersection would also require coordination with Caltrans:

- San Gorgonio Avenue/SR-243 (NS) at:
  - No. 43, Old Idyllwild Road (EW); Caltrans jurisdiction

**Interim Year (2019)**

- 8th Street (NS) at:
  - No. 33, I-10 Freeway Westbound Ramps (EW); Caltrans jurisdiction
  - No. 34, I-10 Freeway Eastbound Ramps (EW); Caltrans jurisdiction

**Interim Year (2022)**

- Highland Springs Avenue (NS) at:
  - No. 6, 14th Street (EW); Beaumont jurisdiction

- 22nd Street (NS) at:
  - No. 27, I-10 Freeway Westbound Ramps (EW); Caltrans jurisdiction
  - No. 28, I-10 Freeway Eastbound Ramps (EW); Caltrans jurisdiction

- 8th Street (NS) at:
  - No. 33, I-10 Freeway Westbound Ramps (EW); Caltrans jurisdiction

**Interim Year (2025)**

- 8th Street (NS) at:
- No. 33, I-10 Freeway Westbound Ramps (EW); Caltrans jurisdiction

**Interim Year (2029)**

- Pennsylvania Avenue (NS) at:
  - No. 5, 1st Street (EW); Beaumont jurisdiction
- 22nd Street (NS) at:
  - No. 28, I-10 Freeway Eastbound Ramps (EW); Caltrans jurisdiction
- 8th Street (NS) at:
  - No. 33, I-10 Freeway Westbound Ramps (EW); Caltrans jurisdiction

**General Plan Buildout Year 2035**

- Beaumont Avenue/SR-79 (NS) at:
  - No. 2, Potrero Boulevard (EW); Caltrans jurisdiction
- Pennsylvania Avenue (NS) at:
  - No. 5, 1st Street (EW); Beaumont jurisdiction
- 8th Street (NS) at:
  - No. 33, I-10 Freeway Westbound Ramps (EW); Caltrans jurisdiction

As described in the Statement of Overriding Considerations, the City has determined that this impact is acceptable because specific overriding economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of the proposed project outweigh its significant effects on the environment.

**Impact 5.15-2: Project-related trip generation would impact levels of service for the freeway system.**

The following discusses potential impacts at freeway mainline segments and freeway ramp operations. The freeway ramp operations include merge, diverge, and weaving operations and queuing on freeway off-ramps.

**Freeway Mainline Segment Analysis**

Five freeway mainline segments were analyzed in each direction (northbound and southbound) of I-10 under the AM and PM peak hours for the General Plan Buildout Year (2035) conditions. The following mainline segments are expected to experience peak hour (in the AM and PM) deficiencies (LOS F) under the General Plan Buildout Year (2035) With Project condition.

- **I-10 EB (AM Peak Hour):**
  - East of 8th Street
  - 22nd Street to 8th Street
  - Sunset Avenue to 22nd Street
  - Highland Springs Avenue to Sunset Avenue
  - West of Highland Springs Avenue

- **I-10 WB (PM Peak Hour):**
  - West of Highland Springs Avenue
• Highland Springs Avenue to Sunset Avenue
• Sunset Avenue to 22nd Street
• 22nd Street to 8th Street
• East of 8th Street

- I-10 EB (PM Peak Hour):
  • East of 8th Street
  • 22nd Street to 8th Street
  • Sunset Avenue to 22nd Street
  • Highland Springs Avenue to Sunset Avenue
  • West of Highland Springs Avenue

The proposed project would add trips on these mainline segments and would worsen operations by adding traffic to congested mainline segments and increasing the volume per capacity ratio.

**Freeway Ramp Merge/Diverge/Weaving Analysis**

The merge/diverge/weaving analysis was conducted at the Sunset Avenue/I-10 interchange, 22nd Street/I-10 interchange, and 8th Street/I-10 interchange. For the General Plan Buildout Year (2035) With Project condition, the study area merge/diverge/weaving areas are projected to operate at LOS B or better during the AM and PM peak hours.

**Freeway Ramp Queuing Analysis**

The traffic impact analysis conducted a left turn pocket queuing analysis at the I-10 and Sunset Avenue, 22nd Street, and 8th Street freeway interchanges using the SimTraffic simulation model. The storage lengths of several turning movements are projected to be overloaded for the General Plan Buildout Year (2035) With Project traffic conditions. While the storage lengths may be overloaded, the intersections are projected to operate at an acceptable level of service. A more detailed explanation of traffic conditions at intersections with overloaded queues is provided below:

- **No. 21, Sunset Avenue (NS) at I-10 EB Ramps (EW):** The evening peak hour queue exceeds the turning bay length for the eastbound off-ramp. This queue spillback would be between six and seven vehicle lengths.

- **No. 33, 8th Street (NS) at I-10 WB Ramps (EW):** The evening peak hour queue exceeds the turning bay length for the northbound left turn lane. This queue spillback would be approximately three vehicle lengths.

- **No. 34, 8th Street (NS) at I-10 EB Ramps (EW):** The evening peak hour queue exceeds the turning bay length for the southbound left turn lane. This queue spillback would be approximately one vehicle length.

Without mitigation, these off-ramps would operate at a deficient level of service because the anticipated queues would exceed the storage capacity.
Mitigation Measures

No feasible mitigation measures are available. The project in combination cumulative development would cause a significant impact at several freeway mainline segments and on freeway off-ramps on the I-10 freeway. Additional high-occupancy-vehicle lanes and general use lanes would be required to improve freeway mainline operations. However, these improvements would require approval from Caltrans as the owner/operator of I-10. Caltrans currently does not have a funding mechanism for development projects to contribute to fair share fees to implement improvements on Caltrans facilities. Therefore, the City of Banning or the property owner/developer would not be able to guarantee the implementation of these measures. Thus, impacts would be significant and unavoidable.

Improvements would also be required at several freeway ramps—No. 21, Sunset Avenue (NS) at I-10 EB Ramps (EW); No. 33, 8th Street (NS) at I-10 WB Ramps (EW); and No. 34, 8th Street (NS) at I-10 EB Ramps (EW). However, the improvements would require approval from Caltrans as the owner/operator of these freeway ramps. Caltrans currently does not have a funding mechanism for development projects to contribute fair share fees to implement improvements on Caltrans facilities. Therefore, the City of Banning or the property owner/developer would not be able to guarantee the implementation of these measures, and impacts would be significant and unavoidable.

Finding

Finding 2. The City hereby makes Finding 2, having determined that changes or alterations that could mitigate these impacts are within the responsibility and jurisdiction of other public agencies and have been, or can and should be, adopted by these other agencies.

As described in the Statement of Overriding Considerations, the City has determined that this impact is acceptable because specific overriding economic, legal, social, technological, or other benefits of the proposed project, including regionwide or statewide environmental benefits, outweigh its significant effects on the environment.

Impact 5.15-3: Project-related trip generation in combination with existing and proposed cumulative development would result in designated road and/or highways exceeding county congestion management agency service standards.

The Congestion Management Program (CMP) in effect in Riverside County was approved by the Riverside County Transportation Commission in 2010. All freeways and selected arterial roadways in the county are designated elements of the CMP system of highways and roadways. Interstate 10, SR-79, and SR-243 are part of the CMP system. The study area includes all freeway mainline segments of I-10 and the intersections of 8th Street at the I-10 eastbound ramps (No. 34), 8th Street at Lincoln Street (No. 35), San Gorgonio at Lincoln Avenue (No. 39), San Gorgonio Avenue at Westward Avenue (No. 36), San Gorgonio Avenue at Lincoln Street (No. 35), San Gorgonio Avenue at Westward Avenue (No. 40), San Gorgonio Avenue at Charles Street (No. 41) and San Gorgonio Avenue at Wesley Street (No. 42).

The intersections of 8th Street at the I-10 eastbound ramps (No. 34) and 8th Street at Lincoln Street (No. 35) would operate at unacceptable LOS F during all six buildout phases. Buildout of the project would result in additional traffic volume that would cumulatively contribute to the anticipated deficient operations at these intersections.

Several freeway mainline segments on I-10 would also operate at unacceptable LOS at General Plan buildout year (2035). Buildout of the project would result in additional traffic volume that would cumulatively contribute to mainline freeway segment impacts. According to the Riverside County Transportation Commission CMP plan, when a deficiency is identified, a deficiency plan must be prepared by the local agency (in this case, Caltrans). Other agencies identified as contributors to the deficiency, which include the City of Banning, are also required to coordinate with the development of the plan. The plan must contain
mitigation measures, including consideration of Transportation Demand Management strategies and transit alternatives, and a schedule for mitigating deficiency.

The project in combination with cumulative development would result in freeway segments and intersections in the congestion management plan network exceeding level of service standards. Similar to Impacts 5.15-1 and 5.15-2, several roadway improvements would be required outside the City’s jurisdiction. Thus, there is potential that significant impacts may not be fully mitigated. Impacts would therefore be significant and unavoidable.

**Mitigation Measures**

Mitigation Measures 15-1 through 15-7 are also applicable to this impact.

**Finding**

**Finding 2.** The City makes Finding 2, having determined that changes or alterations that could mitigate these impacts are within the responsibility and jurisdiction of other public agencies and have been, or can and should be, adopted by these other agencies.

As described in the Statement of Overriding Considerations, the City has determined that this impact is acceptable because specific overriding economic, legal, social, technological, or other benefits of the proposed project, including regionwide or statewide environmental benefits, outweigh its significant effects on the environment.

**VI. FINDINGS REGARDING ALTERNATIVES**

**A. ALTERNATIVES CONSIDERED AND REJECTED DURING THE SCOPING/PROJECT PLANNING PROCESS**

The following is a discussion of the alternative considered during the scoping and planning process and the reasons why it was not selected for detailed analysis in the DEIR.

**Alternative Project Location**

CEQA requires that the discussion of alternatives focus on alternatives to the project or its location that are capable of avoiding or substantially lessening any significant effects of the project. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR (CEQA Guidelines Section 15126.6[f][2][A]). In general, any development of the size and type proposed would have substantially the same impacts on air quality, cultural resources, greenhouse gas emissions, noise, and transportation and traffic.

If a similar site was located, the proposed Rancho San Gorgonio Specific Plan could theoretically be developed at an alternative location within the City of Banning. However, the project applicant, Diversified Pacific, owns the 831 acres of land proposed for development under the Rancho San Gorgonio Specific Plan. Therefore, it would be difficult and economically infeasible to purchase land elsewhere in the City of Banning that would be able to accommodate the buildout potential of the proposed Specific Plan. Most of the large areas of undeveloped land in Banning have already been entitled or have future planned uses. For example, the planned Butterfield Specific Plan project encompasses a 1,543-acre site in northeast Banning for development of up to 4,862 units, open space and parks, two school sites, and commercial uses. The Banning Bench Specific Plan and Loma Linda Specific Plan areas also occupy two larger portions of land in northern Banning. Other large vacant areas are in Banning’s sphere of influence. Therefore, there are no available alternative sites that could accommodate the proposed project.
B. ALTERNATIVES SELECTED FOR FURTHER ANALYSIS

The following alternatives were determined to represent a reasonable range of alternatives with the potential to feasibly attain most of the basic objectives of the project but avoid or substantially lessen any of the significant effects of the project.

- No Project/No Development Alternative
- No Project/Existing General Plan Alternative
- Reduced Density Alternative

An EIR must identify an “environmentally superior” alternative, and where the No Project Alternative is identified as environmentally superior, the EIR is required to identify as environmentally superior an alternative from among the others evaluated. Each alternative’s environmental impacts are compared to the proposed project and determined to be environmentally superior, neutral, or inferior. Only the impacts involving air quality, greenhouse gas emissions, noise, population, and transportation and traffic were found to be significant and unavoidable. All impacts identified as potentially significant prior to implementation of applicable mitigation measures are also considered in identifying the environmentally superior alternative. Section 7.4 of the DEIR identifies the environmentally superior alternative.

No Project/No Development Alternative

Under the No Project/No Development Alternative, the proposed Rancho San Gorgonio Specific Plan would not be adopted, and no development would occur onsite. There would be no residential or nonresidential development nor any associated residents or employees. The project site would remain in its existing condition—that is, vacant and used for cattle grazing. The four onsite creeks—Pershing Creek, Montgomery Creek, Smith Creek, and Gilman Home Channel—would remain in their current natural states.

Finding. Compared to the proposed project, this alternative would reduce impacts on aesthetics, agriculture and forestry resources, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, housing, public services, recreation, and utilities and service systems. The alternative would also eliminate significant and unavoidable impacts to air quality (operational), greenhouse gas emissions, noise, and population growth. Only transportation and traffic impacts would be greater under this alternative because no roadway and intersection improvements would occur.

Although it would reduce impacts in nearly all environmental areas and also eliminate significant and unavoidable impacts, the No Project/No Development Alternative would not meet any of the project objectives (see Section II.D, Statement of Project Objectives). Since the project site would remain undeveloped and vacant, this alternative would not create a master planned community that reflects the City’s market conditions and comprehensive development planning approach (Nos. 1 and 2); provide a high quality, livable community with a wide range of housing opportunities (Nos. 3 and 4); promote sustainability through green building practices and water and energy efficiency (Nos. 5 and 6); provide recreational amenities and ease of navigation (Nos. 7 and 8); provide safe and efficient roadway networks, alternative transportation, and public services (Nos. 9, 11 and 12); address drainage and water quality issues onsite (No. 10); or promote community security with “defensible spaces” and engagement with the area’s homeowners associations (No. 13).

The City Council rejects the No Project/No Development Alternative on the basis of policy and economic factors, as explained herein. (See Pub. Resources Code, § 21061.1; CEQA Guidelines, § 15364; see also City of Del Mar v. City of San Diego (1982) 133 Cal.App.3d 410, 417; California Native Plant Soc. v. City of Santa Cruz (2009) 177 Cal.App.4th 957, 1001; Sequoyah Hills Homeowners Assn. v. City of Oakland (1993) 23 Cal.App.4th 704, 715.) Specific economic, legal, social, technological, or other considerations, including provision of...
employment opportunities for highly trained workers, make infeasible this project alternative identified in the FEIR.

**No Project/Existing General Plan Alternative**

The No Project/Existing General Plan Alternative would develop the site based on the current General Plan land use designations. According to the City’s General Plan, the 670-acre portion of the site within Banning is designated Very Low Density Residential, with limited Medium Density Residential, High Density Residential, Rural Residential, and Open Space-Parks and Open Space-Resources. The remaining 161 acres of the project site is in the City’s sphere of influence in unincorporated Riverside County. This area is designated Ranch/Agriculture by the City of Banning and Light Agriculture (A-1) by the County of Riverside.

Buildout of this alternative would allow up to 1,865 dwelling units and introduce approximately 4,980 residents (based on the City’s average household size of 2.67). Nonresidential development would not be developed onsite; therefore, no jobs would be generated.

**Finding**

Impacts of the No Project/Existing General Plan Alternative would be less than the proposed project for aesthetics, agriculture and forestry resources, air quality (construction and operations), geology and soils, greenhouse gas emissions, hydrology and water quality, land use and planning, noise, housing, public services, transportation and traffic, and utilities and service systems. However, impacts would be similar for biological resources, cultural resources, hazards and hazardous materials, and recreation. Additionally, significant and unavoidable impacts related to air quality (AQMP consistency) and population growth would be eliminated.

Although it would reduce several impacts, the No Project/Existing General Plan Alternative would not achieve several of the project objectives. For example, development of this alternative would not be designed as a master planned community (No. 1); would not update the City’s General Plan based on current and projected market conditions (No. 2); promote the concept of sustainable community development through green building practices (No. 5); create a community easy to navigate with landscaping, signage, and entry design (No. 7); provide recreational amenities (No. 8); provide safe and efficient circulation linking a planned community to the rest of the City (No. 9); address drainage and water quality issues by providing drainage, water quality, and flood control improvements (No. 10); encourage alternative transportation by creating a walkable community with well-defined linkages (No. 12); or promote community security through appropriate outdoor design and defensible spaces (No. 13). Most of these project objectives would be best achieved by implementing a cohesive master plan that is designed all at one time to create a unified community.

Development of this alternative could provide a quality, livable community (No. 3), although not through implementation of a specific plan, and could provide a range of housing opportunities (No. 4), although not to the same degree as the proposed Specific Plan, which has various ranges of housing types at different price points. This alternative could incorporate water and energy efficiency (No. 6) by complying with applicable local water and energy conservation regulations and could ensure provision of public services (No. 11).

The City Council rejects the No Project/Existing General Plan Alternative on the basis of policy and economic factors as explained herein. (See Pub. Resources Code, § 21061.1; CEQA Guidelines, § 15364; see also City of Del Mar v. City of San Diego (1982) 133 Cal.App.3d 410, 417; California Native Plant Soc. v. City of Santa Cruz (2009) 177 Cal.App.4th 957, 1001; Sequoyah Hills Homeowners Assn. v. City of Oakland (1993) 23 Cal.App.4th 704, 715.) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible this project alternative identified in the FEIR.
Reduced Density Alternative

The Reduced Density Alternative would reduce residential development in the Specific Plan area by 20 percent while maintaining the development footprint of the project. The reduction in residential density would be distributed equally across the project site and would result in a buildout of 2,708 dwelling units and 7,230 residents based on an average household size of 2.67. The neighborhood commercial site would be developed with residential use; therefore, no jobs would be generated onsite.

Similar to the proposed project, the other proposed land uses—park and open space areas, public facility, school, roadway right-of-ways, and storm drain easement—would still be developed. Only the residential development would decrease by 20 percent.

Finding

Under the Reduced Density Alternative, impacts on aesthetics, air quality, geology and soils, greenhouse gas emissions, hydrology and water quality, land use and planning, noise, housing, public services, recreation, transportation and traffic, and utilities and service systems would be reduced in comparison to the proposed project. Impacts to agriculture and forestry resources, biological resources, cultural resources, and hazards and hazardous materials would be similar. Lastly, significant and unavoidable impacts to population growth would be eliminated.

Although the Reduced Density Alternative would reduce the proposed residential development by 20 percent, it would achieve most project objectives listed. The alternative could develop a creatively designed master planned community (No. 1); provide a quality livable community (No. 3); promote sustainability and water and energy efficiency (Nos. 5 and 6); create a community with easy navigation and security (Nos. 7 and 13); provide recreational amenities and provisions of public services (Nos. 8 and 11); develop safe and efficient circulation while encouraging alternative transportation (Nos. 9 and 12); and address drainage and water quality issues (No. 10).

However, the City of Banning is in need of housing for future generations. Therefore, this alternative would not provide as much housing opportunity or meet the City’s projected housing market conditions (Nos. 2 and 4) as well as the proposed project. More specifically, Objective No. 2 also pursues a goal for the appropriate physical and economic development of the property. Reducing residential development by 20 percent but maintaining all other improvements (i.e., parks, open space, roadways, and infrastructure) would not be an economically viable method to develop the site, nor would it meet the City’s projected housing market needs to the same degree as the proposed project.

The City Council rejects the Reduced Density Alternative on the basis of policy and economic factors as explained herein. (See Pub. Resources Code, § 21061.1; CEQA Guidelines, § 15364; see also City of Del Mar v. City of San Diego (1982) 133 Cal.App.3d 410, 417; California Native Plant Soc. v. City of Santa Cruz (2009) 177 Cal.App.4th 957, 1001; Sequoyah Hills Homeowners Assn. v. City of Oakland (1993) 23 Cal.App.4th 704, 715.) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible this project alternative identified in the FEIR.
Attachment 2
City Council Resolution No. 2016-88
RESOLUTION NO. 2016-88

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING GENERAL PLAN AMENDMENT NO. 13-2503 TO CHANGE THE GENERAL PLAN DESIGNATION FROM VERY LOW DENSITY RESIDENTIAL, MEDIUM DENSITY RESIDENTIAL, VERY HIGH DENSITY RESIDENTIAL, RURAL RESIDENTIAL AND OPEN SPACE-PARKS TO SPECIFIC PLAN ON PROPERTY LOCATED SOUTH OF INTERSTATE 10 AND BOUNDED BY SUNSET AVENUE AND TURTLE DOVE LANE ON THE WEST, COYOTE TRAIL AND OLD IDYLLWILD ROAD ON THE SOUTH, SAN GORGONIO AVENUE (STATE ROUTE 243) ON THE EAST, AND PORTIONS OF WESTWARD AVENUE TO THE NORTH, APN#'s 537-150-005 – 007; 537-170-002 – 004; 537-190-001 – 005, 018 – 022; 537-220-031 – 038; 543-020-001, 002, 021, 023; 543-030-001; 543-040-001, 002; 543-050-001 – 003

WHEREAS, an application for a General Plan Amendment regarding the Rancho San Gorgonio Specific Plan has been duly filed by:

Applicant / Owner: Diversified Pacific
Authorized Agent: Peter J. Pitassi
Project Location: Noted Above
APN Number: 537-150-005
Lot Area: 831 Acres

WHEREAS, the City Council of the City of Banning ("City") adopted the current General Plan on January 31, 2006.

WHEREAS, California Government Code Section 65358(a) authorizes the City Council to amend the General Plan if it deems to be in the public interest.

WHEREAS, the City Council has the authority to review and either approve or deny General Plan Amendment No. 13-2503 for a change in the General Plan from Very Low Density Residential, Medium Density Residential, Very High Density Residential, Rural Residential and Open Space Parks to Specific Plan for the property located south of Interstate 10 and bounded by Sunset Avenue and Turtle Dove Lane on the west, Coyote Trail and Old Idyllwild Road on the south, San Gorgonio Avenue on the east and portions of Westward Avenue to the north.

WHEREAS, in accordance with Government Code Sections 65353, 65355 and 65090, on _________, 2016 the City gave public notice by advertisement in the Press
Enterprise and Record Gazette newspapers of a public hearing concerning the project, which included the Final Environmental Impact Report (EIR), the General Plan Amendment No. 13-2503, Zone Change No. 13-3501, Tentative Tract Map No. 36586, Rancho San Gorgonio Specific Plan, Development Agreement, and Annexation. Likewise, in accordance with State of California Public Resources Code Section 21165, a Notice of Availability and a Public Hearing Notice was advertised in the Press Enterprise and the Record Gazette newspapers announcing the 45 day circulation for public review and comment of the Draft Environmental Impact Report (EIR) for the proposed Rancho San Gorgonio Specific Plan and Planning Commission hearing held on September 7, 2016. Copies of the Draft EIR were made available at Banning City Hall and Banning Public Library and also transmitted to the State Clearinghouse Office of Planning & Research for review and comment by responsible and trustee agencies. Comments received during the 45 day review period are incorporated into the Final EIR, along with the City’s responses to each comment for review and consideration by the Planning Commission.

WHEREAS, in accordance with Government Code Section 65353, on September 7, 2016 the Planning Commission held a duly-noticed public hearing to consider the General Plan Amendment No. 13-2503, Zone Change No. 13-3501, the Final Environmental Impact Report, Mitigation Monitoring and Reporting Program, Statement of Overriding Consideration and Findings of Fact, Tentative Tract Map No. 36586, the Rancho San Gorgonio Specific Plan, Development Agreement, Water Supply Assessment (WSA), and Annexation, and recommended that the City Council approve the Resolution No. 2016-88 to adopt General Plan Amendment No. 13-2503 for the 831 acre site.

WHEREAS, City Council held a duly noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the General Plan Amendment and at which the Planning Commission considered the General Plan Amendment.

WHEREAS, the General Plan amendments were discussed fully with testimony and documentation presented by the public, stakeholders and affected government agencies with all persons given the opportunity to speak for and against the proposed project.

WHEREAS, the City Council reviewed GPA 13-2503 for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City’s environmental procedures and considered the Project’s FEIR, Mitigation Monitoring and Reporting Program, Statement of Overriding Considerations and Findings of Fact.

NOW THEREFORE, the City Council of the City of Banning does Resolve, Determine, Finds and Orders as follows:
SECTION 1: ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City’s Local CEQA Guidelines and Thresholds of Significance, the recommendation of the Planning Director as provided in the Staff Report dated __________, 2016, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. Public Record: The documents and other materials constituting the record of the proceedings upon which the City’s decision and its findings are based will be located at the City of Banning Community Development Department, Planning Division. The Final EIR meets the requirements of this finding in that documents and other material constituting the record of the proceedings upon which the City’s decision and findings are located at the Planning Division of the City of Banning, 99 East Ramsey Street, CA, 92220 in the custody of the Banning Community Development Department as part of the public record.

2. CEQA: The approval of this General Plan Amendment is in compliance with requirements of the California Environmental Quality Act (“CEQA”), in that on __________, 2016, at a duly noticed public hearing, the City Council considered the project’s Final Environmental Impact Report, SCH # 2015041064, Mitigation Monitoring and Reporting Program, Statement of Overriding Considerations and Findings of Fact approved and certified the Final Environmental Impact Report and adopted the Statement of Overriding Considerations and Findings of Fact reflecting its independent judgment and analysis and documenting that there are economic, social, planning and other benefits of the project that outweigh the significant and unavoidable impacts of the Project.

SECTION 2. GENERAL PLAN AMENDMENT

The City Council adopts approval of General Plan Amendment No. 13-2503 on the following grounds:

1. The proposed amendment is internally consistent with the General Plan in that:

The proposed Rancho San Gorgonio Specific Plan Land Use Districts and Planning Areas have been reviewed against the provisions and policies, goals and objectives of the City’s General Plan, and development standards and requirements of the City’s Zoning Code for internal consistency will all of the General Plan’s element’s text, diagrams. The proposed Planning Areas and Specific Plan zoning districts in conjunction with the associated development standards will not create any conflicts among the various General Plan elements’ goals policies and objectives, including the maps and diagrams of all the elements in the City’s General Plan. Therefore, the proposed General Plan Amendment No. 13-2503 will make the land uses for the Rancho San Gorgonio Specific Plan consistent with the City’s General Plan.
proposed amendment would not be detrimental to the public interest, health, safety, convenience or welfare of the City.

2. The proposed general plan land use designation from Very Low Density Residential, Medium Density Residential, Very High Density Residential, Rural Residential and Open Space-Parks to Specific Plan will not be detrimental to the public interest, health, safety, convenience or welfare in that:

The Rancho San Gorgonio Specific Plan provides a mix of up to 3,385 residential units on up to approximately 540 acres; 9.3 acres for Neighborhood Commercial uses, 14 acres for an elementary school site, 210 acres for parks and recreational areas, with varying passive open space trails and sports fields, and 77 acres for circulation uses, including roadways, pathways and bridges for vehicles, bikes, pedestrian and equestrian use. Upon adoption of the Specific Plan, the existing five zoning districts will be superimposed by a Land Use Plan that establishes 44 planning areas that incorporates a land use mix offering Very Low Density Residential, Low Density, Medium Density, Medium High Density, including a Medium Density-Age Qualified use, Parks and Open Space-Parks Land Use classification, Public Facility Use, School Facility Use and Neighborhood Commercial District.

3. The proposed amendment would maintain the appropriate balance of land uses within the City.

The proposed specific plan zoning districts consisting of 44 planning areas (PA’s) incorporates four (4) land use categories including Very Low Density, Low Density, Medium Density and Medium-High Density uses, including a Medium Density – Age Qualified use, twenty-eight (28) planning areas are allotted for the development of residential uses, totaling approximately 516 acres and 62% of the Specific Plan’s total land area. One PA is designated Very Low Density Residential, 21 PAs are designed Low Density Residential, 2 PAs are designated Medium Density Residential – Age Qualified, and 4 PAs are designated Medium-High Density Residential. PA 9 incorporates a Neighborhood Commercial land use designation and alternative designation of Medium-High Density Residential (MHDR) in the event the Neighborhood Commercial site is not developed. The Specific Plan land use distribution reflects the Project’s attempt to provide a balanced and interconnected array of distinct districts uniformly supporting the master plan area.

4. The subject parcels are physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints), for the requested land use designation and the anticipated land use developments.

Upon adoption of the Specific Plan, the existing five zoning districts will be superimposed by a Land Use Plan that establishes 44 planning areas that incorporates a land use mix offering Very Low Density Residential, Low Density, Medium Density, Medium High Density, including a Medium Density-Age Qualified use, Parks and Open
Space Land Use classification, Public Facility Use, School Facility Use and Neighborhood Commercial District. With adoption of the Master Large Lot Tentative Tract Map No. 36586 which establishes the Project area’s road right-of-ways, the 44 Planning Areas, parks, and open space parcels, the project and future development is physically suitable to accommodate the requested land use designations and the anticipated land use development which both the Specific Plan, and Final Environmental Impact Report have accounted for with regard to the site’s configuration, physical characteristics, topography, and existing and proposed infrastructure improvements.

SECTION 3: CITY COUNCIL ACTION

The City council hereby takes the following action:

1. Approve General Plan Amendment No.13-2503 amending the General Plan land use designation from Very Low Density Residential, Medium Density Residential, Rural Residential and Open Space-Parks to Specific Plan as shown in Exhibit A which is attached hereto and incorporated herein by this referenced.

PASSED, APPROVED AND ADOPTED this ___ day of ______, 2016

________________________________________
Art Welch, Mayor
City of Banning

ATTEST:

________________________________________
Marie A. Calderon, City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

________________________________________
John C. Cotti
Interim City Attorney
City of Banning
CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1499 was duly introduced at a regular meeting of the City Council of the City of Banning held on the __________ day of __________, 2016 and was duly adopted at a regular meeting of said City Council held on the _____ day of ___ ______________, 2016, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

________________________________
Marie Calderon, City Clerk
City of Banning, California
Attachment 3
City Council Ordinance No. 1501
ORDINANCE NO. 1501

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING ZONE CHANGE NO. 13-3501 TO AMEND THE ZONING ORDINANCE TEXT AND THE ZONING MAP FROM VERY LOW DENSITY RESIDENTIAL, MEDIUM DENSITY RESIDENTIAL, VERY HIGH DENSITY RESIDENTIAL, RURAL RESIDENTIAL AND OPEN SPACE-PARKS TO SPECIFIC PLAN ON PROPERTY LOCATED SOUTH OF INTERSTATE 10 AND BOUNDED BY SUNSET AVENUE AND TURTLE DOVE LANE ON THE WEST, COYOTE TRAIL AND OLD IDYLLWILD ROAD ON THE SOUTH, SAN GORGONIO AVENUE (STATE ROUTE 243) ON THE EAST, AND PORTIONS OF WESTWARD AVENUE TO THE NORTH, APN#’s 537-150-005 – 007; 537-170-002 – 004; 537-190-001 – 005, 018 – 022; 537-220-031 – 038; 543-020-001, 002, 021, 023; 543-030-001; 543-040-001, 002; 543-050-001 – 003

WHEREAS, an application for a Zone Change No. 13-3501 has been duly filed by:

Applicant / Owner: Diversified Pacific
Authorized Agent: Peter J. Pitassi
Project Location: Noted Above
APN: Noted Above
Lot Area: 831 Acres

WHEREAS, the Planning Commission in accordance with Government Code Section 65353 held a duly public noticed hearing on September 7, 2016 at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Change No. 13-3501 to review and make recommendations to the City Council for a change in zoning from Very Low Density Residential, Medium Density Residential, Very High Density Residential, Rural Residential and Open Space-Parks to Specific Plan for the property located south off Interstate 10 and bounded by Sunset Avenue and Turtle Dove Lane on the west, Coyote Trail and Old Idyllwild Road on the south, San Gorgonio Avenue on the east and portions of Westward Avenue to the north.

WHEREAS, in accordance with Government Code § 65854, the City Council hearing was advertised in the Press Enterprise and the Record Gazette newspapers announcing the scheduled City Council public hearing for ________________, 2016, regarding the Zone Change and other entitlements for consideration regarding the Rancho San Gorgonio Specific Plan, including the proposed certification of the
WHEREAS, on September 7, 2016, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Change and at which the Planning Commission considered the Zone Change and recommended that the City Council approve Zone Change No. 13-3501 by adoption of Resolution No. 2016-08.

WHEREAS, at a public hearing on ____________, 2016, the City Council considered, and heard public comments and certified the Final Environmental Impact Report, Mitigation Monitoring and Reporting Program, Statement of Overriding Considerations and determined that the economic, social, planning and other benefits of the Project outweigh the significant and unavoidable impact and consequently adopted the Findings of Fact for the project by Resolution 2016-83.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES RESOLVE, DETERMINE, FIND AND ORDER AS FOLLOWS:

SECTION 1.  ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City’s Local CEQA Guidelines and Thresholds of Significance, the recommendation of the Planning Director as provided in the Staff Report dated ____________, 2016, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1.  CEQA:  The approval of this Zone Change is in compliance with requirements of the California Environmental Quality Act (“CEQA”), in that on ____________, 2016, at a duly noticed public hearing, the City Council considered the Findings and Project Alternatives of the Final Environmental Impact Report, including associated comments from persons and agencies received during the 45 day EIR review and comment period, and certified the Final Environmental Impact Report, Mitigation Monitoring Reporting Program, and adopted the Statement of Overriding Considerations and Findings of Fact reflecting its independent judgment and analysis documenting that economic, social, planning, and other benefits of the Project outweighed the significant and unavoidable impacts.  The documents comprising the City’s environmental review for the project are on file and available for public review at Banning City Hall, 99 East Ramsey Street, Banning, California 92220.

SECTION 2.  REQUIRED ZONE CHANGE FINDINGS.

Pursuant to Banning Municipal Code Section 17.116.050, the City Council makes the following findings pertaining to Zone Change No. 13-3501:

1.  The proposed Amendment is consistent with the goals and policies of the general plan.
The General Plan Land Use and Zoning Overlay Map depicts the 670 acre site located in the City of Banning as zoned Very Low Density Residential, Medium Density Residential, Very High Density Residential, and Rural Residential and Open Space Parks. The 161 acre portion of the project proposed to be annexed is located within the project’s sphere of influence (SOI) is zoned Ranch/Agriculture. The proposed Zone Change will amend the General Plan’s land use designations and Zoning Map to “Specific Plan” for properties south of Interstate 10 and bounded by Sunset Avenue and Turtle Dove Lane on the west, Coyote Trail and Old Idyllwild road on the south, San Gorgonio Avenue (State Route 242) on the east, and portions of Westward Avenue to the north.

The proposed Rancho San Gorgonio Specific Plan Land Use Districts and Planning Areas have been reviewed against the provisions and policies, goals and objectives of the City’s General Plan, and development standards and requirements of the City’s Zoning Code for internal consistency will all of the General Plan’s element’s text and diagrams. The Project’s proposed Planning Areas and Specific Plan zoning districts in conjunction with the associated development standards will not create any conflicts among the various General Plan elements’ goals policies and objectives, including the maps and diagrams of all the elements in the City’s General Plan.

2. The proposed Amendment is internally consistent with the zoning Ordinance.

The project will be internally consistent with the General Plan and legally adequate in that the Rancho San Gorgonio Specific Plan, pursuant to Sections 65450 – 65457 of the California Government Code incorporates maps diagrams and descriptions to adequately describe the distribution, extent and size of major infrastructure components needed to serve the project; discussion of the methods to be used for infrastructure financing and a program for implementation; detailed statement of the relationship of the specific plan to the general plan; including consistency between both plans and comparison of goals, objectives and policies; and discussion of how the plan implements the polices of the general plan.

3. The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act concerning the preparation of the draft Environmental Impact Report, and Final Environmental Impact Report, Notice of Preparation, the comments on the draft Environmental Impact report and responses to those comments; the staff report for the public hearings before the Planning Commission, Statement of Overriding Considerations and Findings of Fact. Moreover, the Final Environmental Impact Report has described an adequate range of alternatives to the Project, even when those alternatives might impeded the attainment of project objectives and might be more costly. In making
its decision on the project, the City Council of the City of Banning finds that it has given great weight to the significant an unavoidable adverse impacts, but the significant and unavoidable adverse impacts are clearly outweighed by the economic, social, and other benefits of the Project as set forth in the Statement of Overriding Considerations.

1. **Review Period:** That the City has provided the public review period for the Draft Environmental Impact Report for the 45 day duration required under CEQA Guidelines Sections 15087 and 15105.

2. **Compliance with Law:** That the draft Environmental Impact Report, Final Environmental Impact Report, Mitigation Monitoring Reporting Program, Statement of Overriding Considerations and Findings of Fact was prepared, processed, and noticed in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), the CEQA Guidelines (14 California Code of Regulations Section 15000 et seq.) and the local CEQA Guidelines and Thresholds of Significance adopted by the City of Banning.

3. **Independent Judgment:** That the Final Environmental Impact Report, Mitigation Monitoring and Reporting Program, Statement of Overriding Considerations and Findings of Fact reflects the independent judgment and analysis of the City.

4. **Statement of Overriding Considerations and Findings of Fact:** That the significant impacts of the Project as identified in the Statement of Findings of Fact in support thereof which will have not been reduced to a level of insignificance will have been substantially reduced in their impacts by imposition of conditions on the approved project and the imposition of mitigation measures. In making its decision on the Project the City Council of the City of Banning finds that it has seriously considered the significant unavoidable adverse environmental impacts, but the significant and unavoidable adverse impacts are outweighed by the economic, social and other benefits of the Project as set forth in the Statement of Overriding Considerations.
SECTION 3: CITY COUNCIL ACTION

The City Council hereby takes the following action:

1. Adopt Ordinance No. 1501 approving Zone Change No. 13-3501 amending the Zoning Ordinance Text adopting the Design Guidelines and Development Regulations of the Specific Plan; and, the Zoning Map land use designations from Very Low Density Residential, Medium Density Residential, Very High Density Residential, Rural Residential, and Open Space-Parks to Specific Plan as shown in Exhibit A which is attached hereto and incorporated herein by this reference.

PASSED, APPROVED AND ADOPTED this ___ day of ______, 2016

________________________________________
Art Welch, Mayor
City of Banning

ATTEST:

________________________________________
Marie A. Calderon, City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

________________________________________
John C. Cotti,
Interim City Attorney
City of Banning
CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1501 was duly introduced at a regular meeting of the City Council of the City of Banning held on the __________ day of __________, 2016 and was duly adopted at a regular meeting of said City Council held on the _____ day of ___ ____________, 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

________________________________
Marie Calderon, City Clerk
City of Banning, California
Attachment 4
City Council Resolution No. 2016-84
RESOLUTION NO. 2016-84

A RESOLUTION OF THE BOARD OF THE BANNING UTILITY AUTHORITY APPROVING A WATER SUPPLY ASSESSMENT FOR THE RANCHO SAN GORGONIO SPECIFIC PLAN (SCH NO. 2015041064)

WHEREAS, the City of Banning received an application on May 16, 2013 submitted by Diversified Pacific for a General Plan Amendment No. 13-2503, Zone Change No. 11-3501, Specific Plan, Tentative Tract Map 36586, Development Agreement, Annexation, and Water Supply Assessment to allow the development of a master planned community that will be constructed in accordance with the design and development requirements of the Rancho San Gorgonio Specific Plan. The Specific Plan provides a mix of up to 3,385 residential units on up to approximately 540 acres; 9.3 acres for Neighborhood Commercial uses, 14 acres for an elementary school site, 210 acres for parks and recreational areas, with varying passive open space trails and sports fields, and 77 acres for circulation uses, including roadways, pathways and bridges for vehicles, bikes, pedestrian and equestrian use. The total 831 acre master plan includes an annexation of 161 acres of unincorporated property located in the County of Riverside and within the City of Banning’s Sphere of Influence.

Project Applicant: Peter J. Pitassi

Property Owners: Diversified Pacific owns 831 acres of vacant property, of which 161 acres are located in the County of Riverside

Project Location: South of Interstate 10 and bounded by Sunset Avenue and Turtle Dove Lane on the west, Coyote Trail and Old Idyllwild Road on the south, San Gorgonio Avenue (State Route 243) on the east, and portions of Westward Avenue to the north.

APN Numbers: 537-150-005 – 007; 537-170-002 – 004; 537-190-001 – 005, 018 – 022; 537-220-031 – 038; 543-020-001, 002, 021, 023; 543-030-001; 543-040-001, 002; 543-050-001 – 003

Specific Plan Size: 831 Acres

WHEREAS, applications for General Plan Amendment No. 13-2503, Zone Change No. 13-3501, Rancho San Gorgonio Specific Plan, Tentative Tract Map 36586, Development Agreement, Annexation, and Water Supply Assessment are considered a “project” pursuant to the California Environmental Quality Act Guideline Section 15378 (Public Resources Code Section 21065).

WHEREAS, the City of Banning is the lead agency for the preparation and consideration of environmental documents for the Project, as defined by CEQA Sections 15051 and 15367.
WHEREAS, Section 10911(b) of the Water Code and Section 15155 of CEQA requires that the environmental document for a project that falls within the definition of a “water demand project” or 500 residential units must include an assessment of the adequacy of the public water system to serve the project (Water Supply Assessment or WSA). The Rancho San Gorgonio Specific Plan meets the definition of a “water demand project” pursuant to CEQA Guidelines Section 15155.

WHEREAS, a Water Supply Assessment was prepared for the Project and is consistent with the 2010 City of Banning Urban Water Management Plan (UWMP), which was adopted by the Banning Utility Authority on June 28, 2011. The WSA for the Rancho San Gorgonio Specific Plan analyzed the project water demand for the build-out of the project, which is 20 years and is consistent with the water supply configuration assessment as required by State law. The WSA analyzed the City’s existing water and future supplies, and the reliability of those supplies under varying hydrologic conditions, and compared them to the water demand at project build-out, in addition to the City’s existing and planned for future demands. As detailed in the WSA, made a part of the project’s EIR, the City’s total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection (year 2035) will meet the projected water demand associated with the project, in addition to the City’s existing and planned future uses.

WHEREAS, on ________, 2016, the City gave public notice by advertisement in the Record Gazette and Press Enterprise newspapers of a public hearing concerning the project, which included the action to approve a Water Supply Assessment for the Rancho San Gorgonio Specific Plan (SCH NO. 2015041064) and,

WHEREAS, on ________, 2016, the Board of the Banning Utility Authority held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Water Supply Assessment and at which the Board considered the Water Supply Assessment.

NOW THEREFORE, the Board of the Banning Utility Authority does hereby resolve, determine, find, and order as follows:

SECTION 1. WATER SUPPLY

Pursuant to SB 610, a WSA was prepared for the Specific Plan that determined water needs of the Specific Plan area could be met for the next 20 years. The WSA indicates that the City has a reliable water portfolio to satisfy the demands of the project, in addition to planned and future uses.

The City’s average annual water supply is, and will continue to be, from local groundwater supplies. The City pumps groundwater from five local groundwater basins — the Banning, Banning Bench, and Banning Canyon basins (collectively, the Banning Basins), the Cabazon Basin and the Beaumont Basin. All of the City’s groundwater supplies are supported by vested water rights. In the case of the Beaumont Basin, the
City’s production and storage rights in the basin have been adjudicated by a court and are subject to a judgment.

The City proposes an upgrade to its Wastewater Treatment Plan (WWTP) which, when completed, will provide supplies of recycled water to offset current uses of potable water. Recycled water from the City’s WWTP upgrade would be made available to the project for use in meeting non-potable water demands. This projected use of recycled water from the City’s WWTP and associated appurtenant facilities are already covered by an adopted Mitigated Negative Declaration (MND).

Additionally, the City purchases imported State Water Project (SWP) water from the San Gorgonio Pass Water Agency (SGPWA) which it percolates into the Beaumont Basin and stores for later use; it does not take direct delivery of the supply. The City is not entitled to a specified quantity of supply from SGPWA; rather, it may purchase all of the water that SGPWA has available to sell, subject only to the demands of other retailed water customers. The City conjunctively manages its groundwater and surface water supplies, including its imported water supplies. Imported water purchased from the SGPWA is recharged into the Beaumont Basin and stored for later use. As of 2015, the City of Banning has 46869 acre-feet of water stored in the Beaumont Basin.

The City’s current and projected pumping from all five (5) groundwater supplies – the three Banning Basins, the Cabazon Basin and the Beaumont Basin – are within the safe yields of each basin and consistent with the City’s rights in each basin. To assist in meeting future production demands, the City proposes an increase in the City’s pumping from the Cabazon Basin pursuant to its appropriative and developed rights in that basin. In addition, the City intends to continue its recharge of the Cabazon Basin with treated wastewater. The City’s proposed pumping from the Cabazon Basin is projected to be within the safe yield of the Cabazon Basin. Groundwater extractions from the Cabazon Basin will be that amount which is not anticipated to result in adverse impacts to the Basin or impact other producers. The City’s anticipated supply from the Cabazon Basin will vary annually based on the quantity of treated wastewater supplied recharged into the basin. Refer to Table 4.14-and Table 4-15, Hydrologic Budget – Cabazon Basin, of the Water Supply Assessment, for inflow and outflow terms used in calculating the Cabazon Basin’s hydrologic budget.

The City proposes to maintain average historical amounts from the Beaumont Basin in order to promote the accumulation of water (both from the City’s unused production rights and recharged imported water) in the City’s stored water account. Therefore, the City does not propose increases in pumping from the Beaumont Basin, at least until 2035, and does not propose pumping in excess of its rights in the basin. The City’s existing wells provide sufficient capacity to continue to produce historical amounts. All water production and storage operations in the Beaumont basin are subject to the adjudication and resulting court judgment. The court’s and Watermaster’s ongoing management of the basin ensures that the City’s production of its rights in the Beaumont basin, including withdrawal of water from storage, does not result in adverse
impacts on the Beaumont basin or material interference with other Beaumont basin right holders.

The WSA assesses the reliability of each of the City's individual water supplies (groundwater, surface water, imported water and recycled water) during normal, single dry and multiple dry water years. The WSA concludes that the City's diversified portfolio of water supplies and conjunctive management of groundwater and surface (imported) water increases the overall reliability of the City's water supplies during times of water shortage. The WSA concludes that the City's existing and projected water supplies are sufficient during normal, single dry, and multiple dry water years during the 20-year study period to meet the projected water demands of the Project, in addition to the City's existing and planned future uses. Therefore, sufficient water supplies are available to serve the Project. Refer to Draft EIR Table 5.16-7 and Table 5.16-9.

Based on the entire administrative record, including but not limited to the 2010 Urban Water Management Plan and the Water Supply Assessment and EIR prepared for the Project, it is determined that the City's total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the existing and planned future uses.

SECTION 2. BANNING UTILITY AUTHORITY ACTION.

Based on the foregoing recitals, findings, and on substantial evidence in the record, the Board adopts Resolution No. 2016-84 approving the Water Supply Assessment for the Rancho San Gorgonio Specific Plan (SCH NO. 20015041064), in compliance with SB 610. (WSA, attached hereto as Exhibit “A”)

PASSED, APPROVED AND ADOPTED this _____ day of ___________, 2016.

________________________________________
Art Welch, Chairman
Banning Utility Authority

ATTEST:

________________________________________
Marie Calderon, Secretary
Banning Utility Authority
APPROVED AS TO FORM:

__________________________________________
John C. Cotti,
Interim City Attorney
City of Banning

CERTIFICATION:

I, Marie Calderon, Secretary, Banning Utility Authority, City of Banning, California, do hereby certify that the foregoing Resolution, No. 2016-84, was duly adopted by the Board of the City of Banning, California, at a regular meeting thereof held on the ___ day of ________, 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

__________________________________________
Marie Calderon, Secretary
Banning Utility Authority
Rancho San Gorgonio Specific Plan Water Supply Assessment
Appendix J  Water Supply Assessment
Appendices

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WATER SUPPLY ASSESSMENT

RANCHO SAN GORCONIO SPECIFIC PLAN

CITY OF BANNING
COUNTY OF RIVERSIDE
STATE OF CALIFORNIA

PREPARED BY:

MADOLE & ASSOCIATES, INC.
Engineering Communities for Life
9302 Pittsburgh Avenue Suite 230
Rancho Cucamonga, CA 91730
909-481-6322
Mark Bertone, President

Encompass Associates, Inc.
5699 Cousins Place
Rancho Cucamonga, CA 91737
909-684-0093
Aaron Skeers, P.E.

Prepared for:

Rancho San Gorgonio, LLC

September 30, 2015
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1. Executive Summary

Rancho San Gorgonio is a master planned community proposed in the City of Banning, Riverside County, California. Located on approximately 831 acres on the south side of the city, including approximately 160 acres to be annexed from the county, up to 3385 dwelling units are anticipated, among other uses and amenities.

Due to the size of the project, state law requires a Water Supply Assessment be prepared to ensure there will be an adequate supply of water for the project and the city over the next twenty years.

Water purveyors, like the City of Banning, are required to prepare an Urban Water Management Plan (UWMP) every five years. The current 2010 UWMP, acknowledged by the state on July 1, 2013, describes in detail the various sources of water, the confidence in long-term reliability of those sources, the quality of those sources, and the projected demand for water within the city from now until build-out.

The UWMP was the primary resource and was used as a basis for this WSA. In addition, data from 2010 through 2014, the most current years available, has been obtained and incorporated into this WSA. Based on information provided in the UWMP and subsequent years, an assessment is made herein of the change this project will have on what was anticipated with the UWMP. Planning ahead to a built-out condition, there will be an estimated increase in population of up to 5991 due to this project (Table 4-4), resulting in an estimated increase in demand for water of up to 584 acre-feet/year (Table 4-11) as compared to the UWMP. This will be significantly offset by additional sources of water due to the project, amounting to an estimated 569 acre-feet/year (Table 4-11), including recharge of rainwater and return flows from irrigation, and by use of recycled water in place of potable water for irrigation throughout the city. As the city maintains a significant supply surplus, 605 acre-feet in 2014 (Tables 3-1 and 3-2), a drought year, and not including their ample water storage account, which is over 46,000 acre-feet (Section 3.2.1.5), the small balance of supply needed is well within the city’s current and projected ability to deliver.

Therefore, it is determined with this WSA that the City of Banning’s total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the projected water demand associated with the proposed project, in addition to the city’s existing and planned future uses, including agricultural and manufacturing uses.
2. Water Supply Assessment

2.1. Introduction

A Water Supply Assessment (WSA) is mandated by state law (see Public Resource Code 21080 and Water Code 10910), in general for any project proposing 500 or more new residences. These codes stipulate when WSA’s are needed and how they shall be completed. As the City of Banning is both the land use agency and the water supplier for the proposed Rancho San Gorgonio Master Planned Community, and accompanying Specific Plan, the city is responsible for ensuring the WSA is prepared in accordance with state code. Madole & Associates, Inc., and Encompass Associates, Inc., were contracted to prepare the WSA by Rancho San Gorgonio, LLC, for the benefit of the City of Banning.

This WSA is based upon the City of Banning’s 2010 Urban Water Management Plan (UWMP), which received acknowledgment from the Department of Water Resources on July 1, 2013 as meeting the requirements of the California Water Code. Data pertaining to historical supply and demand is taken from the UWMP. Projections can then be made for the increase in demand from the proposed Rancho San Gorgonio development.

Per Water Code 10910, this WSA “must address whether the projected supply for the next 20 years - based on normal, single dry, and multiple dry years - will meet the demand projected for the project plus existing and planned future use...” The following three issues must be addressed:

1. Assess water received in prior years from (and provide supporting documentation):
   a. Water supply entitlements
   b. Water rights
   c. Water service contracts

2. If no water received in prior years, identify other water suppliers

3. If the source includes groundwater, follow the related guidelines as applicable.

From these three inquiries, the City of Banning can determine if there is sufficient water supply for the proposed project. If there is insufficient supply, the WSA must set forth plans to acquire the necessary supply, including the estimated cost thereof, the permits required, and the estimated timeframe for supply acquisition.
2.2. Proposed Project Description

Rancho San Gorgonio is a master planned community proposed in the City of Banning, California, comprising approximately 830.8 acres. The site is south of Interstate 10, generally situated between Sunset Avenue and San Gorgonio Avenue, south of Westward Avenue. A portion of the property is in unincorporated Riverside County, and will be annexed into the city limits as part of the entitlement process.

The proposed project will consist of up to 3385 dwelling units, almost 49 acres of neighborhood and community parks, over 160 acres of paseos and open space, and 81 acres of right-of-way and utility easements. (Exhibit 2-1)

A mix of residential properties is proposed, including single-family detached in a variety of lot sizes up to half-acre lots, as well as multi-family residences. Numerous parks are planned throughout, with amenities anticipated to include a community center, picnic areas, pedestrian, bicycle and equestrian trails, and athletic fields. See Table 2-1 for a description of land uses, dwelling units, and acreages.

With a projected build-out population of 8936, Rancho San Gorgonio will need an estimated potable water supply of 1411 acre-feet per year per Table 4-9. However, as discussed further in Section 4.2, the project area is already included in the UWMP calculations, which assumes development will occur per current General Plan zoning densities. Further, the Butterfield Specific Plan has been reduced in total dwelling units from what was included in the UWMP. Therefore, this project will only require a net increase in water supply of up to 48 acre-feet per year (Table 4-11).

The increase in potable water demand is offset by new sources of water resulting from the project, including rainwater recharge and recycled water in lieu of potable water for irrigation both in the project and elsewhere in the city.

For rainwater recharge, the project will construct a system of retention basins, required to ensure storm flows discharged downstream do not exceed the existing condition, and that pollutants in runoff are captured prior to discharge downstream. Due to these basins, the project will capture approximately 199 acre-feet more rainfall per year than in the current condition (See Section 4.3.1), and this captured rain will recharge the underlying aquifer.

Recycled water will be generated by the project or at the city’s treatment plant from the project sewer collection system, and then distributed for irrigation usage throughout the area through the city’s recycled water system, partially complete at this time (see Section 5). The project will utilize 218 acre-feet per year for irrigation on-site, and will generate an
additional 252 acre-feet per year, at build-out, for use elsewhere in the city, offsetting current potable water demand (Section 5).

In addition, approximately 25% of irrigation is recharged back into the aquifer, termed return flows, resulting in an additional supply of 117 acre-feet per year (Section 4.3.3).

The net water balance for this project in 20 years (2035) is therefore estimated to result in an increase in demand of 16 acre-feet/year (Table 4-11).
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<td>PA 15-B</td>
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<td>Fire Station</td>
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**Land Use**

- **Acreage**
- **DU**
- **% of Total Ac.**

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<th>Acreage</th>
<th>DU</th>
<th>% of Total Ac.</th>
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<td>Neighborhood Commercial with Residential overlay*</td>
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<tr>
<td>Elementary School with Residential Overlay**</td>
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<tr>
<td>Parks &amp; Open Space</td>
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<td>Right-of-way</td>
<td>77.17</td>
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<td>9%</td>
</tr>
<tr>
<td>Public Facility</td>
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<td>0%</td>
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<td>Flood Control</td>
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<td>TOTAL</td>
<td>830.84</td>
<td>3,385</td>
<td>100%</td>
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**Distribution of Product Type**

- **Density Range**
- **Target Density**
- **Acreage**
- **DU**
- **% of Total DU**

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<th>Density Range</th>
<th>Target Density</th>
<th>Acreage</th>
<th>DU</th>
<th>% of Total DU</th>
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830.84  3385

*Neighborhood Commercial with Residential Overlay (9.33 ac dedicated to MFR)
**84 du (14 ac) are dedicated to the residential overlay within PA 16-C
3. Existing Water System and Supply

3.1. City of Banning Water System

The City of Banning is the utility provider of water and sewer services throughout the city, including areas outside city limits but within the sphere of influence (see Exhibit 3-1). All water is pumped from the various underground water basins via a network of wells. The city owns 21 wells outright, and co-owns 3 wells with the Beaumont Cherry Valley Water District (BCVWD).

The pipeline system connects these wells and tank reservoirs together, including an interconnection with BCVWD for the co-owned wells. In order to serve all parts of the city, the system is organized naturally by actual elevation differences and with pressure regulating devices into four pressure zones (see Exhibit 3-2). Refer to Section 4 of the UWMP for additional information on the city’s water system.

To augment natural groundwater sources, the city replenishes water conjunctively in a number of ways. In partnership with BCVWD, the city purchases State Water Project (SWP) water and recharges it into the Beaumont Basin via BCVWD’s spreading ground facility. And, as the city further develops existing and planned wells over the Cabazon Basin, additional water will be available from the recovery of treated wastewater that is recharged into the aquifer from the percolation ponds at the city’s WWTP.

These sources of water are further described below in this section.
3.2. Current Sources of Water

All water enters the city system via pumping operations from the underground basins. All groundwater basins are geologic formations that, in one way or another, collect and retain water that percolates into the ground. There are different means of replenishing the underground water basin storage. Surface water naturally percolates into the ground during rainfall events, snow melt from the surrounding mountains and higher elevations, and from urban sources, “return flows”, such as excess irrigation runoff. The city also purchases State Water Project (SWP) water through the San Gorgonio Pass Water Agency (SGPWA). Finally, the city has plans to utilize recycled water for nonpotable, irrigation demands, and by doing so, will free up the water supply for additional potable needs.

Table 4-1 from the UWMP summarizes current and future water supplies, and that table is replicated here. The various sources will be discussed further below, as summarized from Section 4 of the UWMP. Water supply data is projected for years 2015 through 2035. Actual supplies used by the city are shown for years 2010-2014.
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<td>16045</td>
<td>16323</td>
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</table>

* 2010-2014 values are actual supplies utilized by the City.
2) City of Banning average annual production from City of Banning Wells within the Beaumont Storage Unit since the basin was adjudicated in 2004
3) Cabazon production supply includes approximately 720 acre-ft/yr, which has been the average annual production from the City of Banning Well C-6, and additional water which may be utilized by the City as described in Maximum Perennial Yield Estimates Report, Geoscience, 2011 (see Appendix F). See Section 4.2.7 for explanation of estimates. These values assume that Phase I of the WWTP Expansion will be completed by 2020, and the 1,680 acre-ft/yr is excluded from these estimates. 2015 production is assumed to be at 2014 levels.
4) Values from Initial Study/Mitigated Negative Declaration, Wastewater Treatment Plant Expansion and Phase I Recycled Water System, May 2008 prepared by the City of Banning Water/Wastewater Utilities Department. Assumes WWTP Phase I will be completed by 2020. It is assumed that supply will increase by 1.5 MGD / 1,680 AFY every ten years.
5) Values include 25% return flow from all irrigation purposes inside and outside the BMZ for Phase I and Phase II WWTP expansion project. Assumes Phase I will be completed in 2020. See Section 4.8 of the UWMP for more information.
6) Values include 25% return flow from all irrigation purposes where potable water is used (50% of residential water use is used for landscape irrigation). Returns flows for Beaumont Storage Unit are not counted, as the City has an allotment of the Safe Yield. All return flows within the Beaumont Basin from imported water are dedicated for over draft mitigation. Return flows in the Banning Storage Units are considered for developments projected for construction which will add new recharge to the storage units (total of 1,044 EDUs at build out - assumed to be 2061) along with 20X2020 conservation.
7) Assumes 60% SGWP SWP average reliability per DWR’s Final Reliability Report 9/27/10; Assumes Banning’s allocation of available SWP water is 25% of SGWP Allotment, assumes EBX-II is on line by 2020. 2015 is assumed to be at 2014 levels.
8) The sizable increase in total water supply from 2014 to 2015 represents current, actual production levels (up to and including 2014), compared with the maximum production level under safe yield operating conditions (2015 onward). The actual production for 2015 likely will not approach the total supply stated, due to current drought conditions and the Governor’s 2015 mandate to reduce usage.
3.2.1. Groundwater

The project and the City of Banning, among other cities in the area, are situated over the San Gorgonio Pass Ground Water Basin. The basin includes five sub-units, which are not totally independent from each other (see Exhibit 3-3).

3.2.1.1. Banning Storage Unit

The Banning Storage Unit is located substantially within the city limits, comprising the downtown area and beyond on both sides of Interstate 10. It is about 3.9 square miles in size, with an average thickness of 600 feet and up to 240,000 acre-feet of capacity (Geoscience 2011).

The City of Banning has exclusive pumping rights to the Banning Storage Unit. With the four wells currently installed within this unit, the city has pumping capacity up to 3,500 gpm, or 5,646 acre-ft/year. The Geoscience study (2011) determined the safe yield to be 1,130 acre-ft/year, which is what the UWMP includes for future production projections.

3.2.1.2. Banning Bench Storage Unit

The Banning Bench Storage Unit is located north of the Banning Storage Unit, mostly within the city limits, up to Banning Canyon. It is approximately 5.9 square miles in size, with an average thickness of 30 feet and up to 1500 acre-feet of capacity (Geoscience 2011).

The City of Banning also has exclusive pumping rights to the Banning Bench Storage Unit. Three wells within this unit can produce up to 3,650 gpm, or 5,888 acre-ft/year. The safe yield was determined to be 1,960 acre-ft/year.
3.2.1.3. Banning Canyon Storage Unit

Extending a few miles north from Banning Bench, the Banning Canyon Storage Unit comprises the canyon area of the city. About 1.6 square miles, it has an average thickness of 161 feet and can store up to about 13,500 acre-feet (Geoscience 2011).

The Banning Canyon Storage Unit is the largest source of water for the city. The San Gorgonio River, and a diversion system from the Whitewater River, provide recharge for Banning Canyon. Eight wells within this unit can produce up to 8,600 gpm, or 13,873 acre-ft/year. The safe yield has been determined to be 4,070 acre-ft/year, which is what is utilized in projections in the UWMP and this WSA.

In the near future, it is anticipated that the US Forest Service will negotiate a reduction in the amount of water diverted from the Whitewater River. As the diversion accounts for only about 500 ac-ft/year, a reduction would not be significant. While details are still pending, any reductions in these historical rights will be replaced by SGPWA, as a requirement of their management of the Pass area water, therefore the values in Table 3-1 above are unchanged from 4,070 ac-ft/year.

3.2.1.4. Cabazon Storage Unit

Underlying the eastern portion of the city, the Cabazon Storage Unit extends easterly to the City of Cabazon. The Cabazon Storage Unit is about 27 square miles in size, has an average thickness of 350 feet, and can store up to 1,000,000 acre-feet.

The city does not have exclusive pumping rights for the Cabazon Storage Unit. One well within this unit, C-6, can produce up to 900 gpm, or 1,452 acre-ft/year. The city produced 786 acre-feet from C-6 in 2014. With the installation of additional wells and pipeline, the city could safely extract 2,515 acre-ft/year per the UWMP, well above the projections used in the UWMP and the WSA.

The city is also anticipating utilizing the Cabazon Storage Unit to supplement the recycled water production capacity of the WWTP. Existing Well R-1 could begin extraction with the installation of pumping equipment, and a second well, designated R-2, could be installed to bring total nonpotable water from the Cabazon unit to 2,655 acre-ft/year, the average amount of treated wastewater infiltrated into the Cabazon unit.
3.2.1.5. Beaumont Storage Unit

Located mostly in the City of Beaumont, part of the Beaumont Storage Unit does underlie the western portion of the City of Banning. It is approximately 20 square miles in size (2010 UWMP).

Extraction of water from the Beaumont Storage Unit has been adjudicated (see Section 6), with rights shared amongst the City of Banning, the Beaumont Cherry Valley Water District, the South Mesa Water District, and the Yucaipa Valley Water District.

Five wells within this unit, plus the city’s share of three additional wells, can produce up to 7,650 gpm, or 12,340 acre-ft/year. The judgment has given the city the right to pump 5,910 acre-feet annually through the year 2014. The basin Watermaster is required by law to re-evaluate the safe yield from the storage unit every ten years, and the technical study, Draft-Final 2013 Reevaluation of the Beaumont Basin Safe Yield, dated January 16, 2015, was completed by Thomas Harder & Co., in association with Alda, Inc. (see Section 6). The overall safe yield was reduced from 8,650 ac-ft/yr to 6,700 ac-ft/yr. The city’s controlled overdraft allotment has been eliminated, as projected in the 2010 UWMP. The city’s appropriative rights are estimated from a study prepared by Wildemuth Environmental, Inc., dated March 18, 2011, titled Projected Allocation of Pumping Rights for the 2004 Beaumont Basin Judgment, shown in column 2 on UWMP Table 4-4, revised and included below.

The city purchases SWP water for the purpose of replenishing the Beaumont Basin (See Section 3.2.3).

To date, the city has not pumped all of what is allotted, and therefore maintains a water account balance. The Watermaster is required to maintain and validate the water account balances in the Beaumont Basin. The City of Banning has been allocated a storage volume of 80,000 ac-ft.

Table 4-4 in the UWMP summarizes this account, and that table is included below. Adjustments have been made to include actual production and recharge values from 2011-2014. Therefore, the account balances have deviated from those shown in the 2010 UWMP.

A summary of the historical well production, organized by year and by Storage Unit, is included in Section 4.2.2 and Table 4-3 of the UWMP.
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<th>Year</th>
<th>City's Appropriative Rights After Overlying Producers (excluding storage)</th>
<th>Controlled Overdraft of Annual Operating Yield</th>
<th>Recharge of SWP</th>
<th>Banning Production from Beaumont Storage Unit</th>
<th>Transfers Among Appropriators</th>
<th>Estimated Total Water in Storage (Production Right)</th>
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</table>

2. Controlled overdraft assigned by the Beaumont Basin Judgment for the ten year period 2004 through 2012 (see Appendix G).
3. State Water Project purchases reported by Watermaster through 2014. 2015 purchases are estimated to be similar to 2014 due to current drought conditions. Projected Purchases (2016-2035) assumed to be 25% of annual delivery to SGFWA anticipated by the SWP Reliability Report (60% of the maximum annual delivery starting in 2016, when EIBXII is assumed to be online, SGFWA full Table A entitlement of 17,300 will be accessible).
4. City of Banning production as reported by the City of Banning for years 2004-2014, production includes water received from BCWD. For years 2015 through 2020, City of Banning pumping is assumed at the average annual pumping value of 2,514 acre-ft/yr.
6. Sum of columns 1, 2, 3 and 5 minus column 4, the product is added to the previous year Estimated Total Water in Storage.
This account balance is included in the supply projections for the proposed project in Section 4 below.

It should be noted that the excess pumping capacity in all five storage units provides the city with safeguards in case of emergencies and system maintenance.

3.2.2.  Surface Water

As stated previously, surface water naturally recharges the underground water basin across the region, and most directly by the San Gorgonio River and the Whitewater River diversion.

Surface water is not listed as a separate source in Table 3-1 above because it merely recharges basin storage unit pumping production.

3.2.3.  State Water Project Water

The SGPWA currently purchases water from the SWP, and sells it to the cities in the region as needed. The city purchases water for the sole purpose of recharging the basin storage units.

The SGPWA has a contract for 17,300 acre-ft/year, but currently only has facilities, called the East Branch Extension, that can deliver 8,650 acre-ft/year. Table 3-1 above includes the amount of SWP water the city expects to purchase from SGPWA in the future, based in part on long-term delivery reliability estimates, established by the Department of Water Resources. SWP deliveries have been reduced in the past few years due to the severe drought conditions effecting the state. As this WSA is a long-range planning document, year-by-year fluctuations in water deliveries are accounted for by utilizing long-range actual and projected delivery levels, estimated to be 60% in the Department of Water Resources Final Reliability Report dated 9/27/10.

The SGPWA is nearing completion of EBX II, the East Branch Extension Phase II, which will bring the Agency’s capacity to its full contract amount of 17,300 acre-ft/year. The Crafton Reservoir Expansion project and the Citrus Reservoir have been completed. Six miles of pipeline are installed. The new Citrus Pump Station is completed, and expansion finished at the Crafton Hills Pump Station. Pumps are to be installed in 2016 as part of the expansion of the Cherry Valley Pump Station, at which point full capacity will exist.

In addition, the SGPWA is expecting to double water deliveries (an additional 17,300 acre-ft/year) by purchasing additional SWP water, and is planning to construct spreading ground facilities by which to store surplus imported water, piped in during wet years, for use as needed. Conveyances from the SWP system to this spreading ground are already installed.
The city purchases 25% of what is available from the SGPWA, and the supply projections in the UWMP and the WSA include this as 2,595 acre-ft/year, which is the city’s portion of the estimated reliable delivery amount for SGPWA (25% of 60% of full capacity). In partnership with BCWWD, the city’s SWP water is discharged into a spreading ground in order to recharge the Beaumont Basin.

3.2.4. Recycled Water

The City of Banning currently has no facilities to provide recycled water, however such facilities are under way and anticipated to be in service by 2020. The city anticipated a phased approach to providing recycled water, with the first phase providing 1,650 acre-ft/year, with similar capacities being added roughly every ten years thereafter, as demand increases. See Section 5 below for additional information about the recycled water system.

Additional sources of recycled water are discussed in Section 4 below.

Use of recycled water displaces what would have been domestic, potable water demand, and therefore is treated as a supply, up to the limit of the demand displacement.
3.3. Water Quality

Section 5.9 of the UWMP summarizes historical water quality data, and reaches the conclusion that current water quality is excellent. However, subsequent to completion of the 2010 UWMP, the state established a new standard for Chromium-6. The city's wells all met the previous standard of 50 ppb, however 7 of 21 wells currently do not meet the newly established level of 10 ppb. Concentrations of Chromium-6 in these 10 wells range from 10.0 ppb up to 22.5 ppb.

The city is currently evaluating options to address Chromium-6 treatment, which is believed to be naturally occurring. One possible solution is to block out the source layer in the wells, and, if viable, this would be a relatively inexpensive and feasible solution. There would be a loss in pumping capacity, as water from the impacted layer could not be drawn. A second alternative is with well-head treatment, which is more expensive but effective. Finally, as discussed further below, the product of impacted wells could be used as nonpotable water, which would displace current potable uses and effectively increase supply by reducing demand.

The City of Banning is required to resolve the Chromium-6 issue, and to that end the city is proactively researching alternatives. Regardless of the means necessary to remedy the existing condition, Chromium-6 does not represent a potential loss in supply, simply a potential loss in existing pumping capacity. Chromium-6 is not impacting all of the water in any given basin unit, just at particular levels within some of the deeper wells. New wells could be installed as needed to maintain supply by pumping from levels not affected by the presence of above acceptable concentrations. And, as discussed in Section 4.7.1, wells exceeding Chromium-6 standards for potable water could be used for irrigation purposes, such as for golf courses, freeing up potable water currently used for that purpose.

3.4. Water shortage/emergency contingencies

The city has adopted a Water Storage Contingency Plan in order to address emergency and disaster planning as related to water supply and fire suppression. Details are discussed in Sections 5.4 through 5.6 of the UWMP.

In response to the current, prolonged drought conditions, Governor Jerry Brown declared a State of Emergency in January 2014, followed by Executive Orders in April 2014, September 2014, and January 2015, encouraging a concerted effort towards voluntary reductions in water usage state-wide. Due to record-low snow pack levels this spring, and due to less than desired levels of water use reduction, the Governor issued an Executive Order on April 1,
2015, directing the State Water Board to issue mandatory water reductions, with the goal of achieving a 25% reduction in urban potable water use state-wide.

In order to accommodate conservation levels already achieved by some water agencies, the Board assigned tiered reduction requirements for each agency, based on the varying levels of reduction they had already achieved. As such, the City of Banning was assigned a required water use reduction of 32%. The basis of this water reduction is the actual residential water usage for the period July through September of 2014. That level was 181.2 gallons per capita per day (residential uses only), and therefore the target is 123.2 gpcd. (Note that a higher projected rate is utilized in both the UWMP and this WSA, in order to assess whether or not there will be adequate water supply. See the next section for more discussion.)

In addition to the water use reduction targets, the following provisions are also required:

1. Prohibition on using potable water for irrigation of ornamental turf in street medians
2. Prohibition on using potable water for outdoor irrigation of new home construction without drip or microspray systems.

These emergency requirements are not permanent, however there is no expiration date, and depending on climate conditions and actual conservation levels, these requirements will last for an extended and indefinite duration.
3.5. Current and Projected Demand

The methodology used to determine city-wide water demand in the UWMP was followed in this WSA. Table 3-8 in the UWMP defines the projected water use through 2035, broken down by land use type, as was determined based upon historical data.

Projected demand in UWMP is based on population growth and estimated per capita water use. The current city General Plan projects build-out in 2061, with a population of 80,226. This reflects a 2% population growth rate. Note that population projections in the UWMP included the project area, determined to be 3693 persons based on 1399 dwelling units as shown in Section 4.2 below.

Current (2010) city water usage is calculated to be 229 gallons per capita per day. The projections follow state guidelines, which calculates to 315 gallons per capita per day (UWMP, page 37). However, state law currently in effect will require a 20% reduction in water use by the year 2020, which is reflected in the calculations in Table 3-2. Note that actual population and total water production (delivered supply) are included as provided by the city for 2010 through 2014. The additional mandatory water use reduction levels discussed above are not included in the projections in this WSA because it is unknown how long those requirements will remain in place.
### Table 3-2 Current Projected City-wide Water Demand - Based on Land Use Factors

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<th></th>
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<th></th>
<th></th>
<th></th>
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</tr>
</thead>
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<td></td>
<td></td>
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<td></td>
<td></td>
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</tr>
<tr>
<td>Per Capita Water Use [gpcd]³</td>
<td>229    254    255    259    249    283    252    252    252    252</td>
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<td></td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>Single Family Residential</td>
<td>56.2%</td>
<td>4412   4751   4819   4914   4759   5440   5724   6320   6978   7704</td>
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<tr>
<td>Multi-family Residential</td>
<td>2.3%</td>
<td>120    194    197    201    195    223    236    260    288    317</td>
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</tr>
<tr>
<td>Commercial/Institutional</td>
<td>26.2%</td>
<td>1908   2215   2247   2291   2219   2536   2669   2947   3254   3593</td>
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<td></td>
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<tr>
<td>Industrial</td>
<td>1.2%</td>
<td>95     101    103    105    102    116    119    131    145    160</td>
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<td></td>
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<td>Irrigation</td>
<td>11.9%</td>
<td>939    1006   1020   1040   1008   1152   1211   1337   1476   1629</td>
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<td></td>
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<tr>
<td>Other</td>
<td>1.1%</td>
<td>82     93     94     96     93     106    113    125    138    153</td>
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<tr>
<td>Sales to other Agencies</td>
<td>1.1%</td>
<td>82     93     94     96     93     106    113    125    138    153</td>
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</tr>
<tr>
<td>Total [acre-ft/yr]</td>
<td>7586   8454   8575   8743   8468   9680   10183  11243  12413  13705</td>
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<td></td>
<td></td>
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</tr>
</tbody>
</table>

*Actual population and total demand for 2010-2014

¹For more information regarding Land Use Factors and Water Use Sector percentages, refer to Section 3.1.2 of the 2010 UWMP


³Per capita water use for 2010-2014 is actual levels, based on total water delivered, divided by the population. There is a conversion factor of 892.7 gallons per day to per acre-foot per year. Per capita water use for 2015 and on is per the 2010 UWMP, and is based on a 10-year average, adjusted for the 20x2020 requirement. Refer to Section 3.2 of the 2010 UWMP. Note that conservatively, the population for 2020 and on was not re-adjusted by the city's expected growth rate of 2%, even though actual population growth up to 2015 is well below the 2010 projections. The population projections include an ultimate buildout of 1393 dwelling units for the project area per section 4.2.

As can be seen in Table 3-2, actual data from 2010-2014 shows a trend of lower per capita use, and lower total water consumption, than was projected in the 2010 UWMP.
3.6. Assessment of Current Supply and Demand

Table 3-3 below is a summary of Tables 3-1, 3-2 and UWMP Table 4-4, providing an analysis of the city’s projected surplus, as determined in the UWMP. Based on the current plan and projections, the city can meet future water needs.

| Table 3-3: Supply and Demand (20x2020) Comparisons - Current City UWMP with Water Basin Account Balance - Actual Data from 2010-2014 [acre-ft] |
|---|---|---|---|---|---|---|---|---|---|
| Total Supply* | 37,530 | 43,737 | 51,020 | 53,591 | 52,654 | 54,824 | 67,667 | 76,123 | 83,824 | 90,821 |
| Total Demand** | 7,586 | 8,454 | 8,575 | 8,743 | 8,468 | 9,680 | 10,183 | 11,243 | 12,413 | 13,705 |
| Supply Surplus*** | 29,944 | 35,283 | 42,445 | 44,848 | 44,186 | 45,145 | 57,484 | 64,880 | 71,411 | 77,116 |

*Total Supply equals the account balance from the Beaumont Basin (per Table 4-4 in the UWMP, as provided in Section 3.2.1.5 above) plus the Supply from Table 4-1 of the UWMP (Table 3-1 above).

**Total Demand is from Table 3-8 of the UWMP (Table 3-2 above). The demand calculations include an ultimate buildout of 1399 dwelling units for the project area per section 4.2.

***The surplus is an accumulation of year-by-year net additions to the Beaumont Basin (not the amount shown being added in that year).
4. Proposed Project

4.1. Proposed Project Build-out Estimate

It is anticipated for planning purposes that project build-out will occur in 6 phases, one phase every three years, for a total duration of 18 years. Market conditions will dictate this pace and it is highly likely that build-out will occur at a slower pace. With construction estimated to commence in 2017, build-out would occur by 2035. Table 4-1 below reflects a linear build-out trend, with an average of 2.64 persons per dwelling, as per the city General Plan.

<table>
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<th>Phase</th>
<th>Year</th>
<th>Dwelling Units</th>
<th>Population</th>
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<tr>
<td>1</td>
<td>2017</td>
<td>108</td>
<td>285</td>
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<tr>
<td>1</td>
<td>2018</td>
<td>215</td>
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<td>2019</td>
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<td>443</td>
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</tr>
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<td>2582</td>
</tr>
<tr>
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</table>
4.2. Current UWMP Demand Comprising Project Area

The land comprising this proposed community is included in the current UWMP, including the 160 acres to be annexed into the city from the county (see Exhibit 3-1), however at lower densities than are proposed. Therefore, per Section 5 of Water Code 10910, it must first be determined if the existing 20-year projections can meet the proposed increased demands. This WSA relies upon the UWMP and updated actual data through 2014 and will only address the changes proposed with this master planned community.

Listed in Table 4-2 below is a summary of the land use zones that currently constitute the property being developed, from the city General Plan (see Exhibit 4-1). The total number of projected dwelling units will then be compared with what is proposed, and the increase in dwelling units is what will be used to assess the ability of the water supply, with future projections, to serve the proposed development. Note that as the City’s General Plan assumes actual development will occur at about 75% of the maximum density, therefore, both the General Plan and the UWMP have already included development of the project area at 1399 dwelling units and the corresponding population of 3693 persons.

<table>
<thead>
<tr>
<th>Type</th>
<th>Zoning Density</th>
<th>Dwelling Units per Acre</th>
<th>Acres</th>
<th>Maximum Dwelling Units</th>
<th>75% of Max. Density</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ranch/Agriculture**</td>
<td>10 ac min.</td>
<td>0.10</td>
<td>149.49</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Rural SFR</td>
<td>0-1 du/ac</td>
<td>1</td>
<td>26.78</td>
<td>26</td>
<td>20</td>
</tr>
<tr>
<td>Very Low SFR***</td>
<td>0-2 du/ac</td>
<td>2</td>
<td>545.57</td>
<td>1067</td>
<td>800</td>
</tr>
<tr>
<td>Low SFR</td>
<td>0-5 du/ac</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Medium SFR</td>
<td>0-10 du/ac</td>
<td>10</td>
<td>14</td>
<td>140</td>
<td>105</td>
</tr>
<tr>
<td>Very High MFR</td>
<td>19-24 du/ac</td>
<td>24</td>
<td>26</td>
<td>624</td>
<td>468</td>
</tr>
<tr>
<td>Park</td>
<td>0 du/ac</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Open Space (Resources)</td>
<td>0 du/ac</td>
<td>0</td>
<td>69</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

830.84 1865 1399

*The City General Plan assumes 75% of maximum density for build-out conditions
**This Type is comprised of 8 parcels, all less than 20 acres each, therefore only 8 units max
***Maximum units calculated by parcel, not by gross acreage

In order to determine the change in projected water demand due to the proposed project, an estimate of the change in dwelling units, or population, is first required. Table 4-3 below shows an evaluation of the change in dwelling units.

Encompass Associates, Inc.
Table 4-3: Proposed Land Use with Maximum Build-out Density

<table>
<thead>
<tr>
<th>Type</th>
<th>Zoning Density</th>
<th>Target Dwelling Units per Acre</th>
<th>Acres</th>
<th>Maximum Dwelling Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-Family Residential**</td>
<td>0.5-6</td>
<td>2-6</td>
<td>362.8</td>
<td>1533</td>
</tr>
<tr>
<td>Multi-Family Residential</td>
<td>12.1-18.0</td>
<td>18</td>
<td>51.7</td>
<td>930</td>
</tr>
<tr>
<td>Age-Qualified Residential</td>
<td>6.1-12.0</td>
<td>6.5</td>
<td>115.94</td>
<td>754</td>
</tr>
<tr>
<td>Mixed Use *</td>
<td>12.1-18.0</td>
<td>18</td>
<td>9.33</td>
<td>168</td>
</tr>
<tr>
<td>Parks &amp; Open Space</td>
<td>n/a</td>
<td>n/a</td>
<td>209.18</td>
<td>0</td>
</tr>
<tr>
<td>Right-of-way</td>
<td>n/a</td>
<td>n/a</td>
<td>77.17</td>
<td>0</td>
</tr>
<tr>
<td>Public Facility</td>
<td>n/a</td>
<td>n/a</td>
<td>3.62</td>
<td>0</td>
</tr>
<tr>
<td>Storm Drain Easement</td>
<td>n/a</td>
<td>n/a</td>
<td>1.1</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>830.84</td>
<td>3385</td>
</tr>
</tbody>
</table>

(see Table 4-2 above: 75% of currently projected build-out)

*Neighborhood Commercial with Residential Overlay (9.33 ac dedicated to MFR)

**84 du (14 ac) are dedicated to the residential overlay within PA 16-C

Table 4-4 below provides a comparison of current versus proposed population, organized in 5 year increments for inclusion in the calculations below. Note that the 2010 UWMP based population estimates on the city's 2008 Draft Housing Element Update, which included the Butterfield Ranch Specific Plan with 5387 dwelling units. As a result of the settlement to a legal challenge, the maximum proposed units were reduced by 525, equating to a reduction in population of 1386. Thus, the effective increase in dwelling units over that which was analyzed in the 2010 UWMP is 1461 (1986-525). This change is included in the population calculations below. The reduction is conservatively assumed to be realized starting in 2030.
### Table 4-4 - Change in Population

<table>
<thead>
<tr>
<th>Year</th>
<th>2015</th>
<th>2020</th>
<th>2025</th>
<th>2030</th>
<th>2035</th>
<th>2061</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current</td>
<td>0</td>
<td>328</td>
<td>739</td>
<td>1149</td>
<td>1559</td>
<td>3693</td>
</tr>
<tr>
<td>Proposed*</td>
<td>0</td>
<td>1170</td>
<td>2973</td>
<td>6679</td>
<td>7550</td>
<td>7550</td>
</tr>
<tr>
<td>Increase</td>
<td>0</td>
<td>842</td>
<td>2234</td>
<td>5530</td>
<td>5991</td>
<td>3857</td>
</tr>
</tbody>
</table>

* includes a 525 dwelling unit (1386 population) reduction due to change in maximum units for the Butterfield Ranch SP starting in 2030

### 4.3. New Sources of Water Due to Project

There are three sources of water supply that will result from the development of Rancho San Gorgonio, including stormwater recharge, recycled water, and return flows from irrigation.

#### 4.3.1. Stormwater Recharge

The project lies over the Banning and Cabazon Storage Units. The project is planning to implement various techniques that will increase percolation and recharge opportunities within the project area, which at a minimum will limit the decrease in percolation due to development. Furthermore, the proposed retention basins, pervious pavement and other storm water quality best management practices will result in an increase in recharge, as storm runoff will be captured and retained (see below).

Natural percolation from large storm events is generally not very high in relation to the volume of runoff, however when a significant portion of that runoff is captured and retained, recharge will be enhanced. An estimate of the average volume of runoff that could be recharged is included below.

The Rancho San Gorgonio master planned community will further augment surface water recharge, through the network of retention and detention basins, that will capture not only small and large storm runoff, but nuisance flows from other urban uses.

An estimate of the volume of stormwater recharge is included in Tables 4-5 and 4-6 below. This estimate conservatively assumes that most rainfall from typical events (not larger storms) either runs off, evaporates, or is absorbed by vegetation, with essentially none being infiltrated naturally. Table 4-5 shows the average rainfall and evapotranspiration rates for the area, and only for those months where rainfall exceeds evapotranspiration.
Table 4-5: Rainfall and Evapotranspiration

<table>
<thead>
<tr>
<th></th>
<th>Jan</th>
<th>Feb</th>
<th>Dec</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rainfall (in)</td>
<td>3.1</td>
<td>3.0</td>
<td>2.4</td>
<td></td>
</tr>
<tr>
<td>ET¹ (in)</td>
<td>1.55</td>
<td>2.52</td>
<td>1.55</td>
<td></td>
</tr>
<tr>
<td>Infiltration (in) (Rainfall-ET)</td>
<td>1.55</td>
<td>0.48</td>
<td>0.85</td>
<td>2.88</td>
</tr>
</tbody>
</table>

¹ California Irrigation Management Information System. Data only shown for months where rainfall exceeds evapotranspiration.

It is assumed that the full balance of rainfall that does not evaporate will be captured by the retention basins proposed throughout the project. The retention basins are designed to contain the full 100-year 3-hour storm, which is a significant event and represents runoff in excess of typical, “average” storm events, therefore the provided storage volume will be sufficient to hold average storm events.

The estimated recharge is therefore 199 acre-feet per year per the table below. Per the MPD, over 90 acre-feet of retention capacity is proposed, sufficient to capture an average of 3 or more storm events per year.

Table 4-6: Estimate of Rainfall Recharge

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Area</td>
<td>830.8 acres</td>
<td></td>
</tr>
<tr>
<td>Infiltration</td>
<td>2.88 in</td>
<td></td>
</tr>
<tr>
<td><strong>Recharge Volume</strong></td>
<td>199 acre-ft</td>
<td></td>
</tr>
<tr>
<td>(Infiltration converted to feet multiplied by area)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4.3.2. Recycled Water generated from Project Effluent

Refer to Section 5 below for a discussion and calculation of irrigation demand for the project and the potential yield of recycled water from project effluent. The project will contribute flows sufficient to generate approximately 470 acre-feet per year of recycled water. The project will utilize approximately 218 acre-feet per year for common area irrigation, leaving 252 acre-feet per year for use elsewhere throughout the city, offsetting the use of potable water for irrigation and other allowed uses of recycled water.
4.3.3. Return flows from Irrigation

Refer to Section 4.8 of the 2010 UWMP for a discussion regarding return flows, which are defined to be 25% of irrigation water. These flows are not absorbed by plants, but instead infiltrate into the ground and eventually into the aquifer, replenishing basin storage. Only the recycled water generated from effluent from this project is included in the return flow analysis, as the private area irrigation will be minimized per water conservation ordinances and codes. From the analysis in Section 5 for recycled water yield from project effluent, approximately 470 acre-feet per year can be utilized for irrigation, with 25%, 118 acre-feet per year, recharging the aquifers as return flows.

4.4. Proposed Water Demand Factors

The UWMP establishes 315 gallons per day per capita as the baseline water demand. The baseline figure is prior to the impacts of the “20x2020” requirement. Table 4-7 below utilizes these projected city-wide demand rates for determining the impact from Rancho San Gorgonio, with a 10% reduction included for 2015 (283 gpd), and the full 20% reduction by 2020 and thereafter (252 gpd).
<table>
<thead>
<tr>
<th>Water Use Sectors</th>
<th>Average % Use of Water Supply 2005-2010</th>
<th>2015</th>
<th>2020</th>
<th>2025</th>
<th>2030</th>
<th>2035</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Population(^2)</td>
<td>0</td>
<td>1170</td>
<td>2973</td>
<td>8065</td>
<td>8936</td>
<td></td>
</tr>
<tr>
<td>Per Capita Water Use [gpcd](^2)</td>
<td>283</td>
<td>252</td>
<td>252</td>
<td>252</td>
<td>252</td>
<td></td>
</tr>
<tr>
<td>Single Family Residential</td>
<td>56.2%</td>
<td>0</td>
<td>185</td>
<td>472</td>
<td>1280</td>
<td>1417</td>
</tr>
<tr>
<td>Multi-family Residential</td>
<td>2.3%</td>
<td>0</td>
<td>8</td>
<td>19</td>
<td>52</td>
<td>58</td>
</tr>
<tr>
<td>Commercial/Institutional</td>
<td>26.2%</td>
<td>0</td>
<td>86</td>
<td>220</td>
<td>597</td>
<td>661</td>
</tr>
<tr>
<td>Industrial</td>
<td>1.2%</td>
<td>0</td>
<td>4</td>
<td>10</td>
<td>27</td>
<td>30</td>
</tr>
<tr>
<td>Irrigation</td>
<td>11.9%</td>
<td>0</td>
<td>39</td>
<td>100</td>
<td>271</td>
<td>300</td>
</tr>
<tr>
<td>Other</td>
<td>1.1%</td>
<td>0</td>
<td>4</td>
<td>9</td>
<td>25</td>
<td>28</td>
</tr>
<tr>
<td>Sales to other Agencies</td>
<td>1.1%</td>
<td>0</td>
<td>4</td>
<td>9</td>
<td>25</td>
<td>28</td>
</tr>
<tr>
<td>Total [acre-ft/yr](^4)</td>
<td>0</td>
<td>330</td>
<td>839</td>
<td>2277</td>
<td>2522</td>
<td></td>
</tr>
</tbody>
</table>

\(^1\) For more information regarding Land Use Factors and Water Use Sector percentages, refer to Section 3.1.2 of the 2010 UWMP.

\(^2\) See Table 4-1. This is the total projected build-out population of the project, not including a reduction due to the General Plan population of 3693 (1399 dwelling units multiplied by 2.54 persons per unit) already included in population projections in the 2010 UWMP.

\(^3\) There is a conversion factor of 892.7 gallons per day to per acre-feet per year. Per capita water use for 2015 and on is per the 2010 UWMP, and is based on a 10-year average, adjusted for the 20x2020 requirement. Refer to Section 3.2 of the 2010 UWMP.

\(^4\) The total demand calculated in this table is inaccurate because the per capita water use rates are not realistic for projections of new demand, as existing water use city-wide does not linearly increase due to new development (see Section 4.4). Further, these totals do not allow for the population of 3693 already included in the 2010 UWMP for the project area.

The totals in Table 4-7 do not reflect realistic potable water demand for the project. First, these numbers cannot be added to the assessment in the 2010 UWMP because the project area was already included in those calculations (1399 dwelling units, resulting in a population of 3693, per Section 4.2). Further, the reduction in dwelling units for the Butterfield Specific Plan is not factored (525 dwelling units, for a population of 1386, per Section 4.2). Second, the water demand factors assume new development will result in an increase in water proportional to current use. However, additional golf courses relying on potable water for irrigation will not be built, new car washes will utilize recycled water, common area irrigation in the project area will be irrigated with recycled water, are just a few examples inflated demand factors used in Table 4-7.

Therefore, in order to assess the impact Rancho San Gorgonio will have over the current 2010 UWMP projections, Table 4-7 is revised to eliminate the population being included already for the project area and the reduced maximum for the Butterfield Specific Plan. These factors are included in Table 4-4 above. Table 4-8 below incorporates these adjusted figures to estimate the project water demand per current city-wide projected usage rates.
Table 4-8 - Project Water Demand (increase over General Plan) 
Based on City-Wide Land Use Factors\(^1\) 
(with 20x2020 factored) [acre-ft]

<table>
<thead>
<tr>
<th>Water Use Sectors</th>
<th>Average % Use of Water Supply 2005-2010</th>
<th>2015</th>
<th>2020</th>
<th>2025</th>
<th>2030</th>
<th>2035</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Population(^1)</td>
<td></td>
<td>0</td>
<td>842</td>
<td>2234</td>
<td>5530</td>
<td>5991</td>
</tr>
<tr>
<td>Per Capita Water Use [gpcd](^2)</td>
<td></td>
<td>283</td>
<td>252</td>
<td>252</td>
<td>252</td>
<td>252</td>
</tr>
<tr>
<td>Single Family Residential</td>
<td>56.2%</td>
<td>0</td>
<td>134</td>
<td>355</td>
<td>877</td>
<td>950</td>
</tr>
<tr>
<td>Multi-family Residential</td>
<td>2.3%</td>
<td>0</td>
<td>5</td>
<td>15</td>
<td>36</td>
<td>39</td>
</tr>
<tr>
<td>Commercial/Institutional</td>
<td>26.2%</td>
<td>0</td>
<td>62</td>
<td>165</td>
<td>409</td>
<td>443</td>
</tr>
<tr>
<td>Industrial</td>
<td>1.2%</td>
<td>0</td>
<td>3</td>
<td>8</td>
<td>19</td>
<td>20</td>
</tr>
<tr>
<td>Irrigation</td>
<td>11.9%</td>
<td>0</td>
<td>28</td>
<td>75</td>
<td>186</td>
<td>201</td>
</tr>
<tr>
<td>Other</td>
<td>1.1%</td>
<td>0</td>
<td>3</td>
<td>7</td>
<td>17</td>
<td>19</td>
</tr>
<tr>
<td>Sales to other Agencies</td>
<td>1.1%</td>
<td>0</td>
<td>3</td>
<td>7</td>
<td>17</td>
<td>19</td>
</tr>
</tbody>
</table>

Increase over 2010 UWMP projections due to the net increase in dwelling units of 1461 [acre-ft/year]\(^2\) 0 238 631 1561 1691

\(^1\) For more information regarding Land Use Factors and Water Use Sector percentages, refer to Section 3.1.2 of the 2010 UWMP
\(^2\) See Table 4-4. Not including demand calculated in the 2010 UWMP for the project area (at lower General Plan densities) and with the reduction in maximum dwelling units for Butterfield Ranch Specific Plan, taking effect in 2030. Increase in dwelling units is per Section 4.2. There is a conversion factor of 892.7 gallons per day to per acre-feet per year. Per capita water use for 2015 and on is per the 2010 UWMP, and is based on a 10-year average, adjusted for the 20x2020 requirement. Refer to Section 3.2 of the 2010 UWMP.

Table 4-8 requires additional refinement to better estimate the expected water demand for Rancho San Gorgonio. As an assessment of recent, actual water use demonstrates, the City of Banning is already using water at the 20% (20x2020) reduction rate. However, this project will have a lower water usage than existing development in the city has, with new water conserving requirements and methods now in effect, as described below.

Most significantly, this project will utilize recycled water for common area landscaping. As shown in Section 5.7 below, there is a projected irrigation demand of 218 acre-feet per year at build-out, which will be supplied by nonpotable water (see Section 5 for a discussion on sources of recycled water). Further, it is anticipated that the project will generate ef fluent sufficient for 470 acre-feet per year of recycled water (Section 5.5 below), with the excess capacity of 252 acre-feet per year and/or contributing to recycled water demand throughout the city or being recharged back into the groundwater basins for reuse via the WWTP.
Potable water use for irrigation of private landscaping will be restricted by the Rancho San Gorgonio Specific Plan and by city ordinance, by requiring low-water-use and drought-tolerant species, and by requiring efficient irrigation. City Ordinance 1012 estimates a reduction in irrigation of two-thirds, and (conservatively) estimates outdoor irrigation at 50% of total urban water usage.

Regarding indoor water use, high efficiency-low water use appliances and plumbing fixtures are now required by building code, and will be incorporated into new building construction for this project. Per the California Green Building Code, and consistent with 20x2020, it is estimated that indoor water reduction of 20% will be attained, at a minimum.

Therefore, a more applicable water demand factor needs to be determined for Rancho San Gorgonio. The 2010 UWMP estimates residential water demand to be 0.52 acre-feet per dwelling unit per year, or 464 gallons per dwelling unit per day. In order to assure a level of conservation, this figure is just reduced by 20%, consistent with the UWMP and 20x2020, but is not further reduced as will likely be the case as discussed above. Therefore, 464 gpd is reduced to 371 gpd, and utilizing the General Plan estimate of 2.64 persons per dwelling unit, the demand is converted to 141 gallons per capita per day.

These targets will be achieved in part through landscape and irrigation design standards included in the project Specific Plan. Furthermore, landscaping, irrigation, and building plumbing requirements will be enforced by the city at building permit issuance. As stated in the UWMP, the city has determined that current city ordinances, along with the building codes, will achieve at least a 20% reduction in water use. Again, as stated earlier, the additional emergency water use reductions are not being included in calculations in this WSA due to the unknown duration of those requirements. However, should those requirements remain for an extended period, actual water use will be significantly less than is projected herein.

### 4.5. Proposed Project Demands

From Table 4-3 above, the estimated increase in dwelling units is 1986 over what was analyzed in the 2010 UWMP. Per the City of Banning Water Master Plan (WMP, 1994), persons per dwelling is estimated at 2.64 across all residential density types. As discussed in Section 4.2, the Butterfield Ranch Specific Plan had a reduction of 525 units, resulting in a decrease in population of 1386. Therefore, the projected population increase at build-out will be 3857, changing the city-wide estimated build-out population to 84,083, using a 2.0% growth rate.

However, as the project is anticipated to be built out in 18 years, this population increase, as shown in Table 4-1 above, is utilized in the calculations. Note that projections in this WSA will follow the time horizon used in the UWMP for consistency.

Encompass Associates, Inc.
Table 4-9 shows the estimated project demand, utilizing the adjusted demand of 141 gpcd from Section 4.3 and 4.4 above.
# Table 4-9 - Total Project Water Demand

With Adjusted Demand Rates [acre-ft]

<table>
<thead>
<tr>
<th>Water Use Sectors(^1)</th>
<th>Expected Average % Use of Water Supply</th>
<th>2015</th>
<th>2020</th>
<th>2025</th>
<th>2030</th>
<th>2035</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Population(^2)</td>
<td>0</td>
<td>1170</td>
<td>2973</td>
<td>8065</td>
<td>8936</td>
<td></td>
</tr>
<tr>
<td>Per Capita Water Use ([gpcd])^3</td>
<td>141</td>
<td>141</td>
<td>141</td>
<td>141</td>
<td>141</td>
<td></td>
</tr>
<tr>
<td>Single Family Residential</td>
<td>67.6%</td>
<td>0</td>
<td>223</td>
<td>567</td>
<td>1538</td>
<td>1704</td>
</tr>
<tr>
<td>Multi-family Residential</td>
<td>32.4%</td>
<td>0</td>
<td>107</td>
<td>272</td>
<td>739</td>
<td>818</td>
</tr>
<tr>
<td>Commercial/Institutional</td>
<td>0.0%</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Industrial</td>
<td>0.0%</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Irrigation</td>
<td>0.0%</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>0.0%</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Sales to other Agencies</td>
<td>0.0%</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total [acre-ft/yr]</strong></td>
<td>0</td>
<td>185</td>
<td>469</td>
<td>1274</td>
<td>1411</td>
<td></td>
</tr>
</tbody>
</table>

\(^1\) Water Use Sectors based on Specific Plan Statistics. Mixed use PA included in Multi-family Residential. Common areas to be irrigated with nonpotable recycled water.

\(^2\) See Table 4-1.

\(^3\) There is a conversion factor of 832.7 gallons per day to per acre-feet per year. Per capita water use per City Ordinance 1012 for outdoor water use, and CalGreen Building Code for indoor water use (20% reduction). Refer to Section 4.3.

In order to assess the impact the project will have on the projections made in the 2010 UWMP, two methodologies are set forth below. First, projections are made based on city-wide demand factors, which conservatively, apply current city water use rates to all future development, including Rancho San Gorgonio. These numbers are shown in Table 4-10 below, and modify Table 3-2 (2010 UWMP Current Projected City-wide Water Demand) with the calculated increases from the project, shown in Table 4-8.
Table 4-10 - Proposed Projected City Water Demand - Based on City-wide Land Use Factors\(^1\)
(with 20x2020 factored) [acre-ft]

<table>
<thead>
<tr>
<th>Water Use Sectors(^1)</th>
<th>Average % Use of Water Supply 2005-2010</th>
<th>2015</th>
<th>2020</th>
<th>2025</th>
<th>2030</th>
<th>2035</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population(^2)</td>
<td></td>
<td>30491</td>
<td>36928</td>
<td>42076</td>
<td>49519</td>
<td>54558</td>
</tr>
<tr>
<td>Per Capita Water Use [gpcd](^3)</td>
<td></td>
<td>283</td>
<td>252</td>
<td>252</td>
<td>252</td>
<td>252</td>
</tr>
<tr>
<td>Single Family Residential</td>
<td>56.2%</td>
<td>5440</td>
<td>5858</td>
<td>6675</td>
<td>7856</td>
<td>8655</td>
</tr>
<tr>
<td>Multi-family Residential</td>
<td>2.3%</td>
<td>223</td>
<td>240</td>
<td>273</td>
<td>321</td>
<td>354</td>
</tr>
<tr>
<td>Commercial/Institutional</td>
<td>26.2%</td>
<td>2536</td>
<td>2731</td>
<td>3112</td>
<td>3662</td>
<td>4035</td>
</tr>
<tr>
<td>Industrial</td>
<td>1.2%</td>
<td>116</td>
<td>125</td>
<td>143</td>
<td>168</td>
<td>185</td>
</tr>
<tr>
<td>Irrigation</td>
<td>11.9%</td>
<td>1152</td>
<td>1240</td>
<td>1413</td>
<td>1663</td>
<td>1833</td>
</tr>
<tr>
<td>Other</td>
<td>1.1%</td>
<td>106</td>
<td>115</td>
<td>131</td>
<td>154</td>
<td>169</td>
</tr>
<tr>
<td>Sales to other Agencies</td>
<td>1.1%</td>
<td>106</td>
<td>115</td>
<td>131</td>
<td>154</td>
<td>169</td>
</tr>
<tr>
<td>Total [acre-ft/yr]</td>
<td></td>
<td>9679.8</td>
<td>10424</td>
<td>11878</td>
<td>13978</td>
<td>15400</td>
</tr>
</tbody>
</table>

\(^1\) For more information regarding Land Use Factors and Water Use Sector percentages, refer to Section 3.1.2 of the 2010 UWMP.

\(^2\) Population from Table 3-2 plus increase from Table 4-4. Not including population in the 2010 UWMP for the project area (at lower General Plan densities) and with the reduction in maximum dwelling units for Butterfield Ranch Specific Plan, taking effect in 2030.

\(^3\) There is a conversion factor of 892.7 gallons per day to per acre-foot per year. Per capita water use for 2015 and on is per the 2010 UWMP, and is based on a 10-year average, adjusted for the 20x2020 requirement. Refer to Section 3.2 of the 2010 UWMP.

Table 4-10 presents the city water demand projections from the 2010 UWMP with a net increase of 1461 dwelling units (3857 population increase) due to the project, but at unrealistic per capita rates and city-wide demand factors.

As discussed in Section 4.4 above, the city-wide water demand use factors misrepresent realistic water use demand rates expected for Rancho San Gorgonio. Therefore, the impact on projected city water demand is further assessed, with Table 4-11 below relying on the residential rate of 76 gpcd determined in Section 4.4 above.
Table 4-11 - Proposed Projected City Water Demand [acre-ft]
Non-Project Demand Based on City-wide Land Use Factors (with 20x2020)

Project Demand Based on Residential Per Capita Usage Rates

<table>
<thead>
<tr>
<th>Water Use Sectors</th>
<th>Average % Use of Water Supply 2005-2010</th>
<th>2015</th>
<th>2020</th>
<th>2025</th>
<th>2030</th>
<th>2035</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population (per General Plan)</td>
<td>30491</td>
<td>36086</td>
<td>39842</td>
<td>43989</td>
<td>48567</td>
<td></td>
</tr>
<tr>
<td>less RSG's current (General Plan) project area population and Butterfield SP Reduction</td>
<td>-328</td>
<td>-739</td>
<td>-2535</td>
<td>-2945</td>
<td>-2945</td>
<td></td>
</tr>
<tr>
<td>Adjusted Population, without Project</td>
<td>30491</td>
<td>35758</td>
<td>39103</td>
<td>41454</td>
<td>45622</td>
<td></td>
</tr>
<tr>
<td>Per Capita Water Use [gpcd]</td>
<td>283</td>
<td>252</td>
<td>252</td>
<td>252</td>
<td>252</td>
<td></td>
</tr>
<tr>
<td>Single Family Residential</td>
<td>56.2%</td>
<td>5440</td>
<td>5673</td>
<td>6203</td>
<td>6576</td>
<td>7237</td>
</tr>
<tr>
<td>Multi-family Residential</td>
<td>2.3%</td>
<td>223</td>
<td>232</td>
<td>254</td>
<td>269</td>
<td>296</td>
</tr>
<tr>
<td>Commercial/Institutional</td>
<td>26.2%</td>
<td>2536</td>
<td>2645</td>
<td>2892</td>
<td>3066</td>
<td>3374</td>
</tr>
<tr>
<td>Industrial</td>
<td>1.2%</td>
<td>116</td>
<td>121</td>
<td>132</td>
<td>140</td>
<td>155</td>
</tr>
<tr>
<td>Irrigation</td>
<td>11.9%</td>
<td>1152</td>
<td>1201</td>
<td>1314</td>
<td>1392</td>
<td>1532</td>
</tr>
<tr>
<td>Other</td>
<td>1.1%</td>
<td>106</td>
<td>111</td>
<td>121</td>
<td>129</td>
<td>142</td>
</tr>
<tr>
<td>Sales to other Agencies</td>
<td>1.1%</td>
<td>106</td>
<td>111</td>
<td>121</td>
<td>129</td>
<td>142</td>
</tr>
<tr>
<td>Subtotal [acre-ft/yr]</td>
<td>9679.8</td>
<td>10094</td>
<td>11038</td>
<td>11701</td>
<td>12878</td>
<td></td>
</tr>
<tr>
<td>Project Population</td>
<td>1170</td>
<td>2973</td>
<td>8065</td>
<td>8936</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Per Capita Water Use [gpcd]</td>
<td>141</td>
<td>141</td>
<td>141</td>
<td>141</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subtotal, Project [acre-ft/yr]</td>
<td>185</td>
<td>469</td>
<td>1274</td>
<td>1411</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gross Total</td>
<td>10279</td>
<td>11507</td>
<td>12975</td>
<td>14289</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase over (decrease from) current projections</td>
<td>96</td>
<td>264</td>
<td>562</td>
<td>584</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional infiltration recharge due to project</td>
<td>(26)</td>
<td>(66)</td>
<td>(180)</td>
<td>(199)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional recycled water available to reduce potable use elsewhere in the city</td>
<td>(33)</td>
<td>(84)</td>
<td>(227)</td>
<td>(252)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Return flows from irrigation (25% of recycled water generated)</td>
<td>(15)</td>
<td>(39)</td>
<td>(106)</td>
<td>(118)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Total: Increase (decrease) in demand less project-generated sources</td>
<td>22</td>
<td>75</td>
<td>49</td>
<td>16</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. For more information regarding Land Use Factors and Water Use Sector percentages, refer to Section 3.1.2 of the 2010 UWMP. Per capita water use for 2015 and on is per the 2010 UWMP, and is based on a 10-year average, adjusted for the 20x2020 requirement. Refer to Section 3.2 of the 2010 UWMP.
2. Project Per capita water use per City Ordinance 1012 for outdoor water use, and CalGreen Building Code for indoor water use (20% reduction). Refer to Section 4.3.
3. General Plan Population per 2010 UWMP Table 2-3, with 2015 population from California Department of Finance, Report E-S.
4. Removing population included in the 2010 UWMP for the project area (at lower General Plan densities) and the 1386 reduction in maximum population from the Butterfield Ranch Specific Plan. See Table 4-4.
5. There is a conversion factor of 892.7 gallons per day to per acre-feet per year.
6. See Table 4-1.
> Gross Total minus Total from Table 3-2.
> Additional stormwater captured and infiltrated above the existing condition. See Section 4-3 and Section 5.
> Project effluent treated and processed into recycled water for irrigation purposes elsewhere throughout the city. Recycled water use on-site is already factored by not increasing potable demand. See Section 4-3 and Section 5.
> See Section 4-3.
> Increase over (decrease from) current projections minus project stormwater recharge, recycled water use elsewhere in the city, and return flows from irrigation.

Table 4-11 represents the realistic demand Rancho San Gorgonio will have on city potable water. The projections in the 2010 UWMP are incorporated, modified to reflect the increase in population from the project, with water usage rates which are representative of how Rancho San Gorgonio will be developed, including the effects of indoor and outdoor water conservation measures, the use of recycled water for irrigation, and due to stormwater capture and recharge improvements. Based on the resulting net total water demand, the city will be able to provide potable water to the project.

4.6. Evaluation of UWMP to meet Project Demand

Current supply projections are included in the UWMP (Table 5-9), based on past record data, with projections based on the trends established by that actual data. Those projects have been modified to include the Water Basin Account Balance, as per the table on page 42 of "Maximum Perennial Yield Estimates for the Banning and Cabazon Storage Units, and Available Water Supply from the Beaumont Basin", Geoscience Support Services, Inc., 2011.

The basin account balance represents surplus water, annually, that the city does not draw but which it has the right to pump. The city has not been drawing its full allotment, therefore the water account balance has been increasing, and is projected to increase over time.
### Table 4-12: Supply and Demand (20x2020) Comparisons - Current City UWMP - Without Project (UWMP Table 5-9) [acre-ft]

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2015</th>
<th>2020</th>
<th>2025</th>
<th>2030</th>
<th>2035</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Average Water Years</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Supply</td>
<td>9,552</td>
<td>15,563</td>
<td>15,792</td>
<td>16,045</td>
<td>16,323</td>
<td>16,628</td>
</tr>
<tr>
<td>Total Demand</td>
<td>7,586</td>
<td>9,680</td>
<td>10,183</td>
<td>11,243</td>
<td>12,413</td>
<td>13,705</td>
</tr>
<tr>
<td><strong>Supply Surplus</strong></td>
<td>1,966</td>
<td>5,883</td>
<td>5,609</td>
<td>4,802</td>
<td>3,910</td>
<td>2,923</td>
</tr>
<tr>
<td><strong>Single-dry Water Years</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Supply</td>
<td>N/A</td>
<td>12,043</td>
<td>12,314</td>
<td>12,608</td>
<td>12,928</td>
<td>13,235</td>
</tr>
<tr>
<td>Total Demand</td>
<td>N/A</td>
<td>9,162</td>
<td>9,638</td>
<td>10,642</td>
<td>11,749</td>
<td>12,972</td>
</tr>
<tr>
<td><strong>Supply Surplus</strong></td>
<td>N/A</td>
<td>2,881</td>
<td>2,676</td>
<td>1,966</td>
<td>1,179</td>
<td>263</td>
</tr>
<tr>
<td><strong>Multiple-dry Water Years</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Supply</td>
<td>N/A</td>
<td>12,784</td>
<td>13,038</td>
<td>13,316</td>
<td>13,619</td>
<td>13,926</td>
</tr>
<tr>
<td>Total Demand</td>
<td>N/A</td>
<td>7,635</td>
<td>8,032</td>
<td>8,868</td>
<td>9,791</td>
<td>10,810</td>
</tr>
<tr>
<td><strong>Supply Surplus</strong></td>
<td>N/A</td>
<td>5,149</td>
<td>5,006</td>
<td>4,448</td>
<td>3,828</td>
<td>3,116</td>
</tr>
</tbody>
</table>

† See Section 5.1 of the 2010 UWMP for the discussion of Average, Single-dry, and Multiple-dry Water Years.

With the proposed project, the table above has been revised below to include the project demands. Table 4-13 below conservatively uses the city-wide demand factors for the project as calculated in Table 4-8, and projected out including city demand in Table 4-10.

### Table 4-13: Supply and Demand (20x2020) Comparisons - Current City UWMP With Project, Using Conservative City-Wide Demand Factors [acre-ft]

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2015</th>
<th>2020</th>
<th>2025</th>
<th>2030</th>
<th>2035</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Average Water Years</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Supply</td>
<td>9,552</td>
<td>15,563</td>
<td>15,792</td>
<td>16,045</td>
<td>16,323</td>
<td>16,628</td>
</tr>
<tr>
<td>Total Demand</td>
<td>7,586</td>
<td>9,680</td>
<td>10,183</td>
<td>11,243</td>
<td>12,413</td>
<td>13,705</td>
</tr>
<tr>
<td><strong>Supply Surplus</strong></td>
<td>1,966</td>
<td>5,883</td>
<td>5,609</td>
<td>4,802</td>
<td>3,910</td>
<td>2,923</td>
</tr>
<tr>
<td><strong>Single-dry Water Years</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Supply</td>
<td>N/A</td>
<td>12,043</td>
<td>12,314</td>
<td>12,608</td>
<td>12,928</td>
<td>13,235</td>
</tr>
<tr>
<td>Total Demand</td>
<td>N/A</td>
<td>9,162</td>
<td>9,638</td>
<td>10,642</td>
<td>11,749</td>
<td>12,972</td>
</tr>
<tr>
<td><strong>Supply Surplus</strong></td>
<td>N/A</td>
<td>2,881</td>
<td>2,676</td>
<td>1,966</td>
<td>1,179</td>
<td>263</td>
</tr>
<tr>
<td><strong>Multiple-dry Water Years</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Supply</td>
<td>N/A</td>
<td>12,784</td>
<td>13,038</td>
<td>13,316</td>
<td>13,619</td>
<td>13,926</td>
</tr>
<tr>
<td>Total Demand</td>
<td>N/A</td>
<td>7,635</td>
<td>8,032</td>
<td>8,868</td>
<td>9,791</td>
<td>10,810</td>
</tr>
<tr>
<td><strong>Supply Surplus</strong></td>
<td>N/A</td>
<td>5,149</td>
<td>5,006</td>
<td>4,448</td>
<td>3,828</td>
<td>3,116</td>
</tr>
</tbody>
</table>

† See Section 5.1 of the 2010 UWMP for the discussion of Average, Single-dry, and Multiple-dry Water Years.
* See “UWMP Table 4-4” revised in Section 3.2 above. Projected shortfalls will be mitigated by the city’s water account balance.
In this worst-case scenario, utilizing conservative city-wide demand factors, Table 4-13 demonstrates that there will be sufficient supply to support the proposed project in all cases except for Single-dry Water Years starting in 2030. Table 4-14 provides a comparison of the projected water account balance with the Single-dry Water Year shortfalls, indicating that there is a substantial surplus of water.
Table 4-14: Single-dry Water Year Surplus or Shortfall and Water Account Balance - With Project using Conservative City-wide Demand Factors [acre-ft]

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2015</th>
<th>2020</th>
<th>2025</th>
<th>2030</th>
<th>2035</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supply Surplus</td>
<td>N/A</td>
<td>2,881</td>
<td>2,448</td>
<td>1,366</td>
<td>-302*</td>
<td>-1,341*</td>
</tr>
<tr>
<td>Water Account Balance*</td>
<td>30,549</td>
<td>46,869</td>
<td>56,984</td>
<td>65,187</td>
<td>72,610</td>
<td>79,301</td>
</tr>
<tr>
<td>Sufficient Water Account Balance</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

* See “UWMP Table 4-4” revised in Section 3.2 above. Projected shortfalls will be mitigated by the city’s water account balance.

A more realistic assessment of projected supply and demand is provided in Table 4-15 below, relying on a project water demand of 141 gpcd, expected to be the likely usage rate based on current water conservation ordinances and code, as discussed in Section 4.4.

Table 4-15: Supply and Demand Comparisons - Total of Non-Project Based on Land Use Factors (with 20×2020)\(^1\) plus Project based on Residential Per capita usage rates\(^2\) [acre-ft]

<table>
<thead>
<tr>
<th></th>
<th>Average Water Years(^3)</th>
<th>Single-dry Water Years</th>
<th>Multiple-dry Water Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2010</td>
<td>2015</td>
<td>2020</td>
</tr>
<tr>
<td>Total Supply</td>
<td>9,552</td>
<td>15,563</td>
<td>15,792</td>
</tr>
<tr>
<td>Total Demand</td>
<td>7,586</td>
<td>9,680</td>
<td>10,205</td>
</tr>
<tr>
<td>Supply Surplus</td>
<td>1,966</td>
<td>5,883</td>
<td>5,587</td>
</tr>
<tr>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>12,784</td>
<td>13,038</td>
<td>13,316</td>
</tr>
<tr>
<td>Supply Surplus</td>
<td>N/A</td>
<td>5,149</td>
<td>4,989</td>
</tr>
</tbody>
</table>
As summarized in Table 4-15 above, the increase in potable water demand from the project will be mitigated by increases in stormwater recharge, recycled water utilized for irrigation, and return flows from irrigation, such that the city will be able to adequately serve the project, consistent with the current projections in the 2010 UWMP.

This analysis reflects projected supplies that the city has physical access to and the legal right to acquire and provide.

An additional assessment is required to determine if the city has the current capacity, in terms of well production, to meet these demands on a daily basis. Table 4-2 of the UWMP summarizes the current system well capacity. The historical low capacity of 28,754 acre-feet per year exceeds the total city demand of 15,400 acre-feet per year in 2035. Therefore, there is current system pumping capacity.

### 4.7. Proposed Source of New Supply

As shown in Section 4.6 above, new sources of supply are not required to support the project. This is due largely to the following:

1. As stated above, the city has taken measures to comply with the state-mandated “20 by 2020” water reduction program. The various water conservation measures taken by the city come into effect and are enforced during the building construction process. This is included in the projections made in this WSA.

2. The pending completion of the State Department of Water Resources’ (along with SGPWA) East Branch Expansion Phase II project, which will bring additional capacity for State Water Project water to the area. This capacity is included in the projections made in this WSA.

3. The proposed use of recycled water for common area irrigation for the project. As shown above, the project will generate more effluent for generation of recycled water than can be utilized for irrigation on-site. The fact that potable water will not be used for common area irrigation is included in the projections made in this WSA, however the benefit provided due to the surplus recycled water, whether it is used elsewhere in the city, or by being recharged into the groundwater basin, is not included in the projections herein, and thereby adds a level of conservation to the supply calculations.

4. Integrated Storm Water Quality provisions are proposed throughout the Rancho San Gorgonio master planned community. The primary concept is for all storm runoff to
be conveyed to a system of infiltration basins prior to discharge to the creek system. These infiltration basins not only capture storm runoff, but every day nuisance water as well, and in turn recharge the underlying groundwater basins. Per the project Preliminary (Storm) Water Quality Management Plan, the basin system has been designed for a WQ volume of 316,681 cubic feet, or 7.3 acre-feet, and over 90 acre-feet of retention capacity for the 100-year 3-hour storm.

Even though new sources of water are not required for this project, there are additional opportunities to increase supply to the city’s potable water system. Some of these sources are discussed below.

### 4.7.1. Recycled water “displacement” of potable use

Better utilization of recycled water for nonpotable water uses, such as irrigation, can effectively create additional sources of potable water by displacing (reducing) potable water demand. There are two general types of sources of recycled water potentially available to the City of Banning. The first type includes the city’s plan to improve the existing WWTP to convert a portion of treated wastewater to recycled water. The second type is direct use of well water from underground sources not suitable for potable use, including portions of the Cabazon Basin such as Well R1, already impacted by the city’s WWTP infiltration ponds, and other wells in the city not currently meeting potable drinking water standards. Using these sources for irrigation will free up potable water currently used for that purpose.

For example, city Well M12 currently exceeds the newly established Chromium-6 standards and if left untreated, will not be viable for potable water use. The city is designing a connection from M12 to the existing recycled water line. The recycled water line can already serve the Sun Lakes Golf Course. The golf course is currently supplied by potable sources for irrigation. The current irrigation demand of Sun Lakes is about 1100 ac-ft/year. If recycled or other sources replace this demand, the city’s supply would increase.

### 4.7.2. Interagency connections

Another source of recycled water is from BCVWD to the west. BCVWD operates a recycled water line in Highland Springs Road at Sun Lakes Boulevard. A short gap of approximately three-quarters of a mile exists between the city’s recycled water line and BCVWD’s.

Connections already exist between the city potable water system and BCVWD’s potable water system at Oak Valley Parkway and Highland Springs Road. This could leverage not only BCVWD’s system, but also Yucaipa Valley Water District’s (YVWD) system, as BCVWD and

Encompass Associates, Inc.
YVWD are working on an agreement for YVWD to provide BCVWD with recycled water, thereby freeing up more potable water supply by displacing current nonpotable uses.

4.8. Permits Required for New Supply

As shown in Section 4.6 above, new sources of supply are not required to support the project.

4.9. Estimate of the Cost and Schedule for New Supply

As shown in Section 4.6 above, new sources of supply are not required to support the project.

4.10. Proposed Project Water System

A system of water main pipelines will be installed throughout the project, with larger lines serving as the backbone infrastructure, which in turn will serve smaller local waterlines distributed throughout the various planning areas.

There will be at a minimum two points of connection to the existing city water system. It is anticipated that the project will connect to the city's "Main" pressure zone in Sunset or Westward, at the westerly or northwesterly portion of the project. A second main connection will likely be on San Gorgonio Avenue, which is in the city's "Lower" pressure zone. It is anticipated that a pressure reducing valve will be required with at least the connection to the "Main" pressure zone in order to safely and efficiently serve the project. At this time, this new zone is titled "Intermediate Pressure Zone".

The project "Master Plan of Water" report estimates the size of the various pipelines, and assesses the need for emergency storage and fire suppression capacities.

An independent recycled water system is a proposed alternative to traditional irrigation from potable water sources for this master planned community. See Section 5 for a description of the recycled water system.
4.11. Summary

Based on current city supply and demand, the additional demand anticipated by this project will not impact the city’s current, projected water supply, as demonstrated in Table 4-15 above. In an extremely conservative analysis, there may be a minor shortfall in projected water supply for a particularly dry year (see Table 4-13 above, years 2030-2035), and for only a specific 5 to 10 year period. As demonstrated in Table 4-14 above, the city is projected to have a significant amount of water available in storage, confirming that even in a very conservative analysis, there will be a large surplus of potable water. And as set forth in Table 4-11, with project demand based on water conservation measures, with recycled water for common area irrigation, and with additional recharge of captured stormwater, the city will have an increase in net water balance of 16 acre-feet per year in year 2035 (a maximum increase of 75 acre-feet is estimated for 2025 due to the project being built faster than city growth was anticipated to occur in the UWMP).

The conservative analysis in the WSA assumes a higher per capita water use than has actually occurred on average in the city for the past 15 years.

The conservative analysis in the WSA does not allow for building codes which will require new homes to be constructed with water-saving fixtures and appliances, and that outdoor irrigation standards currently in effect and anticipated to be in effect for this project, will further reduce water usage.

The conservative analysis in the WSA does not allow for homes which will utilize less area for private landscaping than would be allowed per current city zoning. This will result in less demand for irrigation water.

The conservative analysis in the WSA does not allow for the use of storm water quality BMPs to retain storm runoff from both small and large storms, increasing surface water recharge of the underlying aquifers. For normal rainfall years, this can amount to 199 acre-feet per year, replenishing water storage at a potential rate of about 8% of conservative demand.

The conservative analysis in the WSA does not allow for the use of recycled water to irrigate common area landscaping, including street parkways and medians, parks and trails.

The procedures required to estimate the impact a new project will have on city water use go beyond quantifying the additional amount of water used in the new homes. The UWMP uses an estimated per capita water demand that is based on actual total city water usage, including water used to irrigate parks, street medians and parkways, water used in businesses, schools and city buildings. The total water needed for the city, not just from residences, is included in the per capita demand estimates.

New development places increased demands on city services, requiring more police and fire and similar personnel, and ultimately supporting more commercial and retail businesses. Additionally, with new development, more infrastructure, such as parks and streets, are...
required. Therefore, the conservative analysis in the WSA extends the current condition and current demand rates; the total amount of water used in the city, divided by the population, results in a city-wide per person demand. This calculation is higher than just water use from residences. Applying this same methodology to Rancho San Gorgonio results in a substantial overage of the water demand projection, as this project will not irrigate common areas with potable water. As shown in the next section, the offset of recycled water for this project is estimated to be 218 acre-feet/year, which essentially amounts to an 8% reduction in potable water demand.

Therefore, even with the potential need to draw a small amount of water from the basin storage account for a particularly dry year sometime in the future, that would only occur if water usage within the project significantly exceeds what is expected. It is thus demonstrated with this WSA that the City of Banning’s total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the projected water demand associated with the proposed project, in addition to the city’s existing and planned future uses, including agricultural and manufacturing uses.

In regards to the current drought conditions, the Governor’s Executive Order requires the city to reduce per capita water use by 32%, not total water use by 32%. A new project like Rancho San Gorgonio makes achieving a lower per capita water use level much more attainable, as outlined above. So while actual water use will increase, it will increase at a lower rate per person, thereby helping the city as a whole use less water per capita.
5. Recycled Water System

5.1. Introduction

The Rancho San Gorgonio project is proposing to utilize recycled water for all common area irrigation demands. This includes median and parkway landscape areas along the major streets within the project, as well as at the various public parks and paseos throughout the master planned community. Landscaping on private property at residences will be irrigated with domestic, potable water.

A recycled water system would reduce the amount of potable water required to serve the proposed project, while at the same time reducing the impact to the existing sewer system and waste water treatment facility. There would be an added expense due to the additional facilities required to support a recycled water system.

5.2. Proposed (City) Recycled Water System

At present, the city is in the process of establishing a centralized recycled water system. Termed Segment A, pipelines have been installed in future Westward Avenue (unimproved portions) from Highland Home Road at Sun Lakes Boulevard to Sunset Avenue, then north on Sunset Avenue to Lincoln Street, and in Lincoln Street to 22nd Street. Segment B is planned to continue in Lincoln Street to San Gorgonio Avenue, and Segment C will continue in Lincoln Avenue easterly to Hathaway Street, south in Hathaway Street to Charles Street, and in Charles Street easterly to the WWTP. Expansion of the WWTP to generate recycled water has been approved and funded, with construction ready to commence, but work has not yet begun.
5.3. Recycled Water Delivery Options

A possible option is for a satellite package waste water treatment plant to be constructed, either somewhere within the limits of the community, such as PA 16-A, or at a strategic location nearby. Anticipated end-users of recycled water within the city are golf courses, schools, parks and Caltrans.

More likely, a connection would be made to the pipeline the city is currently constructing. The recycled water would be produced at the upgraded city WWTP. Connections could be made at Westward and Sunset Avenues, or up to Lincoln Avenue via 8th or 22nd Streets.

Regardless of the ultimate source of recycled water, a system of pipelines will be required throughout the project. See Exhibit 5-2 for the proposed location of the on-site recycled water system, as well as the location of the points of connection anticipated at this time.

5.4. Projected Collection of Sewage available for Recycled Water

Based on figures outlined in the city’s Sewer Master Plan (2006), the project is estimated to generate 0.839 MGD of sewage, or a peak amount of 1.4 MGD.

<table>
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<tr>
<th>Land Use</th>
<th>Factor</th>
<th>Unit</th>
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<th>MGD</th>
<th>Proposed DU or AC MGD</th>
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Note: Park area includes PA 10, PA 11 and 12 only.
*Peaking factor is from 2006 SSS (see Section 3.1 of the MPS for the formula, dry weather)
5.5. Estimated amount of Recycled Water available for Landscape Irrigation

Per Section 5.4 above, the project could provide 0.839 MGD of sewage for treatment and conversion to recycled water. A membrane bioreactor (MBR) wastewater treatment plant is proposed and discussed in detail in the project Master Plan of Sewer (MPS). With a conservative yield of 50%, the plant could generate at least 470 acre-feet per year (50% of 0.839 MGD converted to acre-feet per year) of recycled water for common area landscape irrigation use.

As the peak demand for irrigation does not generally coincide with the peak generation of sewage, storage capacity would be required to accommodate peak irrigation needs. Alternatives to storage would be to supplement with domestic water as needed, tie into an off-site source of recycled water, or tie into an off-site sewerline to draw wastewater as needed.

5.6. Estimated demand for Recycled Water

Based on preliminary calculations in the project Master Plan of Water, there are approximately 78 acres of common area landscaping for which recycled water is anticipated to be utilized for irrigation. Those areas include street parkways and medians, Paseos and creek setback areas, and significant portions of the large proposed parks. There will be a mix of turf and drought-tolerant landscaping watered with recycled water. Per the MPW, an average demand of 194,356 gallons per day is estimated, or 218 acre-feet per year.

5.7. Projected Reduction in Potable Water Demand

A detailed study would be required to determine if all of the available wastewater could be used for irrigation purposes, depending on how the recycled water system is configured ultimately. It is assumed herein that all of the wastewater generated could be recycled into water for irrigation use (with a yield of 50%), therefore there would be a reduction of 470 acre-feet year in potable water demand for the city, and approximately 218 acre-feet year from the project, at build-out.
6. References


## City Of Banning
### Year End Water Production Report 2010
Prepared by
Pat Logan

### Acre Feet

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<thead>
<tr>
<th>Well #</th>
<th>Acre Ft This Year</th>
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### Total Acre Feet

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### Average Percent

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## City Of Banning
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Prepared by
Pat Logan

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<td><strong>Total Acre Feet</strong></td>
<td>94.39</td>
</tr>
</tbody>
</table>
## City Of Banning
### Year End Water Production Report 2014
Prepared by
Mike Lynch

<table>
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<tr>
<th>Well #</th>
<th>Acre Ft This Year</th>
<th>Acre Ft Last Year</th>
<th>Average Percent</th>
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<tr>
<td><strong>Beaumont Basin</strong></td>
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<tr>
<td>C2</td>
<td>533.62</td>
<td>111.49</td>
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<tr>
<td>C3</td>
<td>527.07</td>
<td>583.62</td>
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<tr>
<td>C4</td>
<td>865.88</td>
<td>881.77</td>
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<tr>
<td>M3</td>
<td>670.01</td>
<td>500.03</td>
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<tr>
<td><strong>Total</strong></td>
<td>2587.58</td>
<td>2076.92</td>
<td><strong>Total</strong></td>
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<td><strong>West Banning Basin</strong></td>
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<td></td>
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<tr>
<td>C5</td>
<td>580.91</td>
<td>758.63</td>
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<tr>
<td>M7</td>
<td>141.36</td>
<td>58.72</td>
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<tr>
<td>M10</td>
<td>301.37</td>
<td>268.75</td>
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<tr>
<td>M11</td>
<td>342.82</td>
<td>487.66</td>
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<tr>
<td>M12</td>
<td>168.30</td>
<td>260.40</td>
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<td><strong>Total</strong></td>
<td>1534.77</td>
<td>1806.15</td>
<td><strong>Total</strong></td>
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<tr>
<td><strong>East Banning Basin</strong></td>
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<td></td>
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<tr>
<td>C6</td>
<td>786.71</td>
<td>11.33</td>
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<td>R1</td>
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<td><strong>Total</strong></td>
<td>786.71</td>
<td>11.33</td>
<td><strong>Total</strong></td>
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<tr>
<td><strong>Banning Bench</strong></td>
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<tr>
<td>1 E.</td>
<td>987.67</td>
<td>983.07</td>
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<tr>
<td>3 P.</td>
<td>13.09</td>
<td>718.28</td>
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<td><strong>Total</strong></td>
<td>1000.76</td>
<td>1701.35</td>
<td><strong>Total</strong></td>
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<td><strong>Banning Water Canyon</strong></td>
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<td>4P.</td>
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<td>349.63</td>
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<tr>
<td>5P</td>
<td>0.00</td>
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<td>7</td>
<td>1781.74</td>
<td>2048.01</td>
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<td>9</td>
<td>0.00</td>
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<td>10</td>
<td>776.06</td>
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<td>0.00</td>
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<td>12</td>
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<td><strong>Total</strong></td>
<td>2557.80</td>
<td>3147.21</td>
<td><strong>Total</strong></td>
</tr>
<tr>
<td><strong>Received</strong></td>
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<td></td>
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</tr>
<tr>
<td>BCVWD</td>
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<td>0.00</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>0.00</td>
<td>0.00</td>
<td><strong>Total</strong></td>
</tr>
<tr>
<td><strong>Supplied</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>High Valley</td>
<td>69.44</td>
<td>63.91</td>
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<tr>
<td>Sun Lakes Irrigation</td>
<td>881.05</td>
<td>832.48</td>
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<tr>
<td><strong>Total</strong></td>
<td>950.49</td>
<td>916.39</td>
<td><strong>Total</strong></td>
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<tr>
<td><strong>Lost</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4W</td>
<td>0.00</td>
<td>7.21</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>33.68</td>
<td>39.99</td>
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<td><strong>Total</strong></td>
<td>33.68</td>
<td>47.19</td>
<td><strong>Total</strong></td>
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Total Acre Feet: 67.35

BCVWD: 0.00
BCVWD @ S L Blvd: 0.00
Total: 0.00
Total: 0.00

High Valley: 69.44
Sun Lakes Irrigation: 881.05
Total: 950.49

4W: 0.00
Other: 33.68
Total: 33.68

Lost: 0.00
Other: 0.40
Total: 0.40

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Beaumont Basin Watermaster

2014 Annual Report

DRAFT

EXCERPT

2014 Watermaster Board

Duane Burk, City of Banning, Chairman
George Jorritsma, South Mesa Water Company, Vice Chairman
Eric Fraser, Beaumont Cherry Valley Water District, Secretary
Joseph Zoba, Yucaipa Valley Water District, Treasurer
David Dillon, City of Beaumont

Alvarado Smith, Legal Counsel
ALDA Inc. in Association with Thomas Harder & Company, Engineering
Rogers, Anderson, Malody, and Scott. LLP, Financial Auditors

June 2015
### Table 3-6
Summary of Unused Overlying Water - Calendar Year Accounting (ac-ft)

<table>
<thead>
<tr>
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<th></th>
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</thead>
<tbody>
<tr>
<td>Annual Overlying Water Right</td>
<td>4,325.0</td>
<td>8,650.0</td>
<td>8,650.0</td>
<td>8,650.0</td>
<td>8,650.0</td>
<td>8,650.0</td>
<td>8,650.0</td>
<td>8,650.0</td>
<td>8,650.0</td>
<td>8,650.0</td>
<td>8,650.0</td>
<td>8,650.0</td>
</tr>
<tr>
<td>Annual Overlying Production</td>
<td>2,440.8</td>
<td>3,576.3</td>
<td>3,292.6</td>
<td>3,598.7</td>
<td>3,306.5</td>
<td>2,871.6</td>
<td>2,838.2</td>
<td>2,286.3</td>
<td>2,280.2</td>
<td>2,384.3</td>
<td>2,310.3</td>
<td>1,922.0</td>
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<td>Annual Deliveries by Appropriate</td>
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<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
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</tr>
<tr>
<td>Unused Overlying Water Right</td>
<td>1,884.2</td>
<td>5,073.7</td>
<td>5,357.4</td>
<td>5,053.3</td>
<td>5,343.5</td>
<td>5,778.4</td>
<td>5,811.8</td>
<td>6,364.7</td>
<td>6,369.8</td>
<td>6,255.7</td>
<td>6,339.7</td>
<td>6,728.0</td>
</tr>
</tbody>
</table>

### Table 3-7
Allocation of Unused Overlying Water -- Calendar Year Accounting (ac-ft)

<table>
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<tr>
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<tbody>
<tr>
<td>Banning, City of</td>
<td>31.43%</td>
<td>592.2</td>
<td>1,504.7</td>
<td>1,583.8</td>
<td>1,588.2</td>
<td>1,679.5</td>
<td>1,816.1</td>
<td>1,826.7</td>
<td>2,000.4</td>
<td>2,002.0</td>
<td>1,986.2</td>
<td>1,982.6</td>
<td>2,114.6</td>
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<tr>
<td>Beaumont, City of</td>
<td>0.00%</td>
<td>0.0</td>
<td>0.0</td>
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<td>0.0</td>
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<td>0.0</td>
<td>0.0</td>
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</tr>
<tr>
<td>Beaumont Cherry Valley WD</td>
<td>42.51%</td>
<td>801.0</td>
<td>2,156.8</td>
<td>2,277.4</td>
<td>2,148.1</td>
<td>2,271.5</td>
<td>2,456.4</td>
<td>2,470.6</td>
<td>2,705.6</td>
<td>2,707.8</td>
<td>2,659.3</td>
<td>2,695.0</td>
<td>2,860.1</td>
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<tr>
<td>South Mesa Water Company</td>
<td>12.48%</td>
<td>235.2</td>
<td>633.2</td>
<td>668.6</td>
<td>630.6</td>
<td>666.9</td>
<td>721.1</td>
<td>725.3</td>
<td>794.3</td>
<td>795.0</td>
<td>780.7</td>
<td>791.2</td>
<td>839.7</td>
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<td>Yucaipa Valley WD</td>
<td>13.58%</td>
<td>255.9</td>
<td>689.0</td>
<td>727.5</td>
<td>686.2</td>
<td>725.6</td>
<td>784.7</td>
<td>789.2</td>
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<td>865.0</td>
<td>849.5</td>
<td>860.9</td>
<td>913.7</td>
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<tr>
<td>Total</td>
<td>100.00%</td>
<td>1,884.2</td>
<td>5,073.7</td>
<td>5,357.4</td>
<td>5,053.3</td>
<td>5,343.5</td>
<td>5,778.4</td>
<td>5,811.8</td>
<td>6,364.7</td>
<td>6,369.8</td>
<td>6,255.7</td>
<td>6,339.7</td>
<td>6,728.0</td>
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<td>---------------------</td>
</tr>
<tr>
<td>City of Banning - Authorized Storage Account: 80,000 ac-ft</td>
<td>2003 0.0 2,514.5 2,174.2 340.3 0.0 0.0 0.0 0.0 0.0 0.0 0.0 340.3 340.3</td>
<td>2004 340.3 5,029.0 3,387.3 1,631.7 0.0 0.0 0.0 0.0 0.0 0.0 0.0 1,831.7 1,831.7</td>
<td>2005 1,972.0 5,029.0 1,808.6 3,220.4 0.0 0.0 0.0 0.0 0.0 0.0 0.0 3,220.4 3,220.4</td>
<td>2006 5,162.5 5,029.0 1,827.5 3,201.5 0.0 0.0 0.0 0.0 0.0 0.0 0.0 3,201.5 3,201.5</td>
<td>2007 8,303.9 5,029.0 2,772.6 2,258.4 0.0 0.0 0.0 0.0 0.0 0.0 0.0 3,756.4 3,756.4</td>
<td>2008 12,160.3 5,029.0 2,933.6 2,095.4 0.0 0.0 0.0 0.0 0.0 0.0 0.0 4,221.6 4,221.6</td>
<td>2009 16,371.9 5,029.0 2,095.0 2,934.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 7,269.8 7,269.8</td>
<td>2010 23,641.8 5,029.0 1,143.6 3,885.4 0.0 0.0 0.0 0.0 0.0 0.0 0.0 6,807.2 6,807.2</td>
<td>2011 30,549.0 5,029.0 1,347.1 3,687.3 0.0 0.0 0.0 0.0 0.0 0.0 0.0 6,075.6 6,075.6</td>
<td>2012 36,624.5 5,029.0 1,038.3 3,990.7 0.0 0.0 0.0 0.0 0.0 0.0 0.0 6,870.2 6,870.2</td>
<td>2013 43,494.7 2,514.5 2,100.7 413.8 0.0 0.0 0.0 0.0 0.0 0.0 0.0 4,694.7 4,694.7</td>
<td>2014 46,924.7 0.0 2,585.1 -2,585.1 0.0 0.0 0.0 0.0 0.0 0.0 0.0 -150.4 46,774.3</td>
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<tr>
<td>Beaumont Cherry Valley Water District - Authorized Storage Account: 80,000 ac-ft</td>
<td>2003 0.0 3,401.0 3,511.9 -110.9 0.0 0.0 0.0 0.0 0.0 0.0 0.0 -110.9</td>
<td>2004 -110.9 6,862.0 6,873.9 -71.9 0.0 0.0 0.0 0.0 0.0 0.0 0.0 -71.9</td>
<td>2005 -189.9 6,862.0 7,656.6 -793.6 0.0 0.0 0.0 0.0 0.0 0.0 0.0 -793.6</td>
<td>2006 -466.4 6,862.0 9,654.1 -2,252.1 0.0 0.0 0.0 0.0 0.0 0.0 0.0 -2,252.1</td>
<td>2007 842.5 6,862.0 11,383.3 -4,581.3 0.0 0.0 0.0 0.0 0.0 0.0 0.0 -1,419.7</td>
<td>2008 2,262.2 6,862.0 10,716.0 -3,988.5 0.0 0.0 0.0 0.0 0.0 0.0 0.0 -1,791.5</td>
<td>2009 4,963.7 6,862.0 10,133.6 -3,331.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 -3,331.0</td>
<td>2010 7,619.8 6,862.0 9,421.9 -2,619.3 0.0 0.0 0.0 0.0 0.0 0.0 0.0 -2,619.3</td>
<td>2011 13,994.9 6,862.0 9,431.3 -2,629.3 0.0 0.0 0.0 0.0 0.0 0.0 0.0 -2,629.3</td>
<td>2012 24,062.8 6,862.0 10,162.0 -3,360.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 -3,360.0</td>
<td>2013 30,697.3 3,401.0 11,097.4 -7,666.4 0.0 0.0 0.0 0.0 0.0 0.0 0.0 -2,153.0</td>
<td>2014 32,860.3 0.0 10,805.5 -10,805.5 0.0 0.0 0.0 0.0 0.0 0.0 0.0 -3,929.9</td>
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<tr>
<td>City of Beaumont - Authorized Storage Account: 30,000 ac-ft</td>
<td>2003 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0</td>
<td>2004 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0</td>
<td>2005 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0</td>
<td>2006 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0</td>
<td>2007 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0</td>
<td>2008 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0</td>
<td>2009 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0</td>
<td>2010 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0</td>
<td>2011 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0</td>
<td>2012 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0</td>
<td>2013 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0</td>
<td>2014 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0</td>
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</tbody>
</table>
JOSEPH S. AKLUFI (Bar No. 68619)
AKLUFI AND WYSOCKI
3403 Tenth Street, Suite 610
Riverside, California 92501
(909) 682-5480 Office
(909) 682-2619 Fax

Attorneys for Plaintiff, SAN TIMOTEO
WATERSHED MANAGEMENT AUTHORITY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE, RIVERSIDE COURT

SAN TIMOTEO WATERSHED
MANAGEMENT AUTHORITY, a public
agency,

Plaintiff,

vs.

CITY OF BANNING, a municipal
corporation; BEAUMONT-CHERRY VALLEY
WATER DISTRICT, an irrigation
district; YUCAIPA VALLEY WATER
DISTRICT, a county water district;
PLANTATION ON THE LAKE LLC, a
California limited liability
company; SHARONDALE MESA OWNERS
ASSOCIATION, an unincorporated
association; SOUTH MESA MUTUAL
WATER COMPANY, a mutual water
company; CALIFORNIA OAK VALLEY
GOLF AND RESORT LLC, a California
limited liability company; OAK
VALLEY PARTNERS LP, a Texas limited
partnership; SOUTHERN CALIFORNIA
SECTION OF THE PROFESSIONAL GOLFERS
ASSOCIATION OF AMERICA, a
California corporation; SUNNY-CAL
EGG AND POULTRY COMPANY, a
California corporation; MANHEIM,
MANHEIM & BERMAN, a California
General Partnership; WALTER M.
BECKMAN, individually and as
Trustee of the BECKMAN FAMILY TRUST
dated December 11, 1990; THE ROMAN
CATHOLIC BISHOP of San Bernardino,

CASE NO. RIC 389197

STIPULATION FOR ENTRY OF
JUDGMENT ADJUDICATING
GROUNDWATER RIGHTS IN THE
BEAUMONT BASIN
I. STIPULATING PARTIES IDENTIFIED

The following parties, and each of them, agree to the terms of this Stipulation:

Plaintiff:

SAN TIMOTEO WATERSHED MANAGEMENT AUTHORITY

Overlying Defendants:

1. SHARONDALE MESA OWNERS ASSOCIATION, an unincorporated association
2. CALIFORNIA OAK VALLEY GOLF AND RESORT LLC, a California limited liability company
3. OAK VALLEY PARTNERS LP, a Texas limited partnership
4. SOUTHERN CALIFORNIA SECTION OF THE PROFESSIONAL GOLFERS ASSOCIATION OF AMERICA, a California corporation
5. SUNNY-CAL EGG AND POULTRY COMPANY, a California corporation
6. MANHEIM, MANHEIM & BERMAN, a California general partnership
7. WALTER M. BECKMAN, individually, and as Trustee of the BECKMAN FAMILY TRUST dated December 11, 1990
8. THE ROMAN CATHOLIC BISHOP of San Bernardino, a California corporation
9. MERLIN PROPERTIES, LLC
10. LEONARD M. STEARNS and DOROTHY D. STEARNS, individually and as Trustees of the LEONARD M. STEARNS FAMILY TRUST OF 1991
11. PLANTATION ON THE LAKE LLC, a California limited liability company

Appropriating Defendants:

1. CITY OF BANNING, a municipal corporation
2. BEAUMONT-CHERRY VALLEY WATER DISTRICT, an irrigation district
3. SOUTH MESA MUTUAL WATER COMPANY, a mutual water company
4. YUCAIPA VALLEY WATER DISTRICT, a county water district
II. RECITALS

WHEREAS, plaintiff is a joint powers public agency, formed in 2001 for the purpose, among others, of preparing and implementing a Water Resources Management Plan for the San Timoteo Watershed and the waters tributary thereto, including the Beaumont Basin, in order to conserve local water supplies, improve surface and subsurface water quality and quantity, and to protect and enhance groundwater storage, for the benefit of the public;

WHEREAS, the Beaumont Basin, also known as the Beaumont Storage Unit, is the common source of water supply for appropriative water uses within the communities of Banning, Beaumont, Cherry Valley and Calimesa, and for various overlying uses including, but not limited to, golf courses and related facilities and agricultural production, including egg production and related agricultural irrigation uses;

WHEREAS, the maximum quantity of water which can be produced from the Beaumont Basin, at safe yield, is currently estimated to be 8650 acre feet per year, and the total groundwater production from the Beaumont Basin has exceeded and continues to exceed its safe yield;

WHEREAS, much of the land area within and adjacent to the Beaumont Basin is proposed to be intensively developed with residential, commercial and industrial uses, which will place additional demands on local water resources;

WHEREAS, it is estimated that the Beaumont Basin has the capability of storing more than 200,000 acre feet of water for overlying and appropriative use by water users within and
adjacent to the Beaumont Basin;

WHEREAS, the plaintiff proposes to invest substantial public funds to construct facilities that will enable the storage of water within the Beaumont Basin, in addition to the storage that occurs naturally;

WHEREAS, the Overlying and Appropriating Defendants wish to secure the provision and availability of a reliable, affordable, long-term water supply for the area within plaintiff's jurisdiction, making reasonable and beneficial use of the native groundwater in the Beaumont Basin, and other local water resources, promoting the importation of water into the area, and storage of such water, and local surface waters, in the Beaumont Basin;

WHEREAS, the Overlying Defendants believe that it is in their best interest to enter into this Stipulation and be subject to the attached Judgment, rather than continue to litigate the safe yield of the Beaumont Basin, the quantity of their overlying rights, both historical and unexercised, the rights they may have to use the storage volume existing beneath their respective lands, and other issues;

WHEREAS, in order to protect existing overlying and appropriative uses and to justify and protect the public investment necessary to utilize the available groundwater storage capacity in the Beaumont Basin, it is necessary to adjudicate the Beaumont Basin and to define the respective water rights of the overlying and appropriative producers of groundwater.

NOW, THEREFORE, the undersigned parties, and each of them, hereby agree to the following Stipulated Terms.
III. STIPULATED TERMS

1. Form of Judgment: Judgment may be filed and entered in the form attached hereto as Exhibit "1" and made a part hereof.

2. Fees and Costs: Each party shall bear its own costs, attorneys fees and litigation expenses arising out of this adjudication.

3. Waiver: Notice of entry of judgment, the right to trial, stay of execution and appeal, is hereby waived, except as expressly set forth in the Judgment.

4. Binding Effect: This Stipulation and all obligations herein, shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

5. Construction and Interpretation: No adverse construction or interpretation of this Stipulation shall be made under the Civil Code simply because the parties drafted or participated in the drafting of this Stipulation. The terms of the Judgment shall be interpreted to further the purposes of this Stipulation.

6. Jurisdiction and Venue: The Superior Court of California in and for the County of Riverside shall have jurisdiction of this matter. In the event of any litigation arising out of this Stipulation, venue shall conclusively be deemed to lie in the County of Riverside.

7. Advice of Counsel: The undersigned each have had the opportunity to consult with or have consulted with their own legal counsel regarding this Stipulation and all matters set forth herein, or have knowingly waived the right to do so.
8. Authority: Each person executing this Stipulation on behalf of any of the undersigned has been fully empowered to execute this Stipulation and that all necessary action for the execution of this Stipulation has been taken.

IT IS SO STIPULATED:

SAN TIMOTEO WATERSHED MANAGEMENT AUTHORITY
Dated: 1/6/04

By President, Board of Directors

CITY OF BANNING
Dated: 12/23/03

By Mayor

BEAUMONT-CHERRY VALLEY WATER DISTRICT
Dated: 

By President, Board of Directors

YUCAIPA VALLEY WATER DISTRICT
Dated: 

By President, Board of Directors

PLANTATION ON THE LAKE LLC
Dated: 

By President, Board of Directors

SHARONDALE MESA OWNERS ASSOCIATION
Dated: 

By President, Board of Directors
8. Authority: Each person executing this Stipulation on behalf of any of the undersigned has been fully empowered to execute this Stipulation and that all necessary action for the execution of this Stipulation has been taken.

IT IS SO STIPULATED:

SAN TIMOTEÓ WATERSHED MANAGEMENT AUTHORITY

By
President, Board of Directors

CITY OF BANNING

By
Mayor

BEAUMONT-CHERRY VALLEY WATER DISTRICT

By
President, Board of Directors

YUCAIPA VALLEY WATER DISTRICT

By
President, Board of Directors

PLANTATION ON THE LAKE LLC

By
President, Board of Directors

SHARONDALE MESA OWNERS ASSOCIATION

By
President, Board of Directors
8. Authority: Each person executing this Stipulation on behalf of any of the undersigned has been fully empowered to execute this Stipulation and that all necessary action for the execution of this Stipulation has been taken.

IT IS SO STIPULATED:

SAN TIMOTEO WATERSHED MANAGEMENT AUTHORITY

Dated: ____________________

By ____________________
President, Board of Directors

CITY OF BANNING

Dated: ____________________

By ____________________
Mayor

BEAUMONT-CHERRY VALLEY WATER DISTRICT

Dated: ____________________

By ____________________
President, Board of Directors

YUCAIPA VALLEY WATER DISTRICT

Dated: 10/1/03

By ____________________
President, Board of Directors

PLANTATION ON THE LAKE LLC

Dated: ____________________

By ____________________
President, Board of Directors

SHARONDALE MESA OWNERS ASSOCIATION

Dated: ____________________

By ____________________
President, Board of Directors

6 STIPULATION FOR ENTRY OF JUDGMENT
8. **Authority:** Each person executing this Stipulation on behalf of any of the undersigned has been fully empowered to execute this Stipulation and that all necessary action for the execution of this Stipulation has been taken.

**IT IS SO STIPULATED:**

SAN TIMOTEO WATERSHED MANAGEMENT AUTHORITY

Dated: ________________

By ____________________
President, Board of Directors

CITY OF BANNING

Dated: ________________

By ____________________
Mayor

BEAUMONT-CHERRY VALLEY WATER DISTRICT

Dated: ________________

By ____________________
President, Board of Directors

YUCAIPA VALLEY WATER DISTRICT

Dated: ________________

By ____________________
President, Board of Directors

PLANTATION ON THE LAKE LLC

Dated: 7/30/03

By ____________________
President, Board of Directors

SHARONDALE MESA OWNERS ASSOCIATION

Dated: ________________

By ____________________
President, Board of Directors
8. Authority: Each person executing this Stipulation on behalf of any of the undersigned has been fully empowered to execute this Stipulation and that all necessary action for the execution of this Stipulation has been taken.

IT IS SO STIPULATED:

SANTIMOTEO WATERSHED MANAGEMENT AUTHORITY

Dated: ____________________

By _______________________
President, Board of Directors

CITY OF BANNING

Dated: ____________________

By _______________________
Mayor

BEAUMONT-CHERRY VALLEY WATER DISTRICT

Dated: ____________________

By _______________________
President, Board of Directors

YUCAIPA VALLEY WATER DISTRICT

Dated: ____________________

By _______________________
President, Board of Directors

PLANTATION ON THE LAKE LLC

Dated: ____________________

By _______________________
President, Board of Directors

SHARONDALE MESA OWNERS ASSOCIATION

Dated: ____________________

By _______________________
President, Board of Directors

JUNE 27, 2003

STIPULATION FOR ENTRY OF JUDGMENT
SOUTHERN CALIFORNIA SECTION OF THE PROFESSIONAL GOLFERS ASSOCIATION OF AMERICA

By
President, Board of Directors

SUNNY-CAL EGG AND POULTRY COMPANY

By
President, Board of Directors

MANHEIM, MANHEIM & BERNAN

By

D. CRAIG MARTIN

Its: President

SOUTHERN CALIFORNIA SECTION OF THE PROFESSIONAL GOLFERS ASSOCIATION OF AMERICA

By
President, Board of Directors

SUNNY-CAL EGG AND POULTRY COMPANY

By
President, Board of Directors

MANHEIM, MANHEIM & BERNAN

By

D. CRAIG MARTIN

Its: President

SOUTHERN CALIFORNIA SECTION OF THE PROFESSIONAL GOLFERS ASSOCIATION OF AMERICA

By
President, Board of Directors

SUNNY-CAL EGG AND POULTRY COMPANY

By
President, Board of Directors

MANHEIM, MANHEIM & BERNAN

By

D. CRAIG MARTIN

Its: President

SOUTHERN CALIFORNIA SECTION OF THE PROFESSIONAL GOLFERS ASSOCIATION OF AMERICA

By
President, Board of Directors

SUNNY-CAL EGG AND POULTRY COMPANY

By
President, Board of Directors

MANHEIM, MANHEIM & BERNAN

By
SOUTH MESA MUTUAL WATER COMPANY

By President, Board of Directors

CALIFORNIA OAK VALLEY GOLF AND RESORT LLC

By President, Board of Directors

OAK VALLEY PARTNERS LP,
A Texas Limited Partnership

By: Oak Valley-Hunt, Inc.
a Texas Corporation
Managing General Partner

By D. CRAIG MARTIN
Its: President

SOUTHERN CALIFORNIA SECTION OF THE PROFESSIONAL GOLFERS ASSOCIATION OF AMERICA

By President, Board of Directors

SUNNY-CAL EGG AND POULTRY COMPANY

By President, Board of Directors

MANHEIM, MANHEIM & BERNAN

By

Dated: 7-31-2003

STIPULATION FOR ENTRY OF JUDGMENT

J-77 398
SOUTHWEST MUTUAL WATER COMPANY

By ______________________
President, Board of Directors

CALIFORNIA OAK VALLEY GOLF AND RESORT LLC

By ______________________
President, Board of Directors

OAK VALLEY PARTNERS LP, A Texas Limited Partnership

By: Oak Valley-Hunt, Inc.
a Texas Corporation
Managing General Partner

By ______________________
D. CRAIG MARTIN
Its: President

SOUTHERN CALIFORNIA SECTION OF THE PROFESSIONAL GOLFERS ASSOCIATION OF AMERICA

By ______________________
President, Board of Directors

SUNNY-CAL EGG AND POULTRY COMPANY

By ______________________
President, Board of Directors

MANHEIM, MANHEIM & BERMAN

By _________________________

7 STIPULATION FOR ENTRY OF JUDGMENT

J-78
SOUTH MESA MUTUAL WATER COMPANY

Dated: ______________________

By ______________________
President, Board of Directors

CALIFORNIA OAK VALLEY GOLF AND RESORT LLC

Dated: ______________________

By ______________________
President, Board of Directors

OAK VALLEY PARTNERS LP,
A Texas Limited Partnership

Dated: ______________________

By ______________________
Oak Valley-Hunt, Inc.
a Texas Corporation
Managing General Partner

By ______________________
D. CRAIG MARTIN
Its: President

SOUTHERN CALIFORNIA SECTION OF THE PROFESSIONAL GOLFERS ASSOCIATION OF AMERICA

Dated: July 8, 2003

By ______________________
President, Board of Directors
CHIEF EXECUTIVE OFFICER

SUNNY-CAL EGG AND POULTRY COMPANY

Dated: ______________________

By ______________________
President, Board of Directors

MANHEIM, MANHEIM & BERMAN

Dated: ______________________

By ______________________
SOUTH MESA MUTUAL WATER COMPANY

By President, Board of Directors

CALIFORNIA OAK VALLEY GOLF AND RESORT LLC

By President, Board of Directors

OAK VALLEY PARTNERS LP,
A Texas Limited Partnership

By: Oak Valley-Hunt, Inc.  
a Texas Corporation
Managing General Partner

By D. CRAIG MARTIN
Its: President

SOUTHERN CALIFORNIA SECTION OF THE PROFESSIONAL GOLFERS ASSOCIATION OF AMERICA

By President, Board of Directors

SUNNY-CAL EGG AND POULTRY COMPANY

By Michael Menheim
President, Board of Directors

MANHEIM, MANHEIM & BERMAN

By BERT Berman

STIPULATION FOR ENTRY OF JUDGMENT
Dated: 1/23/03

WALTER M. BECKMAN, Trustee of the BECKMAN FAMILY TRUST dated December 11, 1990

Dated: ____________

CECIL MERLE MURRAY

MERLIN PROPERTIES, LLC

Dated: ____________

LEONARD M. STEARNS, individually and as Trustee of the LEONARD M. STEARNS FAMILY TRUST OF 1991

Dated: ____________

DOROTHY D. STEARNS, individually and as Trustee of the LEONARD M. STEARNS FAMILY TRUST OF 1991

APPROVAL AND ORDER

The foregoing Stipulation is hereby approved and is so ordered.

Dated: ____________

JUDGE OF THE SUPERIOR COURT
Dated: ____________________________

WALTER M. BECKMAN

Dated: ____________________________

WALTER M. BECKMAN, Trustee of the BECKMAN FAMILY TRUST dated December 11, 1990

THE ROMAN CATHOLIC BISHOP of San Bernardino, a California corporation

Dated: 9/18/03 ____________________________

By ____________________________

MERLIN PROPERTIES, LLC

Dated: ____________________________

By ____________________________

LEONARD M. STEARNS, individually and as Trustee of the LEONARD M. STEARNS FAMILY TRUST OF 1991

Dated: ____________________________

DOROTHY D. STEARNS, individually and as Trustee of the LEONARD M. STEARNS FAMILY TRUST OF 1991

APPROVAL AND ORDER

The foregoing Stipulation is hereby approved and is so ordered.

Dated: ____________________________

JUDGE OF THE SUPERIOR COURT
Dated: ____________________

WALTER M. BECKMAN

Dated: ____________________

WALTER M. BECKMAN, Trustee of the
BECKMAN FAMILY TRUST dated
December 11, 1990

THE ROMAN CATHOLIC BISHOP of
San Bernardino, a California
corporation

Dated: ____________________

BY ____________________

MERLIN PROPERTIES, LLC

Dated: JULY 31, 2003

By ____________________

LEONARD M. STEARNS, individually
and as Trustee of the LEONARD M.
STEARNS FAMILY TRUST OF 1991

Dated: ____________________

DOROTHY D. STEARNS, individually
and as Trustee of the LEONARD M.
STEARNS FAMILY TRUST OF 1991

APPROVAL AND ORDER

The foregoing Stipulation is hereby approved and is so
ordered.

Dated: ____________________

JUDGE OF THE SUPERIOR COURT

8 STIPULATION FOR ENTRY OF JUDGMENT
Dated: ____________________________

WALTER M. BECKMAN

Dated: ____________________________

WALTER M. BECKMAN, Trustee of the BECKMAN FAMILY TRUST dated December 11, 1990

Dated: ____________________________

CECIL MERLE MURRAY

MERLIN PROPERTIES, LLC

Dated: ____________________________

By ____________________________

LEONARD M. STEARNS, individually and as Trustee of the LEONARD M. STEARNS FAMILY TRUST OF 1991

Dated: ____________________________

DOROTHY D. STEARNS, individually and as Trustee of the LEONARD M. STEARNS FAMILY TRUST OF 1991

APPROVAL AND ORDER

The foregoing Stipulation is hereby approved and is so ordered. FEB. 4, 2004

Dated: ____________________________

GARY TRANBARGER

JUDGE OF THE SUPERIOR COURT
NO FILING FEE REQUIRED PER GOVERNMENT CODE, SEC. 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE, RIVERSIDE COURT

SAN TIMOTEOW WATERSHED
MANAGEMENT AUTHORITY, a public
agency,

Plaintiff,

vs.

CITY OF BANNING, a municipal
corporation; BEAUMONT-CHERRY VALLEY
WATER DISTRICT, an irrigation
district; YUCAIPA VALLEY WATER
DISTRICT, a county water district;
PLANTATION ON THE LAKE LLC, a
California limited liability
company; SHARONDALE MESA OWNERS
ASSOCIATION, an unincorporated
association; SOUTH MESA MUTUAL
WATER COMPANY, a mutual water
company; CALIFORNIA OAK VALLEY
GOLF AND RESORT LLC, a California
limited liability company; OAK
VALLEY PARTNERS LP, a Texas limited
partnership; SOUTHERN CALIFORNIA
SECTION OF THE PROFESSIONAL GOLFERS
ASSOCIATION OF AMERICA, a
California corporation; SUNNY-CAL
EGG AND POULTRY COMPANY, a
California corporation; MANHEIM,
MANHEIM & BERMAN, a California
General Partnership; WALTER M.
BECKMAN, individually and as
Trustee of the BECKMAN FAMILY TRUST;
dated December 11, 1990; THE RONAN
CATHOLIC BISHOP of San Bernardino,

CASE NO. RIC 389197
JUDGMENT PURSUANT TO
STIPULATION ADJUDICATING
GROUNDWATER RIGHTS IN THE
BEAUMONT BASIN
I. INTRODUCTION

1. Pleadings, Parties and Jurisdiction

The complaint herein was filed on February 20, 2003, seeking an adjudication of water rights, injunctive relief and the imposition of a physical solution. The defaults of certain defendants have been entered, and certain other defendants dismissed. Other than defendants who have been dismissed or whose defaults have been entered, all defendants have appeared herein. This Court has jurisdiction of the subject matter of this action and of the parties herein.

2. Stipulation for Judgment

Stipulation for Entry of Judgment has been filed by and on behalf of all defendants who have appeared herein.

3. Definitions

As used in this Judgment, these terms shall have the following meanings:

A. Appropriator or Appropriator Parties: the pumpers identified in Exhibit "C" attached hereto.

B. Appropriator's Production Right: consists of an Appropriator's share of Operating Yield, plus (1) any water acquired by an Appropriator from an Overlying Producer or other Appropriator pursuant to this Judgment, (2) any water
withdrawn from the Appropriator's storage account, (3) and New Yield created by the Appropriator.

C. Appropriative Water: the amount of Safe Yield remaining after satisfaction of Overlying Water Rights.

D. Appropriative Water Right: each Appropriator's share of Appropriative Water, such share expressed as a percentage as shown on Exhibit "C".

E. Beaumont Basin or Beaumont Storage Unit: the area situated within the boundaries shown on Exhibit "A" attached hereto.

F. Conjunctive Use: the storage of water in a Groundwater Basin for use at a later time.

G. Groundwater: water beneath the surface of the ground within the zone below the water table in which soil is saturated with water.

H. Groundwater Basin: an area underlain by one or more permeable formations capable of furnishing a substantial water supply.

I. Groundwater Storage Agreement: a standard form of written agreement between the Watermaster and any Person requesting the storage of Supplemental Water.

J. Groundwater Storage Capacity: the space available in a Groundwater Basin that is not utilized for storage or regulation of Safe Yield and is reasonably available for Stored Water and Conjunctive Use.

K. Minimal Producer: any Producer who pumps 10 or fewer acre feet of Groundwater from the Beaumont Basin per year.
L. New Yield: increases in yield in quantities greater than historical amounts from sources of supply including, but not limited to, capture of available storm flow, by means of projects constructed after February 20, 2003, as determined by the Watermaster.

M. Operating Yield: the maximum quantity of water which can be produced annually by the Appropriators from the Beaumont Basin, which quantity consists of Appropriative Water plus Temporary Surplus.

N. Overdraft: a condition wherein the total annual production from a Groundwater Basin exceeds the Safe Yield thereof.

O. Overlying Parties: the Persons listed on Exhibit "B", who are owners of land which overlies the Beaumont Basin and have exercised Overlying Water Rights to pump therefrom. Overlying Parties include successors in interest and assigns.

P. Overlying Water Rights: the quantities decreed to Overlying Parties in Column 4 of Exhibit "B" to this Judgment.

Q. Overproduction: by an Appropriator, measured by an amount equal to the Appropriator's actual annual production minus the Appropriator's Production Right. By a new overlying producer, an amount equal to what the overlying producer pumped during the year.

R. Party (Parties): any Person(s) named in this action, or who has intervened, or has become subject to this Judgment either through stipulation, trial or otherwise
S. Person: any individual, partnership, association, corporation, governmental entity or agency, or other organization.

T. Physical Solution: the physical solution set forth in Part V of this Judgment.

U. Produce, Producing, Production, Pump or Pumping: the extraction of groundwater.

V. Producer or Pumper: any Person who extracts groundwater.

W. Recycled Water: has the meaning provided in Water Code Section 13050(n) and includes other nonpotable water for purposes of this Judgment.

X. Safe Yield: the maximum quantity of water which can be produced annually from a Groundwater Basin under a given set of conditions without causing a gradual lowering of the groundwater level leading eventually to depletion of the supply in storage. The Safe Yield of the Beaumont Basin is 8650 acre feet per year in each of the ten (10) years following entry of this Judgment.

Y. San Timoteo Watershed Management Authority: a joint powers public agency whose members are the Beaumont-Cherry Valley Water District, the City of Beaumont, the South Mesa Mutual Water Company and the Yucaipa Valley Water District.

Z. Stored Water: Supplemental Water stored in the Beaumont Basin pursuant to a Groundwater Storage Agreement with the Watermaster.

AA. Supplemental Water: water imported into the
Beaumont Basin from outside the Beaumont Basin including, without limitation, water diverted from creeks upstream and tributary to Beaumont Basin and water which is recycled and useable within the Beaumont Basin.

BB. Temporary Surplus: the amount of groundwater that can be pumped annually in excess of Safe Yield from a Groundwater Basin necessary to create enough additional storage capacity to prevent the waste of water.

CC. Watermaster: the Person appointed by the Court to administer and enforce the Physical Solution.

4. List of Exhibits

The following exhibits are attached to this Judgment and made a part hereof:

Exhibit "A" -- "Location Map of Beaumont Basin"
Exhibit "B" -- "Overlying Owners and Their Water Rights"
Exhibit "C" -- "Appropriators and Their Water Rights"
Exhibit "D" -- "Legal Description of Lands of the Overlying Parties"
Exhibit "E" -- "Location of Overlying Producer Parcels and Boundary of the Beaumont Basin"

II. INJUNCTIONS

1. Injunction Against Unauthorized Production of Beaumont Basin Water

Each party herein is enjoined, as follows:

A. Overlying Parties: Each defendant who is an Overlying Party, and its officers, agents, employees, successors and assigns, is hereby enjoined and restrained from producing groundwater from the Beaumont Basin in any five-year period hereafter in excess of five times the share of the Safe Yield assigned to the Overlying Parties as set
forth in Column 4 of Exhibit "B", as more fully described in the Physical Solution.

B. Appropriator Parties: Each defendant who is an Appropriator Party, and its officers, agents, employees, successors and assigns, is hereby enjoined and restrained from producing groundwater from the Beaumont Basin in any year hereafter in excess of such party's Appropriator's Production Right, except as additional annual Production may be authorized by the provisions of the Physical Solution.

2. Injunction Against Unauthorized Storage or Withdrawal of Stored Water

Each and every Party, and its officers, agents, employees, successors and assigns, is hereby enjoined and restrained from storing Supplemental Water in the Beaumont Basin for withdrawal, or causing withdrawal of water stored by that Party, except pursuant to the terms of a written Groundwater Storage Agreement with the Watermaster and in accordance with Watermaster Rules and Regulations. Any Supplemental Water stored in the Beaumont Basin, except pursuant to a Groundwater Storage Agreement, shall be deemed abandoned and not classified as Stored Water.

III. DECLARATION AND ADJUSTMENT OF RIGHTS

1. Overlying Rights

The Overlying Parties are currently exercising Overlying Water Rights in the Beaumont Basin. As shown on Exhibit "B", the aggregate Projected Maximum Production of water from the Beaumont Basin pursuant to Overlying Water Rights is 8610 acre feet and the Overlying Water Rights are individually decreed, in Column 4 of Exhibit "B", for each Overlying Party. The Overlying Parties
shall continue to have the right to exercise their respective Overlying Water Right as set forth in Column 4 of Exhibit "B" except to the extent their respective properties receive water service from an Appropriator Party, as contemplated by Paragraph III.3 of this Judgment.

2. Appropriator’s Share of Operating Yield

Each Appropriator Party’s share of Operating Yield is shown on Exhibit "C". Notwithstanding any other provision of this Judgment, each Appropriator Party may use its Appropriator’s Production Right anywhere within its service area.

3. Adjustment of Rights

A. The Overlying Parties shall have the right to exercise their respective Overlying Water Rights except as provided in this Paragraph 3.

B. To the extent any Overlying Party requests, and uses its Exhibit "B", Column 4 water to obtain water service from an Appropriator Party, an equivalent volume of potable groundwater shall be earmarked by the Appropriator Party which will serve the Overlying Party, up to the volume of the Overlying Water Right as reflected in Column 4 of Exhibit "B" attached hereto, for the purpose of serving the Overlying Party. The intent of this provision is to ensure that the Overlying Party is given credit towards satisfying the water availability assessment provisions of Government Code, Section 66473.7 et seq. and Water Code, Section 10910 et seq. or other similar provisions of law, equal to the amount of groundwater earmarked hereunder.

C. When an Overlying Party receives water service as
provided for in subparagraph III.3.B the Overlying Party shall forebear the use of that volume of the Overlying Water Right earmarked by the Appropriator Party. The Appropriator Party providing such service shall have the right to produce the volume of water foregone by the Overlying Party, in addition to other rights otherwise allocated to the Appropriator Party.

D. Should the volume of the Overlying Water Right equal or exceed the volume of potable groundwater earmarked as provided in subparagraph 3.B, the Appropriator Party which will serve the Overlying Party shall (i) impose potable water charges and assessments upon the Overlying Party and its successors in interest at the rates charged to the then-existing regular customers of the Appropriator Party, and (ii) not collect from such Overlying Party any development charge that may be related to the importation of water into the Beaumont Basin. The Appropriator Party which will serve the Overlying Party pursuant to Subparagraph III.3.B shall also consider, and negotiate in good faith regarding, the provision of a meaningful credit for any pipelines, pump stations, wells or other facilities that may exist on the property to be served.

E. In the event an Overlying Party receives Recycled Water from an Appropriator Party to serve an overlying use served with groundwater, the Overlying Water Right of the Overlying Party shall not be diminished by the receipt and use of such Recycled Water. Recycled Water provided by an Appropriator Party to an Overlying Party shall satisfy the
criteria set forth in the California Water Code including, without limitation, the criteria set forth in Water Code Sections 13550 and 13551. The Apprriator Party which will serve the Recycled Water shall have the right to use that portion of the Overlying Water Right of the Overlying Party offset by the provision of Recycled Water service pursuant to the terms of this subparagraph; provided, however, that such right of use by the Appropriate Party shall no longer be valid if the Recycled Water, provided by the Appropriate Party to the Overlying Party, does not satisfy the requirements of Sections 13550 and 13551 and the Overlying Party ceases taking delivery of such Recycled Water.

F. Nothing in this Judgment is intended to impair or adversely affect the ability of an Overlying Party to enter into annexation or development agreements with any Appropriate Party.

G. Oak Valley Partners LP ("Oak Valley") is developing its property pursuant to Specific Plans 216 and 216A adopted by the County of Riverside ("County") in May 1990, and Specific Plan 318 adopted by the County in August, 2001, (Specific Plans 216, 216A and 318 are collectively referred to as the "Specific Plans"). The future water supply needs at build-out of the Specific Plans will greatly exceed Oak Valley's Projected Maximum Production, as reflected in Exhibit "B" to the Judgment, and may be as much as 12,811 acre feet per year. Oak Valley has annexed the portion of its property now within the City of Beaumont into the Beaumont-Cherry Valley Water District ("BCVWD"), and is in
the process of annexing the remainder portion of its property into the Yucaipa Valley Water District ("YVWD"), in order to obtain retail water service for the development of the Oak Valley property pursuant to the Specific Plans (for purposes of this subparagraph BCVWD and YVWD are collectively referred to as the "Water Districts", and individually as a "Water District"). YVWD covenants to use its best efforts to finalize the annexation of the Oak Valley property within the Calimesa City limits. Oak Valley, for itself and its successors and assigns, hereby agrees, by this stipulation and upon final annexation of its property by YVWD, to forbear from claiming any future, unexercised, overlying rights in excess of the Projected Maximum Production of Exhibit "B" of 1806 acre feet per year. As consideration for the forbearance, the Water Districts agree to amend their respective Urban Water Management Plans ("UWMP") in 2005 as follows: BCVWD agrees that 2,400 acre feet per year of projected water demand shall be included for the portion of Oak Valley to be served by BCVWD in its UWMP, and YVWD agrees to include 8,000 acre feet per year of projected water demand as a projected demand for the portion of Oak Valley to be served by YVWD in its UWMP by 2025. The Water Districts agree to use their best judgment to accurately revise this estimate to reflect the projected water demands for the UWMP prepared in 2010. Furthermore, the Water Districts further agree that, in providing water availability assessments prior to 2010, as required by Water Code §10910 and water supply verifications as required by Government Code §§66455.3 and

11 JUDGMENT PURSUANT TO STIPULATION
66473.7, or any similar statute, and in maintaining their respective UWMP, each shall consider the foregoing respective projected water demand figures for Oak Valley as proposed water demands. The intent of the foregoing requirements is to ensure that Oak Valley is credited for the forbearance of its overlying water rights and is fully accounted for in each Water District's UWMP and overall water planning. The Water Districts' actions in performance of the foregoing planning obligations shall not create any right or entitlement to, or priority or allocation in, any particular water supply source, capacity or facility, or any right to receive water service other than by satisfying the applicable Water District's reasonable requirements relating to application for service. Nothing in this subparagraph G is intended to affect or impair the provision of earmarked water to Overlying Parties who request and obtain water service from Appropriate Parties, as set forth in subparagraph III.3.B, above.

H. Persons who would otherwise qualify as Overlying Producers based on an interest in land lying within the City of Banning's service area shall not have the rights described in this Paragraph III.3.

4. Exemption for Minimal Producers

Unless otherwise ordered by the Court, Minimal Producers are exempt from the provisions of this Judgment.

IV. CONTINUING JURISDICTION

Full jurisdiction, power and authority is retained and reserved to the Court for purposes of enabling the Court, upon
application of any Party, by a motion noticed for at least a 30-
day period (or consistent with the review procedures of Paragraph
VII.6 herein, if applicable), to make such further or
supplemental order or directions as may be necessary or
appropriate for interim operation of the Beaumont Basin before
the Physical Solution is fully operative, or for interpretation,
or enforcement or carrying out of this Judgment, and to modify,
amend or amplify any of the provisions of this Judgment or to add
to the provisions hereof consistent with the rights herein
decreed; except that the Court's jurisdiction does not extend to
the redetermination of (a) Safe Yield during the first ten years
of operation of the Physical Solution, and (b) the fraction of
the share of Appropriative Water of each Appropriator.

V. THE PHYSICAL SOLUTION

1. Purpose and Objective

In accordance with the mandate of Section 2 of Article X of
the California Constitution, the Court hereby adopts, and orders
the parties to comply with, a Physical Solution. The purpose of
the Physical Solution is to establish a legal and practical means
for making the maximum reasonable beneficial use of the waters of
Beaumont Basin, to facilitate conjunctive utilization of surface,
ground and Supplemental Waters, and to satisfy the requirements
of water users having rights in, or who are dependent upon, the
Beaumont Basin. Such Physical Solution requires the definition
of the individual rights of all Parties within the Beaumont Basin
in a manner which will fairly allocate the native water supplies
and which will provide for equitable sharing of costs of
Supplemental Water.
2. **Need for Flexibility**

   The Physical Solution must provide maximum flexibility and adaptability in order that the Watermaster and the Court may be free to use existing and future technological, social, institutional and economic options. To that end, the Court's retained jurisdiction shall be utilized, where appropriate, to supplement the discretion granted herein to the Watermaster.

3. **Production and Storage in Accordance With Judgment**

   This Judgment, and the Physical Solution decreed herein, address all Production and Storage within the Beaumont Basin. Because the Beaumont Basin is at or near a condition of Overdraft, any Production outside the framework of this Judgment and Physical Solution will potentially damage the Beaumont Basin, injure the rights of all Parties, result in the waste of water and interfere with the Physical Solution. The Watermaster shall bring an action or a motion to enjoin any Production that is not in accordance with the terms of this Judgment.

4. **General Pattern of Operation**

   One fundamental premise of the adjudication is that all Producers shall be allowed to pump sufficient water from the Beaumont Basin to meet their respective requirements. Another fundamental premise of the adjudication is that Overlying Parties who pump no more than the amount of their Overlying Water Right as shown on Column 4 of Exhibit "B" hereto, shall not be charged for the replenishment of the Beaumont Basin. To the extent that pumping exceeds five (5) times the share of the Safe Yield assigned to an Overlying Party (Column 4 of Exhibit "B") in any five (5) consecutive years, or the share of Operating Yield
Right of each Appropriator Party, each such Party shall provide funds to enable the Watermaster to replace such Overproduction.

5. **Use of Available Groundwater Storage Capacity**

A. There exists in the Beaumont Basin a substantial amount of available Groundwater Storage Capacity. Such Capacity can be reasonably used for Stored Water and Conjunctive Use and may be used subject to Watermaster regulation to prevent injury to existing Overlying and Appropriative water rights, to prevent the waste of water, and to protect the right to the use of Supplemental Water in storage and Safe Yield of the Beaumont Basin.

B. There shall be reserved for Conjunctive Use a minimum of 200,000 acre feet of Groundwater Storage Capacity in the Beaumont Basin provided that such amount may be reduced as necessary to prevent injury to existing water rights or existing uses of water within the Basin, and to prevent the waste of water. Any Person may make reasonable beneficial use of the Groundwater Storage Capacity for storage of Supplemental Water; provided, however, that no such use shall be made except pursuant to a written Groundwater Storage Agreement with the Watermaster. The allocation and use of Groundwater Storage Capacity shall have priority and preference for Producers within the Beaumont Basin over storage for export. The Watermaster may, from time-to-time, redetermine the available Groundwater Storage Capacity.
VI. ADMINISTRATION

1. Administration and Enforcement by Watermaster

The Watermaster shall administer and enforce the provisions of this Judgment and any subsequent order or instructions of the Court.

2. Watermaster Control

The Watermaster is hereby granted discretionary powers to develop and implement a groundwater management plan and program for the Beaumont Basin, which plan shall be filed with and shall be subject to review and approval by, the Court, and which may include water quantity and quality considerations and shall reflect the provisions of this Judgment. Except for the exercise by Overlying Parties of their respective Rights described in Column 4 of Exhibit "B" hereto in accordance with the provisions of the Physical Solution, groundwater extractions and the replenishment thereof, and the storage of Supplemental Water, shall be subject to procedures established and administered by the Watermaster. Such procedures shall be subject to review by the Court upon motion by any Party.

3. Watermaster Standard of Performance

The Watermaster shall, in carrying out its duties and responsibilities herein, act in an impartial manner without favor or prejudice to any Party or purpose of use.

4. Watermaster Appointment

The Watermaster shall consist of a committee composed of persons nominated by the City of Banning, the City of Beaumont, the Beaumont-Cherry Valley Water District, the South Mesa Mutual Water Company and the Yucaipa Valley Water District, each of
which shall have the right to nominate one representative to the
Watermaster committee who shall be an employee of or consultant
to the nominating agency. Each such nomination shall be made in
writing, served upon the other parties to this Judgment and filed
with the Court, which shall approve or reject such nomination.
Each Watermaster representative shall serve until a replacement
nominee is approved by the Court. The nominating agency shall
have the right to nominate that representative’s successor.

5. **Powers and Duties of the Watermaster**

Subject to the continuing supervision and control of the
Court, the Watermaster shall have and may exercise the following
express powers, and shall perform the following duties, together
with any specific powers, authority, and duties granted or
imposed elsewhere in this Judgment or hereafter ordered or
authorized by the Court in the exercise of its continuing
jurisdiction:

**A. Rules and Regulations:** The adoption of
appropriate rules and regulations for the conduct of
Watermaster affairs, copies of which shall be provided to
all interested parties.

**B. Wellhead Protection and Recharge:** The
identification and management of wellhead protection areas
and recharge areas.

**C. Well Abandonment:** The administration of a well
abandonment and well destruction program.

**D. Well Construction:** The development of minimum
well construction specifications and the permitting of new
wells.
E. Mitigation of Overdraft: The mitigation of conditions of uncontrolled overdraft.

F. Replenishment: The acquisition and recharge of Supplemental Water.

G. Monitoring: The monitoring of groundwater levels, ground levels, storage, and water quality.

H. Conjunctive Use: The development and management of conjunctive-use programs.

I. Local Projects: The coordination of construction and operation, by local agencies, of recharge, storage, conservation, water recycling, extraction projects and any water resource management activity within or impacting the Beaumont Basin.

J. Land Use Plans: The review of land use plans and coordination with land use planning agencies to mitigate or eliminate activities that create a reasonable risk of groundwater contamination.

K. Acquisition of Facilities: The purchase, lease and acquisition of all necessary real and personal property, including facilities and equipment.

L. Employment of Experts and Agents: The employment or retention of such technical, clerical, administrative, engineering, accounting, legal or other specialized personnel and consultants as may be deemed appropriate. The Watermaster shall maintain records allocating the cost of such services as well as all other expenses of Watermaster administration.

M. Measuring Devices: Except as otherwise provided
by agreement the Watermaster shall install and maintain in good operating condition, at the cost of the Watermaster, such necessary measuring devices or meters as Watermaster may deem appropriate. Such devices shall be inspected and tested as deemed necessary by the Watermaster and the cost thereof borne by the Watermaster. Meter repair and retesting will be a Producer expense.

N. **Assessments**: The Watermaster is empowered to levy and collect the following assessments:

1. **Annual Replenishment Assessments**
   The Watermaster shall levy and collect assessments in each year, in amounts sufficient to purchase replenishment water to replace Overproduction by any Party.

2. **Annual Administrative Assessments**
   a. **Watermaster Expenses**: The expenses of administration of the Physical Solution shall be categorized as either "General Watermaster Administration Expenses", or "Special Project Expenses".
      i. **General Watermaster Administration Expenses**: shall include office rent, labor, supplies, office equipment, incidental expenses and general overhead. General Watermaster Administration Expenses shall be assessed by the Watermaster equally against the Appropriators who have appointed representatives to the Watermaster.
ii. Special Project Expenses: shall include special engineering, economic or other studies, litigation expenses, meter testing or other major operating expenses. Each such project shall be assigned a task order number and shall be separately budgeted and accounted for. Special Project Expenses shall be allocated to the Appropriators, or portion thereof, on the basis of benefit.

O. Investment of Funds; Borrowing: The Watermaster may hold and invest Watermaster funds as authorized by law, and may borrow, from time-to-time, amounts not exceeding annual receipts.

P. Contracts: The Watermaster may enter into contracts for the performance of any of its powers.

Q. Cooperation With Other Agencies: The Watermaster may act jointly or cooperate with other local, state and federal agencies.

R. Studies: The Watermaster may undertake relevant studies of hydrologic conditions and operating aspects of the management program for the Beaumont Basin.

S. Groundwater Storage Agreements: The Watermaster shall adopt uniform rules and a standard form of agreement for the storage of Supplemental Water, provided that the activities undertaken pursuant to such agreements do not injure any Party.

T. Administration of Groundwater Storage Capacity: Except for the exercise by the Overlying Parties of their
respective Overlying Water Rights described in Part III, above, in accordance with the provisions of the Physical Solution, all Groundwater Storage Capacity in the Beaumont Basin shall be subject to the Watermaster’s rules and regulations, which regulations shall ensure that sufficient storage capacity shall be reserved for local projects. Any Person or entity may apply to the Watermaster to store water in the Beaumont Basin.

U. **Accounting for Stored Water**: The Watermaster shall calculate additions, extractions and losses and maintain an annual account of all stored water in the Beaumont Basin, and any losses of water supplies or Safe Yield resulting from such stored water.

V. **Accounting for New Yield**: Recharge of the Beaumont Basin with New Yield water shall be credited to the Party that creates the New Yield. The Watermaster shall make an independent scientific assessment of the estimated New Yield created by each proposed project. New Yield will be allocated on an annual basis, based upon monitoring data and review by the Watermaster.

W. **Accounting for Acquisitions of Water Rights**: The Watermaster shall maintain an accounting of acquisitions by Appropriators of water otherwise subject to Overlying Water Rights as the result of the provision of water service thereto by an Appropriator.

X. **Annual Administrative Budget**: The Watermaster shall prepare an annual administrative budget for public review, and shall hold a public hearing on each such budget
prior to adoption. The budget shall be prepared in sufficient detail so as to make a proper allocation of the expenses and receipts. Expenditures within budgeted items may thereafter be made by the Watermaster as a matter of course.

Y. Redetermining the Safe Yield: The Safe Yield of the Beaumont Basin shall be redetermined at least every 10 years beginning 10 years after the date of entry of this Judgment.

6. Reports and Accounting
   (a) Production Reports: Each Pumper shall periodically file, pursuant to Watermaster rules and regulations, a report showing the total production of such Pumper from each well during the preceding report period, and such additional information as the Watermaster may reasonably require.

   (b) Watermaster Report and Accounting: The Watermaster shall prepare an annual report of the preceding year's operations, which shall include an audit of all assessments and Watermaster expenditures.

7. Replenishment
   Supplemental Water may be obtained by the Watermaster from any source. The Watermaster shall seek the best available quality of Supplemental Water at the most reasonable cost for recharge in the Basin. Sources may include, but are not limited to:

   (a) Recycled Water;

   (b) State Water Project Water;
(c) Other imported water.
Replenishment may be accomplished by any reasonable method
including:

(a) Spreading and percolation, or injection of water
in existing or new facilities; and/or

(b) In-lieu deliveries for direct surface use, in lieu
of groundwater extraction.

VII. MISCELLANEOUS PROVISIONS

1. Designation of Address for Notice and Service

Each Party shall designate, in writing to the plaintiff, the
name and address to be used for purposes of all subsequent
notices and service herein, such designation to be delivered to
the plaintiff within 30 days after the Judgment has been entered.
The plaintiff shall, within 45 days after judgment has been
entered, file the list of designees with the Court and serve the
same on the Watermaster and all Parties. Such designation may be
changed from time-to-time by filing a written notice of such
change with the Watermaster. Any Party desiring to be relieved
of receiving notices of Watermaster activity may file a waiver of
notice on a form to be provided by the Watermaster. The
Watermaster shall maintain, at all times, a current list of
Parties to whom notices are to be sent and their addresses for
purposes of service. The Watermaster shall also maintain a full
current list of names and addresses of all Parties or their
successors, as filed herein. Copies of such lists shall be
available to any Person. If no designation is made, a Party’s
designee shall be deemed to be, in order of priority: (i) the
Party’s attorney of record; or (ii) if the Party does not have an
attorney of record, the Party itself at the address on the
Watermaster list.

2. Intervention After Judgment

Any Person who is neither a Party to this Judgment nor a
successor or assignee of a Party to this Judgment may seek to
become a party to this Judgment by filing a petition in
intervention.

3. Interference with Pumping

Nothing in this judgment shall be deemed to prevent any
party from seeking judicial relief against any other party whose
pumping activities constitute an unreasonable interference with
the complaining party’s ability to extract groundwater.

4. Successors and Assigns

This Judgment and all provisions herein shall be binding on
and shall inure to the benefit of the heirs, executors,
administrators, successors and assigns of the parties hereto.

5. Severability

The provisions of this Judgment are severable. If any
provision of this Judgment is held by the Court to be illegal,
invalid or unenforceable, that provision shall be excised from
the Judgment. The remainder of the terms of the Judgment shall
remain in full force and effect and shall in no way be affected,
impared or invalidated by such excision. This Judgment shall be
reformed to add, in lieu of the excised provision, a provision as
similar in terms to the excised provision as may be possible and
be legal, valid and enforceable.

6. Review Procedures

Any action, decision, rule or procedure of the Watermaster
pursuant to this Judgment shall be subject to review by the Court on its own motion or on timely motion by any Party, as follows:

A. **Effective Date of Watermaster Action:** Any order, decision or action of the Watermaster pursuant to this Judgment on noticed specific agenda items shall be deemed to have occurred on the date of the order, decision or action.

B. **Notice of Motion:** Any Party may, by a regularly-noticed motion, petition the Court for review of the Watermaster’s action or decision pursuant to this Judgment. The motion shall be deemed to be filed when a copy, conformed as filed with the Court, has been delivered to the Watermaster, together with the service fee established by the Watermaster sufficient to cover the cost to photocopy and mail the motion to each Party. The Watermaster shall prepare copies and mail a copy of the motion to each Party or its designee according to the official service list which shall be maintained by the Watermaster according to Part VII, paragraph 1, above. A Party’s obligation to serve the notice of a motion upon the Parties is deemed to be satisfied by filing the motion as provided herein. Unless ordered by the Court, any petition shall not operate to stay the effect of any Watermaster action or decision which is challenged.

C. **Time for Motion:** A motion to review any Watermaster action or decision shall be filed within 90 days after such Watermaster action or decision, except that motions to review Watermaster assessments hereunder shall be filed within 30 days of mailing of notice of the assessment.
D. **De Novo Nature of Proceeding**: Upon filing of a petition to review a Watermaster action, the Watermaster shall notify the Parties of a date when the Court will take evidence and hear argument. The Court’s review shall be de novo and the Watermaster decision or action shall have no evidentiary weight in such proceeding.

E. **Decision**: The decision of the Court in such proceedings shall be an appealable Supplemental Order in this case. When the same is final, it shall be binding upon the Watermaster and the Parties.

Dated: **FEB 4 2004**

**GARY TRAMBARGER**

**JUDGE OF THE SUPERIOR COURT**
Attachment 5
City Council Ordinance No. 1500
ORDINANCE NO. 1500

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING THE RANCHO SAN GORGONIO SPECIFIC PLAN AND ADOPTING CONDITIONS OF APPROVAL AND MAKING FINDINGS IN SUPPORT THEREOF

WHEREAS, the City of Banning received an application on May 16, 2013 to adopt and provide zoning regulations for the Rancho San Gorgonio Specific Plan, including a General Plan Amendment No. 13-2503, Zone Change No. 13-3501, Tentative Tract Map 36586, Development Agreement, Annexation, and approval of an EIR to allow the master plan development of the Rancho San Gorgonio Specific Plan which provides a mix of up to 3,385 residential units on up to approximately 540 acres; 9.3 acres for Neighborhood Commercial uses, 14 acres for an elementary school site, 210 acres for parks and recreational areas, with varying passive open space trails and sports fields, and 77 acres for circulation uses, including roadways, pathways and bridges for vehicles, bikes, pedestrian and equestrian use. The total 831 acre master plan includes 161 acres to be annexed from the County of Riverside that is located in the City’s sphere of influence.

Project Applicant: Peter J. Pitassi

Property Owners: Diversified Pacific

Project Location: South of Interstate 10 and bounded by Sunset Avenue and Turtle Dove Lane on the west, Coyote Trail and Old Idyllwild Road on the south, San Gorgonio Avenue (State Route 243) on the east, and portions of Westward Avenue to the north.

APN: The project parcels include APN #’s: 537-150-005 – 007; 537-170-002 – 004; 537-190-001 – 005, 018 – 022; 537-220-031 – 038; 543-020-001, 002, 021, 023; 543-030-001; 543-040-001, 002; 543-050-001 – 003

Specific Plan Size: 831 Acres

WHEREAS, Diversified Pacific requests approval of the Rancho San Gorgonio Specific Plan to master plan the development of an 831 acre vacant site so that future development within the project site conforms to the Rancho San Gorgonio Specific Plan.

WHEREAS, the Rancho San Gorgonio Specific Plan (Exhibit “A”) including its companion entitlement applications for General Plan 13-2503, Zone Change 13-3501, Water Supply Assessment, Tentative Tract Map 36586, Development Agreement, and Annexation are considered a Project pursuant to CEQA Guidelines Sections 21065.
WHEREAS, Government Code Sections 65450 through 65454 establish the authority for the adoption of a Specific Plan, identify the required contents of the Specific Plan and mandate consistency with the General Plan.

WHEREAS, Chapters 17.44 and 17.96 of the Banning Zoning Code specifies the purpose, the content of the Specific Plan, procedures for the preparation and adoption of the Specific Plan and findings.

WHEREAS, the City of Banning development team has reviewed the Rancho San Gorgonio Specific Plan and associated entitlement and determined that the Specific Plan meets the requirements of Government Code Sections 65450 and 65454 and Chapters 17.44 and 17.96 of the Banning Zoning Code.

WHEREAS, the approval of the Rancho San Gorgonio Specific Plan as referenced herein, including its companion applications for General Plan Amendment No. 13-2503, Zone Change No. 13-3501, Water Supply Assessment, Tentative Tract Map 36586, Development Agreement, and Annexation is considered a project pursuant to CEQA Guidelines Section 21065.

WHEREAS, consistent with Section 15083 of CEQA and prior to completing the draft Environmental Impact Report ("EIR"), the City held an early consultation or scoping meeting regarding the environmental issue areas to be considered in the EIR. The City published the Notice of Preparation ("NOP") including the Scoping meeting in the Record Gazette and on the City’s website. The City also mailed the NOP to members of the public, organizations/groups, public agencies and persons who have requested to be on the mailing lists. As part of early consultation, the City held a public scoping meeting on April 29, 2015 at the City of Banning Council Chambers, 99 East Ramsey Street, Banning, California.

WHEREAS, a Final EIR (SCH No. 2015041064), including Draft EIR and Mitigation Monitoring and Reporting Program, Statement of Overriding Considerations and Finding of Fact were prepared in accordance with the California Environmental Quality Act Sections 15000-15387 (Title 14, Chapter 3 of California Code of Regulations), the State CEQA Guidelines, and the City of Banning Environmental Review Guidelines.

WHEREAS, consistent with Sections 15086 and 15087 of CEQA, the City published the Notice of Availability ("NOA") of the Draft EIR and made the Draft EIR available for a 45-day public review period from June 20, 2016 through August 3, 2016. The NOA was published in the Press Enterprise and the Record Gazette and on the City’s website. The City also mailed the NOA to the State Clearinghouse for distribution to State Agencies and to groups and organizations, and members of the public who requested to be on the Project’s mailing list.

WHEREAS, during the Planning Commission hearing on September 7, 2016, the City received questions and comments on the Project, Specific Plan, draft
WHEREAS, the City received comment letters from members of the public, public agencies, groups/organizations, and persons who requested to be a part of the mailing list of the Project for the Draft EIR and the impacts of the Rancho San Gorgonio Specific Plan, including its associated applications as referenced herein.

WHEREAS, consistent with Section 15088 of CEQA, the City evaluated the responses received from members of the public, public agencies, groups/organizations, and persons who requested to be a part of the mailing list of the Project and prepared written responses, which culminated in a Final EIR for the Project and is referenced herein. The Final EIR was made available for 10-day public review on__________, 2016. The Final EIR was made available at City Hall Community Development Counter, the Banning Public Library, and on the City’s website.

WHEREAS, on September 7, 2016, the Banning Planning Commission held a duly-noticed public hearing, at which time the Commission considered the public testimony, staff report, full documentation of the Final EIR, and all other documentation relating to the Project, and the Commission unanimously recommended approval of the Project, certification of the Final EIR, adoption of the Statement of Overriding Considerations and Findings of Fact to the City Council.

WHEREAS, on__________, 2016, the City gave public notice by advertisement in the Press Enterprise and the Record Gazette newspapers of a public hearing concerning the Project to be held before the City Council. In addition, the City mailed public hearing notices to the owners of properties that are located within a 1200’ radius of the project boundaries and to interested persons who requested to be on the mailing lists for the project. On__________, 2016, the City Council held its public hearing on the Project and Final EIR, to consider public testimony, the staff reports and presentations, full copy of the Final EIR, Statement of Overriding Considerations and Findings of Fact and all other documentation relating to the Project.

NOW THEREFORE, the City Council of the City of Banning does hereby ordain, determine, find, and order as follows:

SECTION 1. ENVIRONMENTAL FINDINGS.

A Final Environmental Impact Report [EIR] (SCH No. 2015041064), including Draft EIR and Mitigation Monitoring and Report Program, Statement of Overriding Considerations and Findings of Fact was prepared in accordance with the California Environmental Quality Act (“CEQA”), the State CEQA Guidelines Sections 15000 through 15387, and the City of Banning Environmental Review Guidelines. City Council Resolution No. 2016-83 as referenced herein provides environmental findings for the Project.
SECTION 2. REQUIRED FINDINGS FOR AN AMENDMENT TO THE EXISTING REGULATIONS FOR THE RANCHO SAN GORGONIO SPECIFIC PLAN.

Finding No. 1: The proposed Specific Plan is consistent with the General Plan.

Findings of Fact: The proposed Specific Plan is consistent with the General Plan. The current General Plan Land Use and Zoning designations for the project site is zoned Very Low Density Residential, Medium Density Residential, and Rural Residential and Open Space Parks. The 161 acre portion of the project proposed to be annexed is located within the project’s sphere of influence (SOI) and is zoned Ranch/Agriculture. The proposed General Plan Amendment No. 13-2503 and Zone Change No. 13-3501 will change the land use designations and zoning of the project site to “Specific Plan”, which will make the Rancho San Gorgonio Specific Plan consistent with the General Plan Land Use and Zoning. With approval of the General Plan Amendment No. 13-2503 and Zone Change No. 13-3501, the proposed Rancho San Gorgonio Specific Plan would be consistent with the intent of the General Plan through designation of the site as Specific Plan. Consistency of the Rancho San Gorgonio Specific Plan pertaining to the proposed project is assessed in Section 6.0 of the Rancho San Gorgonio Specific Plan dated January 26, 2015 and is attached herein.

Finding No. 2: The proposed Specific Plan would not be detrimental to the environment, or to the public interest, health, safety, convenience, or welfare of the City.

Finding of Facts: In compliance with State law (Government Code Sections 65450 et. seq.) the proposed Rancho San Gorgonio Specific Plan includes the following information:

(1) The distribution, location, and extent of land uses, including residential, commercial, open space and trail and a site for an elementary school. Specifically, Section 2.0, pages 2.1-1 to 2.2-10 includes maps and diagrams for the distribution, location, and extent of the uses of land, including open space. In addition, the text accompanies the maps and diagrams providing detail information as to the specific plan land uses, their location, and intensity/density of the uses. Similarly, pages 2.3-1 through pages 2.9-4 of the Specific Plan provide detailed development plans for circulation and traffic calming provisions street standards, public landscaping, drainage provisions and the water master plan.
Detail information concerning the project Design Guidelines and Development Regulations are detailed in Sections 3 and 4.

(2) The distribution, location, extent and intensity of major components of public and private transportation, water, sewer, drainage, solid waste disposal, energy, and other essential facilities within the project area required to support the land uses described in the Specific Plan. Specifically, Section 2.3-1 through 2.9-1 in which these sections provide detail information via text and diagrams/maps showing distribution location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan. Other public services and essential facilities for the project including schools, fire and police protection, library, cable, gas, and health services are provided in Section 2.9 on pages 2.9-1 through 2.9-4.

(3) Standards and criteria for which the development will proceed; specifically, the following sections of the Rancho San Gorgonio Specific Plan provides standards and criteria for which the development will proceed:

a. Sections 2.1 through 2.2 provide specific details development regulations for each of the land use districts and how they are to be developed
b. Sections 3.2 through Sections 3.4 provide detail development design guidelines for the community, neighborhood, and individual buildings and how they are to be developed.
   c. Section 5-4 through page 5-9 provide phasing for each development.

(4) A program for implementation including regulations, programs, public works projects and financing measures necessary to carry out the project; Specifically, Section 5.5 of the Rancho San Gorgonio Specific Plan provides details information on the administration and implementation of the Specific Plan that includes regulations, programs, public works projects, and financing measures necessary to carry out items (1), (2), and (3). The financing measures include Water and Sewer Systems, Storm Drain Improvements, Street Improvements and Lighting, Open Space and Parks which is described in detail in Section 5.5, Table 5-2 on page 5-13.
(5) A Statement of Relations of the Specific Plan to the adopted General Plan. Specifically, Section 6.0 of the Rancho San Gorgonio Specific Plan findings of consistency with the General Plan as referenced herein, the proposed General Plan Amendment 13-2503 and Zone Change 13-3501 would maintain the appropriate balance of land uses within the City and specifically, it will implement the Citywide goal of "a balanced, well-planned community including business which provides a functional pattern of land uses and enhances the quality of life for all Banning residents."

Additionally, the Specific Plan has been reviewed to ensure that there are adequate two-points of access within each of the neighborhoods/planning areas to provide access for public safety emergency vehicles during an emergency.

As required by the California Environmental Quality Act (CEQA) Section 20165, an environmental impact report (EIR) [State Clearinghouse No. 2015041064] was prepared for the project. The EIR identified potentially significant effects on the environment, public interest, health, safety, convenience, and welfare of the City and identified mitigation measures that shall be incorporated into the Project to reduce impacts. In certain instances incorporation of mitigation measures were unable to reduce impacts to less than significant. Section 15091 allows the City to approve a project that has significant impacts on the environment where the impacts cannot be mitigated when there are economic, social, or other considerations that make it infeasible to mitigate the significant effects. Findings for approval must be provided consistent with Section 15093 of the CEQA Guidelines in that the City Council will need to adopt a Statement of Overriding Considerations for the significant and unavoidable Project-related impacts.

The City has prepared a Statement of Overriding Considerations for the significant and unavoidable Project-related impacts associated with aesthetics, light and glare, air quality, and traffic and circulation and the cumulative impacts associated with aesthetics, light and glare, air quality, climate change, noise, and traffic and circulation. (Refer to City Council Resolution No. 2016-83).

Based upon the Statement of Overriding Considerations, seventeen (17) areas of Public Benefit related to the proposed Rancho San Gorgonio Specific Plan Project outweigh the seven (7) areas of significant unavoidable adverse impacts. The significant unavoidable adverse impacts are considered acceptable.
Finding No. 3: The subject property is physically suitable for the requested land use designation(s) and the anticipated development(s).

Findings of Fact: The 831 acre project site is currently vacant and undeveloped and the majority of the site is located on flat land. The draft Environmental Impact Report analyzed for constraints and opportunities for development including compatibility of the various densities and intensity of land uses surrounding the development, flood zone, earthquake fault, proximity to natural open space, availability of water and utilities to serve the project. The Rancho San Gorgonio Specific Plan Master Planned Development would continue a pattern of residential development that reflects existing residential patterns that border the project. The project will provide linkages between existing developments, extending and improving the City’s circulation system, and providing additional parks, a school, and other public faculties that would serve both proposed and existing land uses in the area. The major roadway servicing each of the project’s “Village” sites and Planning Areas is the Rancho San Gorgonio Parkway through tie-ins with interconnected streets. The planned Parkway will loop through the project site from the intersection of south 22nd Street and Westward Avenue, south towards Pershing Creek the north to the intersection of South 8th Street and Westward Avenue. The roadway right-of-way and adjoining landscape corridor’s consist of approximately 77 acres of land dedicated to the major backbone roadway network to serve the Project. Multi-use trails (paseos), bikeways and pathways are incorporated into the project to provide additional mobility options throughout the site. A series of “roundabouts” are proposed as alternatives to signaled intersections to maintain the flow of traffic. In conjunction with the vehicle circulation route the 831 acre Project site provides 210 acres of parks and pedestrian open space areas. The parks and recreational facilities proposed within the Project site would be developed in accordance to the Specific Plan requirements for each Planning areas. Parks and open space include four (4) parks, a linear park along Smith Creek, village paseos, natural open space areas, which make up 210 acres of the entire Project site. The combination of paseos, parks, and other open space venues the project proposes substantially contributes to the City’s park systems and quality of life.

Finding No. 4: The proposed Specific Plan shall ensure development of desirable character which will be compatible with existing and proposed development in the surrounding neighborhood.
Finding of Fact: While the project’s development is consistent and sensitive to existing residential housing stock in the area, the Specific Plan is envisioned as a community with a variety of home styles where architectural massing, roof forms, detailing, walls and landscape are integrated to reflect historic, regional, and climate-appropriate styles. The design features include four broad architectural families of styles intended to provide a distinct and unique architectural residential theme. The design themes include Spanish Style represented by Monterey, Spanish Colonial, Santa Barbara and Andalusian architecture; California Eclectic Style represented by Ranch, Farmhouse, Prairie, Napa and Craftsman architecture; Mediterranean Style represented by Tuscan architecture; and Monterrey represented by combination of Spanish Eclectic and Colonial Revival styles. The objective of these designs provided in the Specific Plan is to create an attractive environment that is compatible in scale and aesthetics with the community. Similarly, the commercial design emphases shall be to develop visual and functional structures that contribute to the creation of a coherent, well-defined and active public realm; use of clearly defined landscape and site design elements, pedestrian connections and lighting; and articulated and clearly marked entries.

Each of the residential design themes would be integrated into the project’s phasing program to ensure the orderly build-out of the community based on market demand and infrastructure availability. Each of the neighborhoods within the project area have been reviewed and provided two points of access for public safety in case of emergency and also connection to the surrounding community. Necessary utilities that include water, sewer, gas, electricity, cable, telephone, and transit that will serve the development will be provided through the implementation of the Specific Plan.

In compliance with SB 610 (Water Code Section 10910 et seq.), a Water Supply Assessment was prepared for the project, which is consistent with the City’s Urban Water Management Plan, and which is incorporated herein by reference. The Water Supply Assessment concluded that the City’s total projected water supplies are adequate to meet the projected water demand associated with the project, in addition to the City’s existing and planned future uses.

Based on the facts indicated in this subsection and subsections above and the administrative record, the project site is suitable for requested land use designation(s) and the anticipated land use development(s).
SECTION 3. CITY COUNCIL ACTION.

The City Council hereby takes the following action:

Adopt Ordinance No. 1500 and introduce the first reading of the Ordinance adopting the Rancho San Gorgonio Specific Plan as shown in Exhibit “A” under separate cover and included by this reference, and adopting the Conditions of approval attached hereto as Exhibit B and making findings in support thereof.

PASSED, APPROVED AND ADOPTED this _______ day of ____________, 2016.

__________________________________________
Art Welch, Mayor
City of Banning

ATTEST:

__________________________________________
Marie Calderon, City Clerk
City of Banning, California

APPROVED AS TO FORM
AND LEGAL CONTENT:

__________________________________________
John C. Cotti
Interim City Attorney
City of Banning, California

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1500 was duly introduced at a regular meeting of the City Council of the City of Banning, California, held on the _______ day of ____________,.
2016, and was duly adopted at a regular meeting of said City Council held on the
day of __________, 2016, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:  

________________________________
Marie Calderon, City Clerk  
City of Banning, California
Rancho San Gorgonio Specific Plan

(Under Separate Cover)
RANCHO SAN GORGONIO SPECIFIC PLAN AND TENTATIVE TRACT MAP NO. 36586
CONDITIONS OF APPROVAL

I. GENERAL/ONGOING

COMMUNITY DEVELOPMENT DEPARTMENT

1. Approved General Plan Amendment and Zone Change. The General Plan Amendment and Zone Change are approved as shown in Exhibit “A” to Resolution No 2016-88 and Ordinance No. 1501, respectively. A Development Agreement (the “Development Agreement”) was approved concurrent with the General Plan Amendment and Zone Change. Capitalized terms used herein bear the same meaning as defined in the Development Agreement.

2. Approved Rancho San Gorgonio Specific Plan – Approval of the Rancho San Gorgonio Specific Plan is based upon the plan dated January 26, 2015. This approval includes development of up to 3,385 new residential units on approximately 830.8 acres, a minimum of 9.3 acres of commercial, 210.3 acres of open space including 184.6 acres of parks, paseos, and trails and 25.7 acres of natural open space, potentially one school site as determined by the school district, a 0.2 acre utility substation site, and approximately 77 acres of backbone roads as shown in the table below (“Project”).
3. Within sixty (60) days, the Rancho San Gorgonio Specific Plan shall be updated by the applicant to incorporate any required conditions of approval and shall be resubmitted to the City Planning Department for review. Upon approval, the applicant shall print and submit ten final copies of the approved Specific Plan to the City.

4. The Rancho San Gorgonio Specific Plan shall be amended at Section 4.3.7 Projections Into Required Yards to add language under the third bullet indicating
that pergolas and/or covered but unenclosed landings may extend a maximum of two feet into a side yard, subject to all Building and Fire Code requirements.

5. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-2 to specify that Large Day Care Homes shall require a Conditional Use Permit and under “Other Uses”, to specify that private schools shall be subject to a Conditional Use Permit.

6. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-2 to specify that Second Dwelling Units shall be subject to City of Banning Zoning Ordinance Section 17.08.100 Second Unit Standard requirements.

7. The Rancho San Gorgonio Specific Plan shall be amended at Section 4.3 General Development Criteria, to specify that for non-gated communities, all building setbacks shall be measured to property line and that for gated communities, setbacks may be measured from street or back of sidewalk. General references throughout the document to setback measurements from street or back of sidewalk shall be amended as to be consistent with this requirement. Section 4.3 shall also be amended to specify that all required 2-car garages shall measure 20’x 20’ interior dimensions; and to limit freestanding walls to 6’ in height excepting within a required front yard setback where the maximum height shall be 48”. On a corner lot, no fence, wall, hedge, or other structure, shrubbery, mounds of earth, or other visual obstruction over thirty-six inches in height above the nearest street curb elevation shall be erected, placed, planted, or allowed to grow within a traffic safety sight area.

8. The Rancho San Gorgonio Specific Plan shall be amended at Section 4.3.10 Interim Uses, to specify that the listed interim or temporary uses may be permitted in any planning area ultimately planned for development uses prior to construction, rather than entitlement, of its primary permitted use. Section 4.3.10 shall be further amended to require that (c) festivals or fairs; (e) farmers markets, and (f) Christmas tree lots, pumpkin patches, and similar seasonal uses, shall require a Temporary Use Permit, subject to City of Banning Zoning Ordinance Chapter 17.108 requirements.

9. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-3 VLDR Residential Uses Development Standards to require a minimum lot depth of 100’ and a maximum lot coverage of 50%.

10. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-4 LDR Residential Uses Development Standards-4500 to require a minimum lot depth of 90’ and to require that the front yard garage setback shall be a minimum of 19’ from back of sidewalks.

11. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-5 LDR Residential Uses Development Standards-5000 to require a minimum lot depth of
100’ and to require that the front yard garage setback shall be a minimum of 19’ from back of sidewalk.

12. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-6 LDR Residential Uses Development Standards-5500 to require a minimum lot depth of 100’.

13. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-7 LDR Residential Uses Development Standards-6000 to require a minimum lot depth of 100’ The Rancho San Gorgonio Specific Plan shall be amended at Table 4-8 LDR Residential Uses Development Standards-7000 to require a minimum lot depth of 100’ and to require that the front yard garage setback shall be a minimum of 19’ from back of sidewalks.

14. The Rancho San Gorgonio Specific Plan shall be amended at Section 5.1.5 Minor Modifications to be consistent with City of Banning Zoning Code Chapter 17.84.

15. The Rancho San Gorgonio Specific Plan shall be amended at Section 5.1.6 Amendments to the Specific Plan to specify that any modifications not listed under 5.1.5 Minor Modifications shall require an amendment to the Specific Plan requiring public hearings, a recommendation by the Planning Commission and approval by the City Council.

16. The Rancho San Gorgonio Specific Plan shall be amended at Section 5.2.3 Subsequent Approvals and Plans, third bullet, to specify that Design Review applications shall require Planning Commission consideration and approval.

17. **Precedence of Conditions.** If any of the Conditions of Approval conflict with the Rancho San Gorgonio Specific Plan text or map exhibits, the conditions enumerated herein shall take precedence unless superseded by the Development Agreement, which shall govern over any conflicting provisions of any other approval.

18. **Compliance with City Codes and Conditions.** Development of the property shall conform substantially to the approved Rancho San Gorgonio Specific Plan as filed in the Planning Division, unless otherwise amended. Should the regulations in the Specific Plan differ from the City of Banning Zoning Ordinance, the regulations in the Specific Plan shall take precedence. Regulations that are not addressed in the Rancho San Gorgonio Specific Plan shall be subject to the City of Banning Zoning Ordinance.

19. **Outside Agencies.** Development of the property shall be in accordance with the plans and procedures of various responsible agencies. These include the following:
a) **State and Federal Standards.** The Project shall conform where applicable to all disabled access requirements in accordance with the State of California, Title 14, and Federal Americans with Disabilities Act (ADA).

b) **Southern California Edison.** If construction is proposed within the area of the Southern California Edison power transmission easement or immediately adjacent thereto, the Developer shall contact the area service planner for Southern California Edison to coordinate construction related activities.

c) **School Districts.** The Developer shall demonstrate payment of standard requirements and mitigation fees established by the State of California and the Banning Unified School District.

d) **Riverside County Flood Control.** Prior to approval of any Final Tract or Parcel Map for which a Riverside County Flood Control master plan facility is included, the Developer shall obtain a written statement from the Riverside County Flood Control District, in a form satisfactory to the City, indicating that the Developer has adequately demonstrated the viability of proposed drainage facilities. The written statement could be the approval of the facility by RCFCD.

e) **Caltrans District 8.** Prior to issuance of applicable roadway improvement or encroachment permits, the Developer is required to receive approval of any construction or work within the Caltrans right-of-way(s).

f) **California Department of Fish and Game.** The Developer shall apply for and receive approval of an agreement under Section 1602 of the California Fish and game Code.

g) **United States Army Corps of Engineer.** The owner, Developer, or successor in interest shall receive approval of a permit under Section 404 of the Clean Water Act.

h) **Regional Water Quality Control Board.** The owner, Developer, or successor in interest shall receive approval of a permit under Section 401 of the State Porter-Cologne Act from the Colorado River basin Regional Water Quality Control Board.

i) **Riverside Conservation Authority.** The owner, Developer, or successor in interest shall comply with the Multi-Species Habitat Conservation Program mitigation fees.
j) South Coast Air Quality Management District (SCAQMD). The owner, Developer, or successor in interest shall comply with the air quality regulations promulgated by the SCAQMD.

20. Mitigation Measures and Mitigation Monitoring Program. The owner, Developer, or successor in interest shall comply with the Mitigation Measures and Mitigation Monitoring Program as approved in the Final Environmental Impact Report (SCH# 2015041064) as certified by the City Council on _____, 2016 and incorporated herein by reference. The owner, Developer, or successor in interest shall pay for the cost of implementing and monitoring the mitigation measures.

21. City Approvals. All approvals by City, unless otherwise specified, shall be by the department head of the department requiring the condition. All agreements, covenants, easements, deposits and other documents required herein where City is a party shall be in a form approved by the City Attorney. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.

22. Homeowner’s Associations. The owner, Developer, or successor in interest shall form a Home Owner’s Association (HOA) to maintain private amenities and areas that are determined by the City to be under the area of responsibility of the Homeowners Association as addressed in the Development Agreement, subject to review and approval by the City Attorney and the City Engineer.

23. Property Management Association. The owner, Developer, or successor in interest shall form a Property Management Association for maintenance of common areas within the commercial component of the Project, subject to review and approval by the City Attorney and the City Engineer.

24. Covenant, Conditions, and Restrictions (CC&Rs). Covenants, Conditions, and Restrictions (CC&Rs) shall be established for residential and commercial development. The owner, Developer, or successor in interest shall pay for the cost of review and approval of the CC&Rs by the City Attorney. The CC&Rs shall provide for proper maintenance of all property and include other necessary conditions to carry out the terms herein, and shall be enforceable by City, and recorded prior to development of any parcels. An initial deposit of $5,000 is required to cover processing costs. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.

25. Reciprocal Ingress and Egress. Reciprocal ingress and egress shall be established between the parcels within each of the commercial areas, in a form approved by the City Attorney.
26. **Mandatory Solid Waste Disposal.** Mandatory solid waste disposal services shall be provided by the City franchised waste hauler to all parcels/lots or uses affected by approval of this Project.

27. **Community Facilities District (CFD).** This Project is *not* within an existing Community Facilities District (CFD). As a requirement of this Project, one or more CFD’s (and LMDs) shall be required to fund the maintenance of infrastructure, landscaping, police, and fire services. The formation of the CFD must be completed prior to recordation and shall be subject to review and approval by the City Attorney and City Engineer. An initial deposit of $5,000 is required to cover processing costs associated with the proceedings for the establishment of the CFD. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.

28. **Addresses.** All numbered lots shall have addresses assigned by the Building and Safety Department.

29. **Fair Share Agreements, Reimbursement and Covenant Agreements.** All fair share agreements, covenant agreements and agreements subject to recordation will be subject to review and approval by the City Attorney and will include appropriate enforcement provisions by the City and be properly securitized. The City may require the Developer to enter into fair share and reimbursement and other covenant agreements which may be recorded against property and bind owners of property and their successors. A “fair share” agreement shall provide for Developers of property to pay their fair share for infrastructure improvements as determined by an independent study of the respective benefit received by the benefited property. A reimbursement agreement requires the initial Developer to install infrastructure which will also serve other property when it is developed, and the initial Developer is reimbursed by the future development in accordance with the benefit received by the future development. The benefit formulas and terms of the fair share and reimbursement agreements shall contain provisions for securitization and enforcement and shall be in form and content approved by the City Attorney in accordance with law. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.

30. **Development Impact Fees.** The development is required to comply with the provisions agreed upon in the Development Agreement regarding the payment of and timing of Development Impact Fees (“DIFs”).

31. **School District Fees.** Prior to the issuance of any building permit, The Developer shall provide certification from Banning USD as required by California
Government Code Section 53080(b) that state mandated school fees have been satisfied.

32. **Processing Fees.** The development is subject to all appropriate City Processing fees, charges, deposits for services to be rendered, and securities required pursuant to the Development Agreement.

33. **One hundred sixty-one (161) Acre Property.** The 161-acre property that is part of the Rancho San Gorgonio Specific Plan and designated as portions of Planning Area 2-B, 2-C, 3-A, 14-A, 15-A, and 15-B; and, and Planning Area 1, 2-A, and 4-A is for the establishment of pre-zoning for the property. If the property is annexed into the City, the property shall be annexed into the Community Facilities District and Landscape Maintenance District as established for the Project.

34. **Fire Station Site.** The Developer, owner, or successor in interest shall dedicate the fire station site to the City of Banning. The Owner will receive fee credits as provided in the appraised value of the property at the time of purchase. The dedication shall occur in accordance with the phasing plan in the Development Agreement.

35. **Bicycle Path and Neighborhood Electric Vehicle and Multi-purpose Trails.** The development shall provide bicycle paths/lanes, neighborhood electric vehicle/golf cart lanes, and walking trails in substantial conformance with the Rancho San Gorgonio Specific Plan. The dedication shall occur as the appropriate phase of the TTM 36586 is recorded and in accordance with the Development Agreement. The developer shall provide an exhibit depicting typical bicycle paths, neighborhood electric vehicles, and multi-purpose trails for review and approval by the City Attorney and City Engineer prior to submittal of tentative subdivision maps.

37. **Trust Deposit Accounts.** Trust deposit accounts shall be established for future submittal and review of tentative tract or parcel maps. All trust deposits shall be maintained with no deficits. The trust deposits shall be governed by deposit agreements. The trust deposit account shall be maintained separate from other City funds and shall be non-interest bearing. City may make demands for additional deposits to cover all expenses over a period of 60 days and funds shall be deposited within 10 days of the request therefore, or work may cease on the Project.

38. **Indemnification.** The Developer shall indemnify the City and its elected boards, commissions, officers, agents and employees and will hold and save them and
each of them harmless from any and all actions, suites, claims, liabilities, losses, damages, penalties, obligations and expenses (including but not limited to attorneys’ fees and costs) against the City and/or Agent for any such Claims or Litigation (as defined in Section ______ of the Development Agreement) and shall be responsible for any judgment arising therefrom. The City shall provide the Developer with notice of the pendency of such action and shall request that the Developer defend such action. The Developer may utilize the City Attorney’s office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City. The Developer shall provide a deposit in the amount of 150% of the City’s estimate, in its sole and absolute discretion, of the cost of litigation, including the cost of any award of attorneys fees, and shall make additional deposits as requested by City to keep the deposit at such level. The City may ask for further security in the form of a deed of trust to land of equivalent value. If the Developer fails to provide or maintain the deposit, the City may abandon the action and the Developer shall pay all costs resulting therefrom and City shall have no liability to the Developer. The Developer’s obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. The Developer shall have the right, within the first 30 days of the service of the complaint, in its sole and absolute discretion, to determine that it does not want to defend any litigation attacking this Agreement or the Development Approvals in which case the City shall allow the Developer to settle the litigation on whatever terms the Developer determines, in its sole and absolute discretion, but Developer shall confer with City before acting and cannot bind City. In that event, the Developer shall be liable for any costs incurred by the City up to the date of settlement but shall have no further obligation to the City beyond the payment of those costs. In the event of an appeal, or a settlement offer, the Parties shall confer in good faith as to how to proceed. Notwithstanding the Developer’s indemnity for claims and litigation, the City retains the right to settle any litigation brought against it in its sole and absolute discretion and the Developer shall remain liable except as follows: (i) the settlement would reduce the scope of the Project by 10% or more, and (ii) the Developer opposes the settlement. In such case the City may still settle the litigation but shall then be responsible for its own litigation expense but shall bear no other liability to the Developer.

39. The developer shall provide a dedicated space in the Community Center for use by the Banning Library District. The size of the space shall be determined by Parks and Recreation Director at time of submittal of construction documents. Upon occupancy of the Community Center, the developer shall provide desks with computers for 14 stations.
40. Any future library facilities associated with the project shall be reviewed and approved by the City for compliance with applicable environmental and other regulations.

41. Model Homes. Prior to the issuance of building permits, the Developer shall submit a model home plan that shows building elevations, plotting plan(s), and precise grading for review and approval for each phase of development, or per neighborhood, or per each master or merchant builders for review and approval by the Community Development Director as long as the plans conform to the Design Guidelines depicted in the Specific Plan. Subsequent minor technical change/adjustment after approval of the model homes and plotting is subject to an additional approval of the Community Development Director.

42. Landscaping. Prior to issuance of building permits, the Developer shall submit and obtain approval of three (3) copies of construction level Landscape and Irrigation Plans to the Community Development Department accompanied by the appropriate trust deposit. The plans shall be prepared by a registered landscape architect and include the location, number, genus species, and container size of the plants. Plants shall be consistent with the Banning Municipal Code. The cover page shall identify the total square footage of the landscaped area and note that it shall be maintained in accordance with the City Code. Water efficient fixtures and drought tolerant plants shall be utilized where possible. Required landscape areas specific to this Project include front yards of all lots; side yards of corner lots; streetscapes on the Project side for Sunset Avenue, Westward Avenue, and Old Idyllwild Road; landscaping of slopes and entry theme walls; streetscapes for both sides of all in-tract roadways; and landscaping of all lettered lots including the detention basin, and all drainage channels which include Smith Creek and Pershing Creek.

43. Walls & Fences. Prior to issuance of building permits in each phase of the map, the Developer shall submit and obtain approval from the Community Development Department of any wall or fence plans. These plans shall be consistent with intent of the Rancho San Gorgonio Specific Plan. Plans for the construction of retaining walls shall be reviewed and approved by the Building and Safety and Planning divisions.

44. Disclosure Statement. The Developer, property owner or successor in interest shall submit the disclosure statement for review and approval by the City Attorney prior to the issuance of building permit for the first home within the Specific Plan.

45. A permanent homeowners association (HOA) will be established for the Specific Plan area to assume ownership and maintenance responsibility for all common areas, private streets/ drives, recreation areas, open space and landscaped
areas not dedicated to the City/public. An area-wide or local Landscape Maintenance District will be accepted for any area dedicated to the City for public use provided that the organization is legally and financially capable of assuming the responsibilities for ownership and maintenance. Maintenance organizations will be established prior to or concurrent recordation of land division maps or issuance of building permits for construction within that land division.

46. CC&Rs. A property owners' association shall be established following grading permit issuance and the applicable Conditions, Covenants & Restrictions ("CC&Rs"), shall be prepared for review and approval of the City Engineer and City Attorney providing for maintenance of the parkways, slopes adjacent to public right-of-ways, drainage areas, water quality facilities, detention basins, debris basins, common area landscaping, and median island landscaping. The Developer shall appoint the members of the Board of Directors of the property owners' association, or take such other steps as may be reasonably necessary to assure that members have been appointed or elected to such Board of Directors, until under the terms of the applicable CC&Rs individual lot owners have the power to elect the members of the Board of Directors in accordance with the CC&Rs.

47. CC&Rs shall contain provisions which prohibit dissolution of the property owners' association unless another entity has agreed to assume the operation and maintenance responsibilities of the property owners' association. The CC&Rs shall contain provisions that prohibit the Developer and his/her successors-in-interest from amending said covenants, conditions and restrictions to conflict with these conditions of approval, City codes and/or standards.

48. CC&Rs shall be subject to prior review and approval of the City Attorney. The Developer shall bear the cost of the review and make a deposit pursuant to a deposit agreement. The City shall be a party of the CC&Rs with full rights to enforce the provisions pertaining to the City including lien rights. The CC&Rs shall be submitted for review prior to issuance of grading permits and recorded prior to issuance of building permits unless approved by the City Attorney.

49. Fair Share of Cumulative Impacts. The Developer shall pay a fair share toward cumulative impacts not otherwise captured in existing fee programs, funding sources or in lieu improvements noted above, if such a program is in place at the time of building permit issuance, based on Project contribution percentages identified in Table 4.13-16 of the Rancho San Gorgonio Specific Plan Draft Environmental Impact Report (June 2016). (FEIR Mitigation Measure XXXXX).

50. Artifact Disposition/Tribal Monitoring: Prior to grading permit, the landowner(s) shall relinquish ownership of all cultural resources, including sacred items, burial
goods, and all archaeological artifacts and non-human remains as part of the required mitigation for impacts to cultural resources. The Applicant shall relinquish the artifacts through one or more of the following methods and provide the County Archaeologist with evidence of same.

a) The developer shall provide to the City of Banning evidence a fully executed reburial agreement with the appropriate culturally affiliated Native American tribe(s) or band(s). This shall include measures and provisions to protect the future reburial area from any future impacts. Reburial shall not occur until all cataloguing, analysis and special studies have been completed.

b) The developer shall provide to the City of Banning evidence a curation agreement with an appropriate qualified repository within Riverside County that meets federal standards per 36 CFR Part 79 and therefore would be professionally curated and made available to other archaeologists/researchers for further study. The collections and associated records shall be transferred, including title, to an appropriate curation facility within Riverside County, to be accompanied by payment of the fees necessary for permanent curation.

c) If more than one Native American Group is involved with the project and cannot come to an agreement as to the disposition of cultural materials, they shall be curated at the Western Science Center.

d) Should reburial of collected cultural items be preferred, it shall occur in coordination with the consulting federally recognized Indian tribes. Should curation be preferred, the developer/permit applicant is responsible for all costs and the repository and curation method shall be described in the Phase IV monitoring report.

51. TRIBAL MONITORING: Prior to Grading Permit the developer shall provide to the City of Banning evidence of fully executed monitoring agreement(s) with the appropriate culturally affiliated Native American tribe(s) or band(s) for all ground disturbing activities associated with the project. If more than one tribe Federally Recognized Indian Tribe has requested monitoring, an equal rotation shall be created around the grading and ground disturbing schedule. This shall include a scope of work and a description of tribal monitoring activities.

52. Paleo/Archeological Conditions. In the event that Native American cultural
resources are discovered during project development/construction, all work in the immediate vicinity of the find shall cease and a qualified archeologist meeting the Secretary of Interior Standards shall be hired to access the find. Work on the overall project may continue during this assessment period. If significant Native American cultural resources are discovered, for which a Treatment Plan must be prepared, the developer or his archeologist shall contact the Morongo Band of Mission Indians (“Tribe”). If requested by the Tribe, the developer of the project archeologist shall, in good faith, consult on the discovery and its disposition.

53. The applicant shall comply with all conditions and requirements identified in the Airport Land Use Commission, Riverside County, letter dated January 21, 2014.

PARKS, RECREATION, AND OPEN SPACE

54. Prior to the recordation of any phase of the final “A” map that contains a designated public park lot, the Applicant shall make an irrevocable offer of fee dedication for park purposes to the City of Banning or its designee for said parks. The form of the offer shall be suitable for recordation as approved by the City Engineer. Said offer shall be free and clear of money and all other encumbrances, liens, leases, fees, easements (recorded and unrecorded), assessments and unpaid taxes except those meeting the approval of the City Attorney.

55. Developer shall fully improve all public parks, including design, construction and final completion as required in the approved specific plan. Developer’s obligation for improvement costs of said parks shall be as set forth in the Development Agreement. OR shall not be limited to the amount of the park portion of the City’s Development Impact Fees, but shall include full obligation to provide fully improved parks.

56. Prior to the issuance of rough grading permit, the applicant shall ensure the following applicable components are incorporated into the rough grading plans:

- All public and private parks
- Linear parks
- Detention basins
- Major entry monuments
- Pedestrian trails, equestrian trails, paseos, and/or bicycle trails
- Paseo connections between cul-de-sacs to and from other paseos and trails where feasible
57. The graphics for parks and monuments in the Specific Plan are conceptual in nature. Prior to issuance of precise grading permits for parks and monuments, the developer shall submit and obtain approval of construction plans from the Community Development Director that are in substantial conformance with the concepts introduced in the Specific Plan.

58. Prior to issuance of a building permit, the applicant shall submit a comprehensive architectural plan package for review and approval by the Community Development Department, Public Works Department, Building Department and Fire Department, including, but not limited to, the following items: site plan, landscape plan, photometric plan, floor plans, elevations, roof plan, and mechanical, electrical, and structural plans wet stamped and signed by a California licensed architect and/or structural engineer. The plans shall demonstrate compliance with the current California Building, Plumbing, Mechanical, Electrical, Fire, Energy, and Green Codes and Banning Municipal Code, Public Works Standards, and all conditions contained herein.

59. Active park sites shall be developed in accordance with the conceptual design shown in the approved Specific Plan. The plans submitted into plan check shall demonstrate compliance with the following items:

- Building elevations shall have varied design elements on each unit within a unified design theme. Enhanced articulation shall be provided on elevations visible from common areas;
- All mechanical equipment shall be adequately screened from public view through landscaping or architectural compatible screens to the satisfaction of the Community Development Director;
- Exterior lighting shall be designed as an integral part of the building and landscape design and shall complement and enhance the selected style of the building. In areas adjacent to existing residential properties, shields shall be used to contain light on-site by directing lighting downward;
- Illumination levels shall be provided to address security concerns, especially for parking lots, pedestrian paths, outdoor gathering spaces, at building entries and any other pedestrian accessible areas; and,
- Landscaping, gateway signs, perimeter and internal walls and fences shall be designed to be compatible with the architectural style of the buildings.
- Active Recreational Facilities, such as pools, spas and playgrounds, shall not be located closer than 40-feet to any dwelling unit.

60. Landscape and irrigation plans shall be submitted for review and approval and shall be prepared in accordance with the provisions of the RSG Specific Plan and Banning Municipal Code requirements. All landscape and irrigation construction
plans shall be substantially complete, to the satisfaction of the Community Development Director. The plans shall demonstrate compliance with the following items:

- All landscaping and hardscape within a City park, utility easement or right of way shall be subject to approval by the Public Works Director. Trees shall be planted a minimum of five (5) feet from dry utilities, a minimum of ten (10) feet from driveways, water meters, water lines, sewer mains and lines, traffic and directional signs, and fire hydrants, a minimum of fifteen feet (15) from street lights, and a minimum of thirty feet (30) from street corners.

- Water efficient planting and irrigation practices shall be utilized to conserve water, reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides.

- Location of all new water facilities, including water mains, valves, landscape services, meters and backflow devices shall require approval from the Public Works Department prior to issuance of a permit to install landscaping and irrigation.

- Landscaping plans that include work in public right-of-way shall include a note stating: "A permit shall be obtained from the Public Works Department prior to any work commencing in the public street parkway. The approved Street Improvement Plans shall be assumed correct if they conflict with these plans".

- All plant materials shall be installed in a healthy and vigorous condition typical to the species and shall be maintained in a neat and healthy condition.

61. After City approval of the landscaping and irrigation installation, the developer shall provide 180-day maintenance during the plant establishment period. The City or LLMD shall take over maintenance responsibilities at the completion of the plant establishment period.

62. Prior to issuance of a grading permit, the Applicant shall submit plans for review and approval to provide for grading & erosion control and shall stub out sewer, water, gas, electricity, telephone, storm drain, etc., connections to the property lines. Grading, erosion control, utility, stub-outs, etc. would be done in conjunction with park construction.

63. Site Lease. Developer shall enter into a separate lease agreement with the City ("Site Lease") that defines the arrangement by which Developer shall lease the Project site from the City and have the Project constructed and presented upon completion to the City. Breach of the Site Lease shall also constitute a violation of these Conditions of Approval.

64. Payment of Project Approval Costs. Prior to the issuance of City permits, Developer shall pay all Project Approval Costs for the Project as approved by the
City, according to a reimbursement process acceptable to the City. “Project Approval Costs” shall include, but are not limited to, reasonable costs for consultants, including the City Attorney and City Engineer during approval process, and shall include any outstanding amounts owed to the City. Project Approval Costs do not include costs of construction of the Project (“Project Construction Costs”), which are provided for under the separate Site Lease.

65. CEQA Mitigation Measures. The Mitigation Monitoring and Reporting Program (MMRP) related to the Final Environmental Impact Report prepared pursuant to the California Environmental Quality Act for this project are incorporated herein by reference. Compliance with the MMRP is required.

66. Traffic Construction Management Plan. Prior to issuance of a grading or construction permit, a Traffic Construction Management Plan (TCMP) shall be submitted and approved by the City Engineer. The TCMP shall be developed to avoid conflicts with large vehicles removing or delivering materials to the Project site during commute hours, and shall employ traffic control measures as specified by Caltrans Standards and approved by the City Engineer and Director of Public Works.

67. Geotechnical Report and Review. At the time of plan submittal for City Permits, the Developer shall submit a report prepared by a geotechnical engineer, selected by the Developer with the City’s prior approval, that fully assesses the existing site conditions, and addresses all issues regarding excavation and grading, foundations and their construction, drainage, retaining wall systems, periodic on-site observations, and other related items involving the Project.

68. Storm Water Discharges. Prior to issuance of grading permits, the developer shall submit a copy of the Notice of Intent (NOI) indicating that coverage has been obtained under the National Pollutant Discharge Elimination System (NPDES) State General Permit for Storm Water Discharges Associated with Construction Activity from the State Water Resources Control Board. Evidence that the NOI has been obtained shall be submitted to the City Engineer and Building Official. In addition, the developer shall include notes on the grading plans indicating that the project will be implemented in compliance with the Statewide Permit for General Construction Activities.

69. Consultant Cost Recovery. The Developer shall, at the time of the City Permit Application, make a cash deposit with the City in the amount of $10,000 to be used to pay for the fees and expenses of City consultants as deemed necessary by the City, or in any way otherwise required to be expended by the City for professional assistance (other than City Staff). If the cash deposit has been
reduced to $5,000 or less at any time, the Director of Public Works may require the Developer to deposit additional funds to cover any further estimated fees and expenses associated with consultants retained by the City for the Developer’s Project. Any unexpended amounts shall be refunded to the Developer within 120 days after the Project has an approved Final Inspection and Notice of Completion by the City.

70. City Attorney and City Engineer Cost Recovery. The Developer shall, at the time of the City Permit Application, make a cash deposit with the City in the amount of $10,000 to be used to offset time and expenses of the City Attorney and City Engineer relating to the Project. If such cash deposit has been reduced to $5,000 or less at any time, the Director of Public Works may require the Developer to deposit additional funds to cover any further estimated additional City Attorney and City Engineer time and expenses. Any unused amounts shall be refunded to the Developer within 120 days after the Project has an approved Final Inspection and Notice of Completion by the City.

71. California’s Water Efficient Landscape Ordinance: The Developer shall comply with the requirements of California’s Model Water Efficient Landscape Ordinance that went into effect January 1, 2010. Landscape & Irrigation plans shall be submitted for review and approval prior to issuance of a grading permit.

- The Developer shall submit a copy of the Water Efficient Landscape Worksheet to the City prior to issuance of a grading permit.
- After completion of work, the Developer shall submit to the City a Certificate of Completion, including an irrigation schedule, an irrigation maintenance schedule, and an irrigation audit report. The City may approve or deny the Certificate of Completion.

72. ALTA Survey. Prior to issuance of building permits, Developer shall have prepared and submitted for review and approval by the Public Works Director and City Engineer an ALTA Survey for the Park Site.

73. Prior to issuance of any permits, the Applicant must submit an Agreement and Faithful Performance and Labor and Materials Bonds (or other surety type acceptable to the City) in the amount approved by the City Engineer guaranteeing the installation of park improvements.

74. Parks, Recreation and Open Space. The Land Use Plan includes development of a total of 210.3 acres of neighborhood parks, paseos, and open space as
depicted in Table 2-1 and described in Section 3 Design Guidelines, and 4.7 and 4.8 of the approved Rancho San Gorgonio Specific Plan. All dedications and improvements shall be in accordance with the Development Agreement except as specifically provided herein.

75. **Parks Completion and Use by the Public.**

   a. Prior to the construction of any parks, the Developer shall meet with both the Director and the Director of Parks and Recreation to review the provisions set forth in the Specific Plan outlining the facilities to be provided at each park and discuss the Developer’s plans for near-term construction of the parks. Prior to development of each park, a detailed site plan consistent with the Specific Plan shall be prepared by the Developer and approved by the Director and the Parks and Recreation Commissions. The Developer shall complete the construction of the neighborhood parks as follows: PA-13 shall be completed prior to the issuance of the final certificate of occupancy for Phase 1. PA’s 14C and 14D shall be completed prior to the issuance of the final certificate of occupancy for Phase 1. PA-11 shall be completed prior to the issuance of the final certificate of occupancy for Phase 2. PA-14B shall be completed prior to the issuance of the final certificate of occupancy for Phase 2. PA-12 shall be completed prior to the issuance of the final certificate of occupancy for Phase 3. PA-15B shall be completed prior to the issuance of the final certificate of occupancy for Phase 3. PA-10 shall be completed prior to the issuance of the final certificate of occupancy for Phase 4. PA-14A shall be completed prior to the issuance of the final certificate of occupancy for Phase 4. PA-15A shall be completed prior to the issuance of the final certificate of occupancy for Phase 4. Upon completion of each neighborhood park, the City shall after the 90 day one-year maintenance period has expired, within 10 working days, develop final punch lists of items to be corrected prior to acceptance by the City. Upon correction of final punch list items by the Developer, the City shall accept the park within 30 days of the date of the final inspection.

76. **Alternative Use of the School Sites.** If the school site(s) is not needed, then any alternative use(s) of the site(s) shall be subject to the City discretionary
Design Review process as provided for in the Specific Plan and the City’s Zoning Ordinance.

77. All parks plans shall be reviewed by the City Engineer and the Director of Parks and Recreation.

78. **One Year Maintenance of Parks and Open Space.** The Developer shall maintain all parks, parkways, medians, berms, lakes, drainage facilities not accepted by Riverside County Flood Control District and irrigation systems within streets or otherwise annexed into the Maintenance Districts, excluding facilities maintained by the Homeowners Association (HOA), for a period of one year after construction until accepted by the receiving agency. All facilities shall be operable and in good working order and any dead or dying landscaping shall be replaced with like materials. If these conditions are not met, or if landscaping has not been in a consistently healthy condition, the one year period can be extended. The Developer shall pay one year cash deposit or post a bond in an amount equal to one year’s maintenance plus City administrative costs (value to be determined prior to recordation of each final map) to ensure maintenance for one year, and shall securitize the obligation in a form approved by the City Attorney. After one year, these operations shall be accepted by the appropriate Maintenance District. That maintenance district will then maintain the facilities to the same level as required by Owner during the maintenance period.

79. **Confluence Park Planning Area 11.** The Developer, owner, or successor in interest shall develop amenities around the basin for recreational purposes as described in the Specific Plan and approved as noted in conditions. Maintenance of the amenities shall be provided by the Community Facilities District (CFD) or Landscape Maintenance District (LMD).

80. **Installation of Plant Material.** Landscaping and permanent irrigation facilities shall be installed with street improvements including landscaped medians on Rancho San Gorgonio Parkway, “C” Street, and Sunset Avenue in accordance with the approved Rancho San Gorgonio Specific Plan as they pertain to plant and irrigation standards. The Developer shall have appropriate right-of-way improvements, landscaping, street lighting and irrigation installed and in good working order prior to final release of occupancy of the homes within the phase adjacent to the improvements.

81. **Content of Plans.** Landscape Improvement plans shall conform to the concepts, features, and standards established in the approved Rancho San Gorgonio Specific Plan and the conditions enumerated herein, and shall be prepared by a licensed landscaped architect.
82. **Security Camera.** For security reasons, the Developer, property owner or successor in interest shall provide a security camera at the City's discretion in selected neighborhood and/or community parks where restroom facilities and other structures are provided. Specifications of the security camera shall be subject to review and approval of the Police Department. The cameras, once installed, will be maintained and operated by the City of Banning Police Department. Developer shall convey the equipment to City with all warranties therein.

**SITE AND ARCHITECTURAL DESIGN**

83. **Architectural Styles.** The architectural styles for the Project shall be consistent with the conceptual architectural design as approved in the Rancho San Gorgonio Specific Plan.

84. **Community Entry Monument Program and Project/Tract Identification.** Consistent with the Rancho San Gorgonio Specific Plan, community entry statements, including theme walls, monumentation, and enhanced landscaping at each entrance to the Project shall be consistent with the locations as approved in the Rancho San Gorgonio Specific Plan. Theme walls and monuments shall not occur within the public right-of-way. All entry monumentation programs shall be submitted for review and approval by the Community Development Department and shall be in substantial conformance with the approved Rancho San Gorgonio Specific Plan. Construction of the monumentation shall occur based on phasing and shall be completed and open prior to final occupancy of the first home in each phase.

85. **Unit/Building Identification.** Each building and unit in the Project shall include a lighted address fixture. This fixture shall allow for replacement of the bulbs, and shall be reviewed and approved by the Community Development Department, the Fire Department, and the Police Department.

86. **Phasing.** Any Phasing Plan shall be reviewed and approved by the Community Development Department and Public Works Department. Each Phase of the Project shall provide adequate drainage, domestic water, and at least two points of access to all lots. A phasing plan shall be submitted with the Design Review application. The phasing plan shall be in accordance with the Master Phasing Plan in the Development Agreement and shall include the installation of any necessary backbone infrastructure.

87. **Satellite Waste Water Treatment Facility.** The architecture of the building for the satellite wastewater treatment facility, if the construction of such a facility is requested by City, shall be designed to be compatible with the architecture of residential homes and the surrounding environment. The facility shall be
constructed on a site approved by the Director of Public Works and dedicated to City, in accordance with the terms of the Development Agreement. If built off site, Developer will pay its fair share fees for such development in accordance with an approved fair share agreement. Plans for construction shall be prepared by appropriately certified architects and engineers and approved by the Director of Public Works.

88. **Mechanical Equipment.** All mechanical equipment, including air conditioning units, pool equipment, etc., shall be screened from the public right-of-way by a view obscuring fence, wall, or landscaping to the satisfaction of the Community Development Department.

89. **Spark Arresters.** All spark arresters in the proposed tract shall be screened by enhanced architectural enclosures or other material acceptable to the Building Official and Planning Division and painted according to the approved paint palette.

90. **Decorative Paving within Streets at the Primary and Secondary Entries.** Decorative paving could be provided within the right-of-way at sufficient distance at the primary and secondary entries. The type of enhancement could include stamped asphalt or other similar applications.

91. **Street Paving.** Public streets in each tract, planning area, or phase of development shall be paved and accessible prior to the issuance of building permits for the first production unit.

92. **Lighting for the Garages and Porches.** Light fixtures for the garage exteriors and porches shall be provided with decorative light fixtures.

93. **Trash Enclosures for Commercial and Multi-Family Residential Development.** Trash enclosures for the commercial development and multi-family residential development shall be provided with a walk-in enclosure with decorative cap and lattice covers.

**LANDSCAPE DEVELOPMENT**

94. **Landscape Construction and Water Conservation.** All landscape architecture documents and landscape construction shall comply with the City of Banning Municipal Code with regard to water conservation in landscaping.

95. **Registered Landscape Architect Licensed by the State of California.** All landscape architecture documents, used as part of the entitlement and landscape construction process, shall be designed by a registered landscape architect licensed by the State of California.
96. **Review and approval of Landscape Architecture Documents.** All landscape architecture documents shall be submitted to Community Development Department for review and approval.

97. **Future Changes to Approval Landscape Architecture Documents.** All future changes, to the landscape architecture documents after City approval, shall be reviewed by the City for conformance to the Specific Plan. If major changes are proposed, the Developer, owner, or successor in interest shall submit the landscape plans and shall deposit funds in the City's trust deposit account for review and approval of the plans. The determination of whether a change is major or minor shall be made by the Director.

98. **Landscape Maintenance.** The owner, Developer, or its successors agrees to maintain the landscape construction, including trails, in accordance with the following:

   a) The landscape construction shall be neat, of good quality and design, and show good horticultural practice.

   b) The landscape construction shall preserve the design intent in accordance with the approved landscape architecture documents.

   c) The landscaped areas shall have appropriate irrigation and drainage systems to assure healthy landscaping and prevent runoff and debris flows.

   d) The landscape construction shall be maintained in good 1\textsuperscript{st} class condition in accordance with the approved Landscape Maintenance Guidelines approved with the Project.

   e) The landscape maintenance shall be provided by the owner, the owner’s representatives, or by the proper professionals registered with the State of California until such time that the appropriate entity accepts the areas for maintenance.

   f) Any diseased or dead landscaping shall be replaced by landscaping of similar size and in good and healthy condition.

99. **Clear Sight Triangles.** All vehicular sight line triangles shall be shown on the landscape construction planting plans.

100. **Trail Easement.** Trail easements shall be dedicated to the City of Banning, where appropriate, and shall be shown on the final map in accordance with the
requirements of the City of Banning. The Developer shall provide information sufficient to confirm to the City of Banning that the trails are terminated in a safe manner at the tract boundaries. Trail crossings shall be shown on the road improvement plans and the final map, where appropriate. Unless otherwise approved by City, all trails shall be fully improved, when dedicated in accordance with Rancho San Gorgonio Specific Plan and all Project approvals. The Developer may be required to provide temporary trail connections to be replaced by permanent improvements in accordance with agreements approved by the City Attorney.

101. **Landscape Inspection.** All landscape inspections shall be requested at least 48 hours in advance.

102. **Avoidance of Trees Conflict with Light Standard and Utility Lines.** Trees shall be planted in such a way as to avoid conflict between light standards and electric utility distribution lines. Street tree size shall be a minimum 15-gallon and at least 50% of all street trees should be a minimum of 24-inch box size consistent with the provision of the Rancho San Gorgonio Specific Plan. All residential landscaping shall conform to the Rancho San Gorgonio Specific Plan. All residential lots for single-family residential development shall be provided with a minimum of one 15-gallon front yard tree, one, 15-gallon accent tree. The plant list shall be provided consistent with the Specific Plan. If there are conflicts between the landscaping requirements of the Banning Municipal Code versus the Rancho San Gorgonio Specific Plan, the requirements in the Rancho San Gorgonio Specific Plan shall prevail.

103. **Landscape Inspections.** The Project Developer shall be aware and inform the on-site project or construction manager and the landscape contractor of their responsibility to call for landscape inspections. A minimum of three (3) landscape inspections are required in the following order, and the landscape inspection card shall be signed by the City’s landscape inspector to signify approval at the following stages of landscape installation:

a) At installation of irrigation equipment, when the trenches are still open;

b) After soil preparation, when plant materials are positioned and ready to plant; and,

c) At final inspection, when all plant materials are installed and the irrigation system is fully operational.
104. Prior to issuance of a building permit for the first unit in Phase I, the Applicant shall prepare and the City shall approve an updated Traffic Impact Fee Study to include development densities and parameters within the Rancho San Gorgonio Specific Plan area. The applicant shall be required to pay Traffic Impact Fees as defined in said fee.

105. Plan Submittal for Public Works. The issuance of these Conditions of Approval do not negate the requirements of the Public Works Department for submittal, review, and approval of street improvement plans, signing and striping plans, grading plans, storm drain improvement plans, street lighting plans, water, sewer, and electrical improvement plans, or other plans as deemed necessary by the Public Works Director.

106. Public Works Permit. A Public Works Permit shall be required prior to commencement of any work within the public right-of-way. The contractor working within the public right-of-way shall submit proof of a Class "A" State Contractor's License, City of Banning Business License, and Liability Insurance. Any existing public improvements, or public improvements not accepted by the City that are damaged during construction shall be removed and replaced as determined by the City Engineer or his/her representative.

107. Other Engineered Improvement Plans. Other engineered improvement plans. Other engineered improvement plans prepared for City approval that are not listed herein shall be prepared in formats approved by the City Engineer prior to commencing plan preparation.

108. Street Plans. All off-site plan and profile street improvement plans and signing & striping plans shall show all existing improvements for a distance of at least 200-feet beyond the Project limits, or at a distance sufficient to show any required design transitions.

109. Signs & Striping. All on-site signing and striping plans shall show the following at a minimum: stop signs, limit lines and legends, no parking signs, raised pavement markers (including blue raised pavement markers at fire hydrants) and street name signs per Public Works standard plans and/or as approved by the City Engineer.

110. Index Map. A small index map shall be included on the title sheet of each set of plans, showing the overall view of the entire work area.

111. All street improvement design shall provide pavement and lane transitions per City standards for transition to existing street sections.
112. Driveway Grades. Driveway grades shall not exceed eight percent unless approved by the City Engineer.

113. Construction Debris. Construction debris shall be disposed of at a certified recycling site. It is recommended that the Developer shall contact the City's franchised solid waste hauler for disposal of construction debris.

114. Plan Check Fees. Required plan check fees for professional report review (geotechnical, drainage, etc.), and all improvement plans review, shall be paid prior to submittal of said documents for review and approval in accordance with the fee schedule in effect at the time of submittal and in accordance with the Development Agreement.

115. Fire Marshal Approval. The Developer shall submit and obtain approval in writing from the Fire Marshal for the plans for all public or private access roads, drives, streets, and alleys. The plans shall include plan and sectional views and indicate the grade and width of the access road measured flow-line to flow-line. When a dead-end access exceeds 150 feet or when otherwise required, a clearly marked fire apparatus access turnaround must be provided and approved by the Fire Marshall. Applicable covenant, conditions or restrictions or other approved documents shall contain provisions which prohibit obstructions such as speed bumps/humps, control gates or other modifications within said easement or access road unless prior approval of the Fire Marshal is granted. Secondary Access for certain Planning Areas, as depicted in the Specific Plan (Exhibit 3.3D, Secondary Access Drives) and reviewed and approved by Fire Marshall, shall be constructed accordingly. at the time of construction of all other improvements in the tract.

**ELECTRIC UTILITY DEPARTMENT**

116. Plan Submittal Requirements. Prior to the issuance of grading permit, the Developer, owner, or successor in interest shall submit detailed plans indicating lot lines, streets, easements, building layout, etc. These plans are required in electronic format AutoCAD 2010 or equivalent at the time of development.

117. Electric Utility Backbone Infrastructure. Prior to the issuance of grading permit, electric utility infrastructure backbone plans for this Project must be completed.

118. Permit Fees. Developer shall pay current required fees - electrical permit, plan check fee, inspection fees, meter fee and cost of electrical apparatus for completing the underground line extension in accordance with the city policies and the Development Agreement.
119. **Electricity Easements.** Developer shall dedicate all easements for electric facilities installation/maintenance, etc.

120. **Electric Utility Infrastructure.** Electric Utility Infrastructure for each Phase in accordance with the Phasing Plan in the Development Agreement. The dedication shall be in a form approved by the City Attorney. Prior to the issuance of building permit, electric utility infrastructure (conduits, vaults, etc.) must be completed as well any temporary or permanent electric infrastructure to supply power to each phase as constructed.

121. **Electric Utility Materials.** The Developer shall provide install all conduits, vaults, and other materials associated with electric facility installations (except cables and their terminations).

122. **Streetlights.** The Developer shall install, complete and test streetlight poles and conduits.

123. **Secondary Service Entrance Conductors.** Secondary service entrance conductors to be provided and installed by the Developer. The Developer shall install, complete and test secondary service entrance conductors.

124. **Completion of Electric Utility Infrastructure prior to Issuance of Certificate of Occupancy.** Prior to the issuance of certificate of occupancy, the Developer, owner, or successor in interest shall install, complete and test all electric utility infrastructure including primary and secondary cabling, transformers, etc.

125. **Cost of Electrical Line in Aid of Construction.** Prior to the issuance of certificate of occupancy, the Developer, owner, or successor in interests shall pay the required cost of electrical line extension and in aid of construction for the particular phase under construction.

126. The new area for the future Electric Utility Substation shall be increased from 114’ x 104’ to 114’ x 130’ to accommodate future right of way and setback requirements.

127. All new public distribution and transmission lines shall be placed underground throughout the Specific Plan area. All existing overhead distribution and transmission lines along Westward Street shall be relocated or placed underground to accommodate new right-of-way alignment/setback requirements.

128. All streetlight designs will require approval from City of Banning Electric Utility for future maintenance purposes.

**POLICE DEPARTMENT**
129. The Developer shall provide a 110 outlet at the top of any light post in the designated parks for future camera placements.

130. The Developer shall ensure any water and power outlets in the parks are securable so they cannot be used after hours.

131. The Developer shall ensure the foliage in the parks and pathways does not create unsafe blind spots that cannot be seen from the street and/or parking lots and trail systems by patrolling officers.

**FIRE DEPARTMENT**

132. Prior to the City's issuance of the 200th building permit, Developer will submit to City applications for all entitlements necessary for the construction of the San Gorgonio Station (i.e., zoning changes, plot planning, CEQA study, etc.) and thereafter shall diligently process such applications.

133. Prior to the City's issuance of the 500th building permit, Developer will retain duly licensed and authorized design and engineering consultants for the designing and planning of the Station and complete the design of the Station totaling between 7,000 to 8,000 square feet consisting of two (2) or three (3) apparatus bays, five (5) bedrooms to accommodate a staff of ten (10) personnel, and four (4) restrooms. The design of the San Gorgonio Station shall be in accordance with fire guidelines. Further, Developer will purchase one fire engine that meets the RCFD specifications. The proposed fire station will be in accordance with the Riverside County Fire Department Design Standards. Developer shall identify an alternative funding mechanism for the completion of the fire station that parallels the project phasing.

134. Prior to the County's issuance of the 800th building permit for the Project, and subject to the approval by the RCFD Manager or his designee (the “Strategic Planning Bureau”) of the final plans and specifications for the San Gorgonio Station (collectively the “Improvement Plans”) and an estimate of the total costs to construct the San Gorgonio Station, the Developer and City shall execute the Construction Agreement and Developer shall proceed to solicit bids for the construction of the San Gorgonio Station and award and administer the contract(s) for such construction.
135. Prior to the 1000th building permit, Developer shall commence construction of the San Gorgonio Station in accordance with the Improvement Plans and the Construction Agreement.

136. Prior to the 1500th building permit, Developer shall complete construction of the San Gorgonio Station in accordance with the Improvement Plans and the Construction Agreement.

137. The Developer shall provide traffic control signal light adjacent to the fire station along the arterial roadway.

138. The Fire department shall concurrently review proposed roundabouts with the city traffic engineer.

The following are the minimum Banning Fire Marshal’s office requirements. These requirements will satisfy for the Club House, Commercial Occupancies, and Park Buildings for this Project. There may be additional requirements when the Project specifics are defined and the final proposal is submitted for approval.

139. Any fees will be set pursuant to the Development Agreement. The current fee schedules at this time are as follows:
   - Commercial, Industrial and/or Office Complex –
     - $579.00 for 50,000 square feet or less
     - $25.00 per unit Disaster Planning
   - Plan Check and Inspection - $134.00 per hour

140. All contractors, subcontractors etc. are required to obtain a City of Banning Business license prior to submitting plans or starting construction.

141. All Plans, Specifications and Construction shall comply with and conform to the current edition of the California Fire Code (CFC), California Building Code (CBC), and other state and local laws and ordinances as applicable.

142. Three (3) sets of Plans and Specifications shall be submitted for review prior to obtaining a permit. This requirement applies to all work regardless of the size of the job; new construction or remodel.
143. Fire Sprinkler Systems shall be installed as required by the CFC or in any and all structures that are thirty six hundred (3,600) sq. ft. or more, or if the applicable codes require a more restrictive system.

144. With the adoption of the 2010 codes, all residential homes shall be protected with fire sprinkler systems. Three (3) sets of plans and calculations, including three (3) sets of manufacturer’s hardware specifications, shall be submitted to a State Certified Fire Protection Engineering Firm, designated by the Fire Marshal, for review for compliance with recognized codes and standards.

145. No fire sprinkler work shall be started prior to issuance of the permit.

146. The minimum size for water supply to the base of the riser shall be six (6) inches for commercial systems.

147. An approved AWWA double check detector check assembly, as approved by the C.O.B Water Department located as close to the property line as possible, and a minimum of twelve (12) inches above the ground shall be provided.

148. The Water Department shall approve all plans involving water main service.

149. Prior to construction or renovation, fire hydrants shall be provided when any portion of any structure exceeds 150 feet from a water supply on a public street.

150. All hydrants must be installed, working and inspected by the Public Works Department and the Banning Fire Marshal’s office before any combustible materials can be placed at the worksite.

151. Spacing of fire hydrants shall comply with CFC Appendix C and the City of Banning Public Works Standards. (Maximum 250 feet between hydrants).

152. Minimum 6-inch riser, street valve, approved shear valve and blue dot identification marker shall be provided for each fire hydrant. The City standard fire hydrant is the Commercial, James Jones #J3765, Residential, James Jones #J3700, or an equivalent approved by the Fire Marshal.

153. Fire Hydrants are to be painted by the Developer, contractor, etc., prior to the final inspection. (EOS Standard W714) Rustoleum Red, damp proof #769 and two (2) coats of Rustoleum semi-gloss yellow #659, or an approved equivalent.

154. Fire flow shall be established by the Fire Department using the information provided in the CFC Appendix B. Fire Flow may be adjusted upward where
conditions indicate an unusual susceptibility to fire. (1000 gallons/minute for 2 hours).

155. Fire department access shall be required when any portion of the first story of any structure is more than 150 feet from Fire Department apparatus access.

156. Minimum clearances or widths may be increased when the minimum standards are not adequate for Fire Department access.

157. Surfaces shall be designed and maintained to support the imposed loads of fire apparatus (75,000gvw). Surfaces shall have all-weather driving capabilities, including bridges. All roads must be place and meet the above standard before any combustible materials can be delivered to the site.

158. Minimum unobstructed width shall be 20 feet.

159. Minimum unobstructed vertical clearance shall not be less than 13 feet 6 inches.

160. Minimum turning radius shall be 42 feet.

161. All dead-end access roads in excess of 150 feet shall have approved provisions for turning around of fire apparatus.

162. Maximum grade shall be established by the Banning Fire Marshal's office.

163. Vehicles shall not be parked or otherwise obstruct the required width of any fire apparatus access.

164. Two means of ingress/egress shall be provided for emergency vehicles and fire apparatus. Surfaces shall have all-weather driving capabilities, including bridges. All roads must be place and meet the above standard before any combustible materials can be delivered to the site, and approved by the Banning Fire Marshal's office. See Secondary Access Plans as depicted Exhibit 3.3D, Secondary Access Drives, in the approved Rancho San Gorgonio Specific Plan.

165. A “Knox” box will be required for fire department access and location approved by the Banning Fire Marshal’s office.

166. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background.
167. Inspections shall be requested a minimum of forty-eight (48) hours prior to the time the required inspection is needed.

168. Developer shall pay the inspection fees that are effective at that time. Work begun without a permit or without an approved set of plans at the job site will result in a triple fee and/or the work stopped.

169. The storage, dispensing, use or handling of hazardous materials shall be in accordance with the provisions of CFC Chapter 27 and CBC in addition to all federal, state and local laws or ordinances.

170. Business Plans may be required per SB 2186 and 2187 including MSDS, HMMP and RMPP.

171. If there are no existing fire hydrants within 150 feet of the proposed building, then there will be a requirement for the installation of two commercial grade hydrants as described above. If a hydrant then only one additional hydrant will be required.

172. A fire alarm system, designed to NFPA 72 standards, will be required.

PUBLIC WORKS DEPARTMENT

General Requirements

173. The subject property shall substantially conform to the approved tentative map and specific plan. The City Engineer may approve minor design modifications to the project plans during the plan check process, if such modifications conform to the provisions of the Banning Municipal Code. Substantial changes shall not be permitted except upon application for, and approval of modification of this entitlement in compliance with all applicable procedures and requirements.

174. Termination of approval of the Tentative “A” Tract Map shall occur under the terms of the Development Agreement.

175. All Ordinances, Policy Resolutions, and Standards of the City in effect at the time this project is approved shall be complied with as a condition of this approval.

176. All applicable mitigation measures specified in the approved Environmental Impact Report (EIR) and the approved Traffic Impact Analysis (TIA) shall be incorporated as conditions of approval for this project and shall be addressed to the satisfaction of the Public Works Director and City Engineer.
177. A Public Works Permit shall be required prior to commencement of any work within the public right-of-way. The contractor working within the public right-of-way shall submit proof of a Class “A” State Contractor's License, City of Banning Business License, and Liability Insurance.

178. Prior to the issuance of any grading, construction, or public works permit by the City, the Applicant shall obtain any necessary clearances and/or permits from the following agencies. Permits will not be unreasonably withheld if the developer has met all typical standards for a permit and satisfied all relevant conditions of approval and items in the development agreement for the appropriate permit.

- City of Banning Fire Marshal
- City of Banning Police Department
- City of Banning Public Works Department
- City of Banning Community Development Department
- City of Banning Water/Wastewater Department
- City of Banning Electric Department
- Riverside County Transportation Department
- Riverside County Flood Control & Water Conservation District (RCFC&WCD)
- Riverside County Environmental Health Department
- California Department of Transportation (Caltrans)
- California Regional Water Quality Control Board Colorado River Basin (RWQCB)
  - Provide copy of Section 401 water quality certification.
- South Coast Air Quality Management District (SCAQMD)
- United States Army Corps of Engineers (USACE)
  - Provide copy of executed Section 404 permit.
- California Department of Fish and Game (DFG)
  - Provide copy of executed Streambed Alteration Agreement.
- US Fish and Wildlife Services

179. The applicant is responsible for meeting all requirements of permits and/or clearances from the above listed agencies. When the requirements include approval of improvement plans, the applicant shall furnish proof of such approvals when submitting improvements plans to the City. The applicant shall comply with all conditions and mitigation measures and submit copies of all correspondence with the agencies to the Engineering Division.

180. Prior to recordation of each phase of the final “A” map, the following improvement plans shall be prepared by a qualified civil engineer or architect licensed by the State of California as allowed and submitted to the Engineering Division for review and approval. A separate set of plans shall be prepared for each line item listed below. Unless otherwise authorized by the City Engineer in writing, the
plans shall utilize the minimum scale specified and shall be drawn on 24” x 36” Mylar on City standard title block. Plans may be prepared at a larger scale if additional detail or plan clarity is desired (Note: the applicant may be required to prepare other improvement plans not listed here pursuant to improvements required by other agencies and utility purveyors).

a) Grading Plans  
   1” = 40’ Horizontal

b) Clearing Plans  
   Include fuel modifications zones
   Include construction fencing plan  
   1” = 50’ Horizontal

c) Construction Haul Route Plans  
   1” = 50’ Horizontal

d) Erosion Control, SWPPP & WQMP  
   1” = 40’ Horizontal
   (Note: A, B, C, D & E shall be processed concurrently.)

e) Storm Drain Plan  
   1” = 40’ Horizontal

f) Street Improvement Plans  
   1” = 40’ Horizontal
   1” = 4’ Vertical

1” = 20’ Horizontal

h) Traffic Signal Plans  
   1” = 40’ Horizontal

i) Construction Traffic Control Plans  
   1” = 40’ Horizontal

j) Sewer Improvement Plans  
   1” = 40’ Horizontal
   1” = 4’ Vertical

k) Recycled Water Improvement Plans  
   1” = 40’ Horizontal
   1” = 4’ Vertical

l) Water Improvement Plans  
   1” = 40’ Horizontal
   1” = 4’ Vertical

m) Landscaping Plans for Streets and Parks  
   1” = 20’ Horizontal

n) On-site Utility Plans  
   1” = 40’

181. Other engineered improvement plans prepared for City approval that are not listed herein shall be prepared in formats approved by the City Engineer prior to commencing plan preparation.

182. All off-site plan and profile street improvement plans and signing & striping plans shall show all existing improvements for a distance of at least 200-feet beyond the project limits, or at a distance sufficient to show any required design transitions.

183. A small index map shall be included on the title sheet of each set of plans, showing the overall view of the entire work area. All plans shall be complete to
the satisfaction of the City Engineer, prior to final map recordation and
determination of surety estimates.

184. Prior to release of surety and upon completion of construction, the applicant shall
furnish the City with reproducible record drawings on Mylar of all improvement
plans that were approved by the City Engineer. Each sheet shall be clearly
marked "As-Built" or "As-Constructed" and shall be stamped and signed by the
engineer or surveyor certifying the accuracy and completeness of the drawings.
The applicant shall have all AutoCAD or raster-image files submitted to the City,
revised to reflect the “As-Built” conditions.

185. Prior to issuance of any permit, the Applicant shall submit a construction access
plan and schedule for the development of all facilities for Community
Development Director and City Engineer approval; including, but not limited to,
public notice requirements, special street posting, phone listing for community
concerns, hours of construction activity, dust control measures, and security
fencing.

186. Prior to recordation of phase 2 of the final “A” map, the unincorporated portions
of the site which include 161 acres in the City’s sphere of influence, must be
formally annexed into the City. The Applicant shall submit proof to the City
Engineer that the annexation has been processed and approved by LAFCO. No
work within the unincorporated area may commence until annexation has been
completed.

187. Prior to recordation of any final map, the applicant shall either demonstrate that
the CFD has already been created or that a CFD application has been submitted
and accepted as complete by the City of Banning Financial Services Division and
shall include all maps, related Engineers report, and the required information
(CFD boundary maintenance areas by location and type, etc.) to the satisfaction
of the City Engineer.

188. A Landscape, Lighting and Maintenance District (LLMD) or other approved
mechanism shall be established promptly following grading permit issuance and
prior to recordation of the first phase of the final “A” map. The LLMD shall
provide for maintenance of the public parkways and median island landscaping,
slopes adjacent to public right-of-ways, debris basins, detention and retention
basins, public parks, linear parks and trails along the creeks, open space areas,
BMP's referenced in the approved WQMP, and other items as required by the
City Engineer.

189. In the event that the Applicant creates a Homeowners’ Association (HOA), the
Covenants, Conditions, and Restrictions (CC&Rs) and Articles of Incorporation of
the Homeowners' Association are subject to the approval of the Planning and Engineering Divisions and the City Attorney. They shall be recorded concurrently with the associated Final Map. A recorded copy shall be provided to the City Engineer. The Homeowners' Association shall submit to the Planning Division a list of the name and address of their officers on or before January 1 of each and every year and whenever said information changes.

190. The conditions, covenants and restrictions shall contain provisions which prohibit dissolution of the Homeowners' Association unless another entity has agreed to assume the operation and maintenance responsibilities of the Homeowners' Association. The conditions, covenants and restrictions shall contain provisions that prohibit the Applicant and his/her successors-in-interest from amending said covenants, conditions and restrictions to conflict with these conditions of approval unless the subject property is reverted to acreage and the subdivision abandoned.

191. If the elementary school site is approved for Planning Area 16-C as provided for in the Rancho San Gorgonio Specific Plan, the Applicant will be required to provide a mass graded pad, street access and utility connection stubs for the school site.

Rights of Way, Easements and Dedications

192. Prior to issuance of any permit(s), the applicant shall, in good faith, put forth his best efforts to acquire or confer property rights necessary for the construction and proper functioning of the proposed project/development. Conferred rights shall include right-of-way dedications, irrevocable offers to dedicate or grant of easements to the City for public access, emergency services, maintenance, utilities, storm drain facilities, or temporary construction purposes including the reconstruction of essential improvements as directed by the City Engineer. All costs associated with acquiring rights-of-way or easements shall be paid by the Applicant. In the event that the applicant is unsuccessful in acquiring said property rights, the City will consider and possibly act on the option to acquire through eminent domain.

193. Prior to recordation of any final map; to determine intersection right of way dedication and ultimate street improvement locations, applicant shall prepare an alignment study of all roadway intersections of collector and above to the satisfaction of the City Engineer. The approved alignment study, in the form of a 1” = 40’ scale striping plan, will establish interim and ultimate alignments for all applicable roadways. The approved alignment study shall consider the design requirements for all project mitigation identified in the Traffic Impact Analysis to include lane geometry and capacities, any new traffic signal locations or relocations, roundabouts, striping transitions, bus bay locations (if any), driveway locations and future medians.
194. During the improvement plan checking process, turning radius template checks shall be submitted for access to all storm drain facilities, open space, and other utility easements that are accessed from a publicly accessible paved street. These templates shall clearly show that the easements are sufficient for full access under emergency conditions. The City of Banning's review of the easements shall include appropriateness of the vehicle turning radius, easement slopes and easement widths. Additional easement widths shall be required when the design vehicle is likely to use outriggers or other means of load stabilization.

195. Prior to recordation of each phase of the final “A” map, the Applicant shall dedicate Public Street, Parkway and Utility Easements associated with that phase of the map and in accordance with the Approved Traffic Impact Analysis, further referenced in the Circulation Element of the adopted San Gorgonio Specific Plan, and as shown on the Tentative Tract Map to the satisfaction of the City Engineer. Additional right of way (ROW) shall be acquired and/or dedicated for the following streets which require street alignment and intersection geometry to be submitted to the City Engineer for review and approval prior to map approval:

a) Sunset Avenue – Sufficient right of way to accommodate its ultimate half street width on the east side plus an additional 10 foot dedication west of the centerline to allow for two way traffic. (44’ half street plus 10’) from the south end of the MSJCC property to Bobcat Road. This dedication is associated with Phase 5.

b) 8th Street – Sufficient right of way to accommodate its ultimate full width street section (60’ feet) from Westward Avenue to Lincoln Street. Refer to Condition 16 regarding acquisition of Right of Way. This dedication is associated with Phase 1.

c) 22nd Street - Sufficient right of way to accommodate its ultimate full width street section (66 feet) from Westward Avenue to Dysart Park located just south of Victory Avenue. Refer to Condition 16 regarding acquisition of Right of Way. This dedication is associated with Phase 2.

d) Victory Avenue – A City owned public park fronts the south side of Victory Avenue between 22nd Avenue and Lovell Street. Applicant shall work with City to ensure sufficient right of way is allocated to accommodate the ultimate half street width on the south side of Victory plus an additional 10 foot dedication north of centerline to allow for two way traffic from 22nd Avenue to Lovell Street. This condition is associated with Phase 4.

e) Bob Cat Road, Turtle Dove Lane, Lovell Street, Old Idyllwild Rd and Coyote Trail – Sufficient right of way to accommodate their ultimate
half street width along the property frontage. City Engineer may require additional ROW dedication beyond the half street centerline as deemed necessary to allow for two way traffic. Ultimate right of way widths shall be determined by the City Engineer. Any excess right of way that currently exists beyond the ultimate half street width shall be vacated.

196. Prior to map recordation of each phase of the map, applicant shall dedicate right-of-way beyond either the phased construction and/or tract boundary required to provide utility service, public and/or emergency vehicular ingress and egress access to the nearest paved and publically maintained street as follows:

- A minimum width of 36 feet for a paved public access (Primary, Secondary, Tertiary etc).
- A minimum width of 20 feet for a paved or all weather emergency access.

197. The applicant shall be responsible for right-of-way acquisition, design and construction for the offsite portions of “C” Street from the project boundary to SR-243. Said right-of-way acquisition and improvements shall be completed prior to recordation of the first phase of the final “A” map. “C” Street shall intersect SR-243 at a right angle. Off-Site Cross-Section shall match On-Site Cross Section in this segment. Street alignment and geometry require approval by the City Engineer. City and Applicant acknowledge that a portion of the property needed to secure road access alignment is on private property and not owned or controlled by Applicant. Applicant shall make in good faith and put forth his best efforts to secure said right-of-way; however, in the event that Applicant is unsuccessful, City may elect to acquire required right of way through its power of eminent domain. Applicant shall pay all costs related to right-of-way acquisition, design and construction of these offsite improvements.

198. Any public right-of-way or streets to be vacated from public use, pursuant to Street and Highway Codes Sections 8300 through 8363, shall conform to the complete vacation procedure and show specific circulation alternative, where required. All street vacations shall be shown on the final tract map.

199. Prior to or concurrently with the recordation of the first phase of the final “A” map, Old Idyllwild Road from SR-243 to the intersection of “C” Street shall be vacated as required by the City Engineer.

200. The Applicant shall grant slope easements to the City of Banning for road maintenance purposes for all locations where slopes adjoin the public right-of-ways as shown on the final “A” tract map. The easements shall extend 10 feet from the toe of slope and 5 feet from the top of slope. All private slopes shall be maintained by the Homeowners' Association or other approved mechanism.
201. The applicant shall not grant any easements over any property subject to a requirement of dedication or irrevocable offer to the City of Banning or the Riverside County Flood Control and Water Conservation District unless such easements are expressly made subordinate to the easements to be offered for dedication to the City or RCFC&WCD. Prior to granting any of said easements, the Applicant shall furnish a copy of the proposed easement to the City Engineer for review and approval. Further, a copy of the approved easement shall be furnished to the City Engineer prior to the issuance of any certificate of use and/or occupancy.

202. All public facilities including sewer, water, reclaimed water and drainage shall be located in a public right of way or public utility easement. All final maps shall include appropriate easements per the approved tentative map and as required by the City Engineer and/or RCFC&WCD. All easements shall meet minimum width and access requirements as mandated by the City or governing agency.

203. Montgomery Creek will be captured at Westward Avenue and conveyed through the project in an underground storm drain system. If it is determined by the City Engineer that off-site improvements will be necessary on the north side of Westward Avenue to accommodate the collection of natural flows into the pipe system, the Applicant shall be required to make every effort to obtain the necessary right-of-way, temporary and permanent easements required for the facilities. All costs associated with these improvements and right-of-way and/or easement acquisitions shall be the responsibility of the Applicant. Interception of these flows on the south side of Westward may be considered.

Street and Traffic

204. All public improvements shall be financed, designed, and constructed by the Applicant. This may include the formation of a regional financial mechanism for the construction of required improvements. Additionally, the Applicant may enter into a reimbursement agreement for those improvements constructed that may provide benefit outside the development in accordance with Banning Municipal Code. Prior to recordation of the first phase of the final “A” map, the Applicant shall prepare and submit for approval by City, a fair share cost analysis for the project’s offsite traffic improvements.

205. Prior to recordation of each phase of the final “A” map, the applicant shall provide estimates to construct, improve, or finance the proposed public improvements to the City Engineer for review and approval. The estimate shall differentiate between public improvements within the property boundaries of the tentative map, improvements outside the project boundaries and public improvements which abut the boundary of the property to be subdivided.
206. All street improvement design, not specifically addressed by City of Banning approved engineering standards and specifications, shall be per Caltrans Standards or the latest edition of the Standard Plans for Public Works Construction and/or approved Specific Plan.

207. Prior to recordation of any phase of the final “A” map, the Applicant shall provide evidence that all mitigation measures identified for that phase from the approved Traffic Impact Analysis (TIA) have been designed and approve by the City Engineer.

208. Prior to recordation of each phase of the Final “A” Map or any subsequent development final maps, all associated improvement plans shall be submitted for review and approval by the City Engineer and Public Works Director and shall include all mitigation measures/recommendations resulting from the final approved Traffic Impact Analysis (TIA). Street improvements shall include but not be limited to the following: construction of roadway grading and paving as required, curb and gutter, the installation of sidewalk, multi-purposes trails, parkway trees, parkway landscaping, street lights, all roadway striping, pavement markings, traffic signing, traffic signals and other improvements to the satisfaction of the City Engineer.

209. Prior to recordation of the appropriate phase of the final “A” map, full width street improvement plans shall be submitted for review and approval by the City Engineer for the following streets. Street alignment and intersection geometry to be submitted to the City Engineer for review and approval prior to final map approval.

   a) 22\textsuperscript{nd} Street from Westward Avenue to Dysart Park (just south of Victory Avenue) in accordance with the Specific Plan designation for this section of Rancho San Gorgonio Parkway and as adjusted to accommodate existing conditions at the intersection of Westward Avenue and 22\textsuperscript{nd} Street to the Satisfaction of the City Engineer. Said improvements shall be completed prior to the first occupancy release in Phase 2

   b) 8\textsuperscript{th} Street from Lincoln Street to Westward Avenue in accordance with the Secondary Highway Section shown on Figure 8 of the City of Banning General Plan Roadway Cross-Sections. Said improvements shall be completed prior to the first occupancy release in Phase 1.

210. Prior to recordation of each phase of the final “A” map, street improvements shall be required and associated plans shall be submitted for review and approval by the City Engineer for half street improvements plus additional improvements as deemed necessary by the City Engineer to allow for two way traffic. Ultimate
street section widths shall be determined by the City Engineer. This condition applies to the following streets:

a) Sunset Avenue: Minimum east side plus 10’ from existing improvements adjacent to the college property to Bob Cat Road. Improvements to be completed prior to the first occupancy release in Phase 5.

b) As required by the City Engineer, Old Idyllwild Road from Coyote Trail to the southeast corner of Lot 36 (PA 3-D). Improvements to be completed prior to the first occupancy release in Phase 6.

c) Old Idyllwild Road from the intersection of “C” St. to the southeast corner of Lot 36 (PA 3-D). The applicant will be required to resurface but not widen the existing bridge that crosses the creek south of “C” Street. Said improvements to be completed prior to the last occupancy release in Phase 1. Access to Old Idyllwild Road from Lot 36 (PA 3-D) shall be gated and for emergency vehicles only.

d) Bob Cat Road along the project boundary (improvements to be completed prior to the first occupancy release phase 5)

e) Turtle Dove Lane along the project boundary. Improvements to be completed prior to the first occupancy release in Phase 5.

f) Lovell Street along the project boundary. Improvements to be completed prior to the first occupancy release in Phase 4.

g) As required by the City Engineer, Coyote Trail along the project boundary. Improvements to be completed prior to the first occupancy release in Phase 5.

h) Victory Avenue: Minimum south side plus 10’ between 22nd Street and Lovell Street. Improvements to be completed prior to the first occupancy release in Phase 4.

211. In addition to the above improvements, all remaining existing pavement beyond the improvement requirements for each street shall be cold planed 1 ½ inch and overlayed with a minimum of 1 ½ inch A.C. pavement or as otherwise specified by the City Engineer. All above improvements shall be constructed and accepted by the City prior to issuance of the first occupancy release for the associated phase.

212. Prior to recordation of Phase 6 of the final “A” map, bridge/street improvement plans shall be submitted for review and approval by the City Engineer to extend “B” Street southerly from “C” Street across Smith Creek to Lot 36. These
improvements shall be constructed and accepted by the City prior to issuance of the first occupancy release for phase 6.

213. Prior to recordation of the first phase of the final “A” map, full width street improvement plans shall be submitted for review and approval by the City Engineer for construction of Westward Avenue from the east edge of the MSJCC property to San Gorgonio Avenue. Improvements shall include full street width improvements including but not be limited to construction of roadway grading and paving, curb and gutter, the installation of ROW adjacent sidewalk, parkway trees, parkway landscaping, street lights, all roadway striping, pavement markings, traffic signing, traffic signals, and other improvements to the satisfaction of the City Engineer in accordance with Collector Highway (66-foot ROW) shown on Figure 8 of the City of Banning General Plan Roadway Cross-Sections. Parkway improvements including landscaping and sidewalk will not be required along sections of Westward Avenue that are not adjacent to the project boundary. Street lights shall be installed on both sides of the street for the entire length. Improvements from the 8th Street intersection easterly to the High School shall be completed prior to the first certificate of occupancy in Phase 1. The remaining Westward Avenue improvements shall be completed prior to issuance of the 200th certificate of occupancy in Phase 1. Street alignment and intersection geometry to be submitted to the City Engineer for review and approval prior to final map approval.

214. Prior to recordation of each phase of the final “A” map, all traffic improvements not located within the City of Banning’s jurisdiction will require written evidence of plan approval, permits and bonding from appropriate agencies. Plans shall include all required mitigations/public improvements identified in the approved Traffic Impact Analysis Table 33 and the approved Environmental Impact Report. Such improvements include but are not limited to traffic signals and intersection improvements in the City of Beaumont and improvements to State Highway 243 (San Gorgonio Avenue) and other intersections and lane improvements to facilities owned by Caltrans.

215. Timing goals for completion of proposed improvements to SR-243 (San Gorgonio Avenue) should take into account the lengthy Caltrans Streamline Oversight Review process and separate CEQA environmental approval process that may be required for this project. All construction within the Caltrans right of way will require a Caltrans Encroachment Permit and plans shall be in compliance with all current Caltrans design standards, applicable policies and construction practices.

216. Grading and excavations in the public right-of-way shall be supplemented with a soils and geology report prepared by a professional engineer or geologist licensed by the State of California.

217. In accordance with the California Building Code, Title 24, and the requirements of the Americans with Disabilities Act (ADA), facilities for disabled persons shall be
constructed and existing facilities adjacent to the project limits shall be reconstructed in locations specified by the City Engineer (i.e., accessible paths of travel, curb ramps, etc.).

218. Prior to construction of any improvements, a Traffic Control Plan based on the Work Area Traffic Control Handbook shall be submitted, for review and approval by the City Engineer. The Traffic Control Plan shall be prepared by a California Registered Traffic Engineer or Civil Engineer experienced in this type of plan preparation. Traffic control shall be included as a line item in the Engineer's Estimate for bonding purposes. No construction shall be allowed prior to the approval of this plan.

219. Prior to recordation of each phase of the final “A” map, a line item shall be included in the Engineer's Estimate for the personnel needed for twenty-four hours a day, seven days per week for tending and maintaining all construction signage and safety apparatus. To the best extent possible, a person should be available twenty-four hours a day and seven days a week. The police department and fire department shall have access to the phone number. If there is a public concern, any person can contact the police/fire department who will be able to get a hold of the personnel. The personnel shall be available as on-call and the telephone number for the on-call person shall be publicly available at the Banning Police and Fire Departments. This condition applies to Tentative Tract Map 36586 and all subsequent tracts and phases related to Tentative Tract Map 36586. The City of Banning’s construction inspectors shall have the authority to stop the work in progress until the safety signage/lighting has been restored to a condition acceptable to said inspector.

220. Prior to laying of the aggregate base layer for any new streets, all landscaping irrigation services (or sleeves to accommodate said services) shall be installed. Street cut permits may be denied and alternate methods may be required for any construction within a street that was accepted by the City within the prior five years.

221. Prior to recordation of each phase of the final “A” map, signing and striping plans shall be installed by the Public Works Department. Prior to release of bonds, the Applicant shall install all street name signs, striping, and related signage as shown on the approved plans to the satisfaction of the City Engineer and Public Works Director.

222. Prior to bond release, the applicant shall make pavement repairs necessary to mitigate the impacts of project construction traffic on all affected existing streets. Prior to map recordation or issuance of permits, the applicant shall post a bond with the City of Banning to guarantee the repair of the roads.

223. Prior to the issuance of any certificate of occupancy, all fire hydrants shall have a blue reflective pavement marker indicating the hydrant location on the street as
EXHIBIT “B”
(Specific Plan Ordinance No. 1500)

approved by the Fire Marshall, and must be maintained in good condition by the property owner until the street is accepted for maintenance.

224. Street pavement design shall take into account the subgrade soil strength, the projected traffic loading, and have a design life of 20 years.

225. Traffic improvements for the final “A” map shall adhere to the phasing criteria shown in the approved Traffic Impact Analysis and Environmental Impact Report. Prior to map recordation for any subsequent development phases, detailed phasing plans shall be submitted for review and approval by the Public Works Director, Community Development Director and City Engineer. Each phasing plan shall identify construction access, public access and emergency access routes. The City Engineer reserves the right to modify any phasing plan.

226. Prior to issuance of a Certificate of Occupancy for any tract or development phase, all onsite and offsite mitigation measures/public improvements identified in the approved Traffic Impact Analysis, approved Environmental Impact Report, the approved Specific Plan, these conditions of approval and related engineering studies and reports shall be completed in place, tested, and approved by the Engineering Division for each tract or development phase.

227. Prior to recordation of tract “B” maps, Focused Traffic Impact Analysis Reports may be required, at the discretion of the City Engineer, for each Planning Area with project application process. These reports shall not limit or eliminate Specific Plan mitigations identified but instead address additional mitigation as required.

228. Prior to map recordation for the final “A” Map or any individual phase tract map, the Developer shall provide horizontal and vertical site distance calculations for review and approval by the City Engineer. Safe horizontal traffic sight distances and vertical curve sight distances shall be maintained regardless of street intersection angles, street grades, landscaping, or the lot configuration shown on the approved tentative tract map, as follows:

a) All vertical curve sight line design shall be per the Caltrans Design Manual (Figures 201-latest, Topic 405-latest, et al). The vertical curve design speed along with the requisite vertical curve geometric data shall be shown on the improvement-drawing sheet where the curve occurs.

b) All horizontal curve sight line design shall be per Riverside County Standards (Plates 114, 821, et al). Horizontal curve design speeds along with the related geometric data shall be tabulated on the improvement drawing sheets where the curves occur.

c) Horizontal and vertical sight distances shall be maintained even if such compliance results in reconfigured lots and/or a reduction in the lot
count shown on the approved tentative map. All Rancho San Gorgonio Specific Plan requirements and City of Banning Ordinances shall be met while achieving the required safety requirements.

229. Access to any phased construction site shall be restricted by a temporary installation of a chain link fence with locks to restrict public access, but allowing emergency vehicle access per City acceptable arrangements as required by the City Engineer.

**Grading and Drainage**

230. Prior to recordation of each phase of the final “A” map, the Applicant shall submit grading and erosion control plans to the City Engineer for review and approval. All other provisions of this Specific Plan notwithstanding, all grading shall conform to the California Building Code and all other applicable laws, rules and regulations governing grading in the City of Banning, including Banning Ordinance No. 1388, Grading Manual and Ordinance No. 1415.

231. A grading permit shall be obtained prior to commencement of any grading activity.

232. Prior to approval of any grading permits the applicant shall submit a construction haul route plan to the City Engineer for review and approval. Deviation during construction from the approved plan shall constitute a violation of the conditions of the grading permit.

233. Grading work shall be balanced on-site, wherever possible. If export is required as a result of the final grading plan, then measures will be taken to be in compliance with the applicable City of Banning Ordinances at time of final grading plan approval.

234. Any retaining walls proposed within the limits of the rough grading plans shall include top of wall and top of footing elevations shown. All footings shall have a minimum of 1-foot of cover, and/or sufficient cover to clear any obstructions. The Applicant shall submit design calculations and obtain permits for all perimeter and retaining walls from the Building and Safety Department.

235. All streets shall have a maximum grade of 15 percent or less. Wherever feasible street grades should be kept to 10 percent or less.

236. Prior to issuance of a grading permit, a soils report and geotechnical study shall be submitted in conjunction with the grading plan with further analyses of on-site soil conditions and appropriate measures to control erosion and dust. Any issues or recommendations provided in the report shall be addressed to the satisfaction of the City Engineer. The responsible geotechnical engineer shall sign and stamp all grading plans indicating the plan complies with the recommendations of the comprehensive soils and geotechnical report.
237. Prior to issuance of any grading permits, the applicant shall retain a qualified archeologist, paleontologist, and biologist for observation of grading and excavation activities in accordance with the approved mitigation program.

238. The height of grading dirt stockpiles shall be minimized and promptly removed as grading allows. Such stockpiles shall be setback from the boundaries of the Specific Plan area a minimum of 150 feet.

239. Prior to issuance of a grading permit, construction documents shall include language that requires all construction contractors to strictly control the staging of construction equipment and the cleanliness of construction equipment stored or driven beyond the limits of the construction work area. Construction equipment shall be parked and staged within the project site. Staging areas shall be screened from view from adjacent properties. Vehicles shall be kept clean and free of mud and dust before leaving the development site. Surrounding streets shall be swept daily and maintained free of dirt and debris.

240. Prior to recordation of the first phase of the final “A” map or issuance of a grading permit, the Applicant shall finalize the Drainage Study to the satisfaction of the City Engineer and Riverside County Flood Control and Water Conservation District (RCFC&WCD). Drainage design shall be in accordance with Banning Master Drainage Plan adopted by RCFC&WCD Hydrology Manual, and standard plans and specifications. The study shall include hydrologic and hydraulic analysis for developed and undeveloped conditions, the 10-year storm flows shall be contained within the street curbs, and the 100-year storm shall be contained within the street right-of-way. The design flow rate for Gilman Home Creek shall be a Q100 of 3,665 cfs (Q includes the 25% bulked flow). All other creeks flow rates shall be bulked (increased) 25% for debris. All findings within the final report shall be implemented to the satisfaction of the City Engineer.

241. The approved drainage study for this project determined the developed peak flows for the ultimate, built-out condition; therefore, prior to issuance of a grading permit or recordation of the applicable final map, a separate drainage analysis will be required for each phase of construction to determine what additional temporary mitigation measures are warranted to reduce runoff to the existing condition and protect new improvements from potential flooding.

242. Prior to recordation of the final “A” map or subsequent planning area final maps that contains a detention basin, the developer shall identify the exact location and sizing of each detention basin in conjunction with submittal and acceptance of a complete hydrology report. Depending upon the results of the report, minor adjustments shall be made to the final map to ensure that the detention basins will be designed and constructed to meet the RCFC&WCD standards. It is anticipated that RCFC&WCD will assume ownership and responsibility for maintenance of the basins. If RCFC&WCD elects not to own and maintain a
basin, the developer shall provide other means such as a LLMD, CFD or other publicly controlled mechanism to maintain these facilities.

243. Prior to recordation of each phase of the final “A” map or issuance of a grading permit, the Applicant shall submit drainage improvement plans for the proposed subdivision with the accompanying hydrology and hydraulic analysis and shall be designed per the RCFC&WCD Hydrology Manual and the City of Banning flood control standards. Finalized studies shall verify the size of flood control facilities. Drainage facilities shall be in accordance with the approved tentative map and specific plan. Plans shall be submitted to RCFC&WCD and the City of Banning for review and approval. A Cooperative Agreement between the District, the City, and the Developer is required.

244. The proposed drainage improvement plans shall be designed such that drainage facilities will maintain or reduce the 100-year peak runoff rates presently exiting all Project boundaries. The Project will use on-site detention basins to reduce the storm water flows to or below the existing condition flows prior to their discharge to areas located downstream of the project. The project shall be designed to retain the 100 year 3 hour storm. Detention facilities shall have a maximum draw down time of 72 hours.

245. Prior to plan approval, a fee shall be paid to the RCFC&WCD in the amount as specified by the District for performing plan checking and an inspection for the proposed subdivision.

246. The areas within the creeks are the only areas within the project site that are situated within a designated Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) Special Flood Hazard Zone. Prior to release of sureties, a letter of map revision (LOMR) shall be processed through FEMA to remove the flood limits as related to Montgomery Creek and a portion of Gilman Home Creek, as it is proposed to place those flows in pipes. The LOMR may also need to address minor changes to Smith Creek as related to grading and proposed improvements.

247. The design of the development shall not cause any increase in flood boundaries, levels or frequencies in any area outside the development. Prior to issuance of any grading permits, FEMA requires a hydrologic and hydraulic analysis to be submitted and approved that demonstrates that the development will not cause any rise in base flood levels.

248. The project grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage areas, outlet points and outlet conditions. Otherwise, a drainage easement shall be obtained for the release of concentrated or diverted storm flows. A copy of the recorded drainage easement shall be submitted to the City of Banning and District for review prior to the recordation of each associated final map.
249. The applicant shall comply with Chapter 13.24 "Storm Water Management Systems" and Title 18 "Grading, Erosion and Sediment Control" of the Banning Municipal Code (BMC), the California Building Code related to excavation and grading; and, the State Water Resources Control Board's orders, rules and regulations.

   a) For construction activities including clearing, grading or excavation of land that disturbs one (1) acre or more of land, or that disturbs less than one (1) acre of land, but which is a part of a construction project that encompasses more than one (1) acre of land, the applicant shall be required to submit a Storm Water Pollution Protection Plan (SWPPP) and file a Notice of Intent (NOI) with the Regional Water Quality Control Board.

   b) The applicant’s SWPPP shall be reviewed and approved by Regional Water Quality Control Board prior to any on-site or off-site grading being done in relation to this project.

   c) The applicant shall ensure that the required SWPPP is available for inspection at the project site at all times through and including acceptance of all improvements by the City.

   d) The applicant’s SWPPP shall include provisions for all of the following Best Management Practices ("BMPs"):

      i. Temporary Soil Stabilization (erosion control)
      ii. Temporary Sediment Control
      iii. Wind Erosion Control 
      iv. Tracking Control
      v. Non-Storm Water Management
      vi. Waste Management and Materials Pollution Control

   e) All erosion and sediment control BMPs proposed by the applicant shall be approved by the City Engineer prior to any onsite or offsite grading, pursuant to this project.

   f) The approved SWPPP and BMPs shall remain in effect for the entire duration of project construction until all improvements are completed and accepted by the City.

250. Prior to issuance of any grading or building permit, a Project-Specific Water Quality Management Plan (WQMP) shall be reviewed and approved in accordance with the City Engineer and California Regional Water Quality Control Board Colorado River Basin Region Order No. R7-2008-0001. Best
Management Practices (BMPs) shall be implemented to enhance pollutant removal during storms and to improve the quality of storm water runoff. Project Water Quality Management Plans (WQMP’s) shall be prepared for project phases as required by the State Water Resource Control Board.

251. Prior to approval of any final map the applicant shall identify and include in its improvement plans those routine structural and non-structural Best Management Practices (BMP’s) as outlined in Supplement A to the Riverside County Drainage Area Management Plans and any attachments or revisions.

252. Prior to issuance of grading permits, the potential for conveyance of debris by the offsite watershed shall be accounted for in design of onsite drainage facilities to the satisfaction of the City.

253. Prior to approval of any grading permits the applicant shall submit a PM10 Management Plan for construction operations to the City Engineer and SCAQMD for review and approval.

254. Upon the completion of construction, the Applicant shall file a letter with the SWRCB or submit information to the SMART System stating that the construction activity is complete. A copy of this letter shall be submitted to the City prior to any occupancy.

255. Low flow creek crossings shall not be permitted.

256. Prior to issuance of any grading permits, a phase plan for the designated tract or development area shall be submitted and approved by the Community Development Director and City Engineer. Each phase shall provide for adequate vehicular access, public facilities, and infrastructure to service the development and as needed for public health and safety. A separate analysis is required for each phase of construction to determine what additional temporary mitigation measures are warranted in order to reduce runoff to the existing condition, and protect the new improvements from potential flooding. Such improvements might include temporary detention basins, natural channels, and minor levees. Additionally, each development proposal will need to meet current MS4 Permit requirements in effect at time of building permit issuance as directed by the Colorado River Basin Regional Water Quality Control Board.

257. Detailed grading plans shall be prepared and approved by the City prior to any on-site grading for each project or group of projects.

258. Construction of each phase shall include an assessment of the size and flow patterns of the adjacent undeveloped areas on the Specific Plan area.

259. Each phase shall prepare an erosion control plan that provides the developed phases with the required flood protection. Flood protection shall be determined by the size of the undeveloped areas and the flow patterns.
260. Temporary basins shall be constructed to meet detention requirements and earthen channels/berms shall be used to divert and convey flows during construction phases.

261. Within park areas or areas accessible to the public, detention/retention basins will be protected from public entry as required.

262. Impacts to jurisdictional streams, creeks and drainages shall be reviewed and approved by the appropriate regulatory agencies with jurisdiction in this area and will require the appropriate required permits issued. Long term regular maintenance and operation of drainage improvements, such as detention basins, shall be included in the initial regulatory permitting applications.

263. Streambed protection along Pershing Creek and Smith Creek shall include a 100-foot setback for infrastructure and residential improvements. These setback areas are proposed to include a linear trail system, native and drought- tolerant landscaping, and some of the retention-detention basin facilities. Bridge encroachments into this setback area are proposed at two locations along Pershing Creek, one being a steel bridge crossing at B Street and the other being a series of culverts crossing under Sunset Avenue, designed such that the full 100-year storm would be conveyed through the culverts, leaving Sunset Avenue passable during a storm. Bridge piers, culvert headwalls, cutoff walls and slope protection measures for these road crossings should be extended well below the existing streambed to account for channel scouring due to high flow velocities. Additional freeboard in accordance with RCFC&WCD standards shall be included in the design of these road crossings to account for possible sediment deposits.

264. Prior to recordation of the first phase of the final “A” map, the Applicant shall submit a wash study and protection plan for the washes/creeks within the boundaries of the development for review and approval of the City Engineer. The study shall include provision to protect the trails from erosion at locations where drainage flows enter the creeks. Slope stability measures shall incorporate those requirements as established by the RCFC&WCD.

265. As a means to mitigate the impact of piping the Montgomery Creek flows, the project proposes to construct three interconnected retention-detention basins located in Confluence Park (Lot 17). The retention component would contain smaller storm events, daily nuisance flows and other sources, and would ensure that storm water released to Smith Creek downstream would not occur at a faster rate than occurs in the existing condition. The basins are anticipated to be approximately 10 to 20 feet deep, depending on the ultimate park design. Within park areas or areas accessible to the public, the basins shall be protected from public entry as required. The aforementioned retention-detention basins are proposed to enhance storm water runoff quality and maintaining the creeks in their natural state. Prior to recordation of the applicable final map, all
retention/detention basin plans and accompanying hydrology and hydraulics reports shall be submitted for review and approval to the City Engineer.

266. Prior to the issuance of any earth moving permit on the site, all improvement plans which cross or abut the Gas Company easement or SCE easement (containing transmission towers and lines) will be submitted to the Gas Company and SCE for review, approval and any required permits. Any conditions or requirements from said utility agencies shall be incorporated onto the plans and be made part of the grading permit(s) for the project. The location of the easement shall be surveyed, staked and clearly marked immediately following rough grading of the project site. The staking and signage shall be maintained in visible order until all construction adjacent to it is complete.

267. All public drainage facilities shall be located within a public right-of-way or a publicly dedicated drainage easement. Additionally, if the inlet works are required on the north side of Westward Avenue and are outside the project boundaries, permission/easements from the property owners for construction of the inlet works shall be secured by the Applicant. Easements shall meet minimum width and access requirements as mandated by the City and District.

268. All storm drains 36 inches in diameter or less shall be designed and constructed to RCFC&WCD Standards and shall be maintained by the City of Banning, except as modified by separate agreement between the Applicant and the City of Banning. All Water Quality Management Plan (WQMP) basins shall be maintained by an LLMD or other approved mechanism.

269. All storm drains greater than 36 inches in diameter, and structures proposed for maintenance by RCFC&WCD shall be designed and constructed to RCFC&WCD standards. All plan sets related to any RCFC&WCD facilities shall be reviewed, checked, and approved by said District prior the recordation of the applicable final map.

270. Prior to acceptance of public streets, all catch basins and storm drain inlet facilities shall be stenciled with the appropriate no dumping message as required by the Public Works Department.

271. The Contractor shall comply with SCAQMD Rule 403 - Fugitive Dust requirements. Dust control operations shall be performed by the Contractor at the time, location and in the amount required and as often as necessary to prevent the excavation or fill work, demolition operation, or other activities from producing dust in amounts harmful to people or causing a nuisance to persons living nearby or occupying buildings in the vicinity of the work. Dust control shall consist of sprinkling water, use of approved dust preventatives, modifications of operations or any other means acceptable to the Engineer, City of Banning, the Regional Water Quality Control Board (RWQCB), the Air Quality Management District (AQMD), and any Health or Environmental Control Agency having
jurisdiction over the site. The City shall have the authority to suspend all construction operations if, in their opinion, the Contractor fails to adequately provide for dust control.

272. Prior to issuance of a grading permit, the project Applicant shall implement all applicable mitigation measures identified in the approved Environmental Impact Report (EIR) prepared for the proposed project. All mitigation measures shall be addressed on the grading plans as applicable.

Landscaping

273. Prior to recordation of each phase of the final “A” map, landscape and irrigation plans for all required facilities including backbone street parkways and medians shall be submitted for approval. The final design of the parkways, walls, landscaping, and sidewalks shall be included in the plans and shall be subject to approval by the Community Development Director and City Engineer.

274. Landscaping and irrigation systems required to be installed within the public right-of-way shall be continuously maintained by the Applicant until maintenance is assumed by a Landscape, Lighting & Maintenance District (LLMD) as required by the Public Works Director.

275. An automatic sprinkler system and landscaping shall be installed, prior to release of bonds/sureties and prior to occupancy of the first unit of the development, within the parkway and median islands fronting collector streets; secondary, major and arterial highways. The system shall include a landscape controller, a separate water meter and electric meter, and plantings as approved by the Community Development Director.

276. The Applicant shall prepare a water conservation plan to reduce water consumption in the landscape environment using xeriscape principles. “Xeriscape” shall mean a combination of landscape features and techniques that in the aggregate reduce the demand for and consumption of water, including appropriate low water using plants, non-living groundcover, a low percentage of turf coverage (limited to 25% of the planted area), permeable paving and water conserving irrigation techniques and systems.

277. Prior to release of bonds/sureties, landscape improvements shall be certified by a licensed landscape architect or licensed landscape contractor as having been installed in accordance with the approved detailed plans and specifications. The applicant shall furnish said certification, including an irrigation management report, for each landscape irrigation system and any other required implementation report determined applicable, to the City Engineer for review and approval.
278. Public landscaped areas shall be irrigated with recycled water once recycled water becomes available. The use of recycled water shall be accounted for in the design of the irrigation system and plant selection. The Water Supply Assessment Report based its calculations and conclusions on the assumption that recycled water would be used for landscaping purposes. Prior to recordation of the first phase of the final “A” map, the Applicant shall include calculations in a Supplemental Water Study to deduce the timing of when the project must be connected to recycled water. No building permits will be issued beyond the timing conclusions of the above report unless recycled water is available.

Final Map, Monuments & Surety

279. This project includes a master tract map referred to as the “A” map that will be recorded in six phases as described on TTM 36586. The applicant will develop improvement plans and provide construction improvements or bonding/sureties for the improvements that are required by each phase. All improvement plans and construction improvements or bonding/sureties for the entire project shall be in place by the recordation of the Phase 6 “A” map.

280. The approval of this project is subject to, and contingent upon, the recordation of six phases of the final “A” map. The submittal, approval, and recordation of any final map shall be in accordance with the provisions of the State Subdivision Map Act and Title 16, Subdivisions, of the Banning Municipal Code.

281. Prior to approval of each Final Map, the applicant shall construct all on-site and off-site improvements in accordance with the approved plans and satisfy its obligations for same, or shall furnish a fully secured and executed Agreement for Construction of Public Improvements guaranteeing the construction of such improvements and the satisfaction of its obligations for same, or shall agree to any combination thereof, as may be required by the City.

282. Each final map shall have adequate reservations for public ingress and egress as well as public and/or private utility easements and abandonment of existing utility easements to the satisfaction of the Public Works Director. The applicant shall be responsible for contacting all utility providers to establish appropriate easements required to provide services to each development area.

283. Prior to release of surety, the Applicant shall comply with Assembly Bill 1414, which was enacted on January 1, 1995, and amended Section 8771 of the Business and Professions Code of the Land Surveyors Act. Assembly Bill 1414 requires that two (2) corner records be filed when:

a) Monuments exist that control the location of subdivisions or tracts, streets or highways; or provides survey control. The monuments are located and referenced by a licensed Land Surveyor before any streets or highways are reconstructed or relocated. The corner record(s) of
the references are filed with the County Surveyor.

b) Monuments are reset in the surface of the new construction and a corner record is filed with the County Surveyor before recording of a Certificate of Completion for the project.

284. The applicant shall file an Environmental Constraint Sheet. An Environmental Constraint Sheet means a duplicate of the final map on which are shown the Environmental Constraint Notes. This sheet shall be filed with the County Surveyor simultaneously with the final map and labeled ENVIRONMENTAL CONSTRAINT SHEET in the top margin. Applicable items will be shown under a heading labeled Environmental Constraints Notes. The Environmental Constraint Sheet shall contain the statement

THE ENVIRONMENTAL CONSTRAINT INFORMATION SHOWN ON THIS MAP SHEET IS FOR INFORMATIONAL PURPOSES DESCRIBING CONDITIONS AS OF THE DATE OF FILING, AND IS NOT INTENDED TO AFFECT RECORD TITLE INTEREST. THIS INFORMATION IS DERIVED FROM PUBLIC RECORDS OR REPORTS, AND DOES NOT IMPLY THE CORRECTNESS OR SUFFICIENCY OF THOSE RECORDS OR REPORTS BY THE PREPARER OF THIS MAP SHEET.

As required by the City Engineer, the sheet shall delineate constraints involving, but not limited to, any of the following that are conditioned by the Advisory Agency: archaeological sites, geologic mapping, grading, building, building setback lines, flood hazard zones, seismic lines and setbacks, fire protection, water availability, and sewage disposal.

285. Security for the construction of public improvements in accordance with Government Code Section 66499 shall be as follows:

- Faithful Performance Bond - 100% of estimated cost
- Labor and Material Bond - 100% of estimated cost
- Monumentation Bond – In the amount as supplied by the Record Engineer/Land Surveyor and as approved by the City Engineer

286. Securities for the public improvements shall be on file with the City Clerk prior to scheduling the final map for approval by City Council. Unit prices for bonding estimates shall be those specified or approved by the City Engineer.

287. Revisions to the tentative map during plan check including, but not limited to, lot line alignments, easements, improvement plan revisions, and similar minor changes which do not alter the design (property rights, number of lots, environmental impact, etc.) may be administratively approved through the plan check process with the mutual consent and approval of the Community Development Director and City Engineer. Final maps shall be amended in
accordance with the Subdivision Map Act. Changes to points of access to existing roadways other than those shown in the approved Specific Plan shall be cause for revision of the tentative tract map and preparation of revised conditions of approval.

288. Prior to release of surety, permanent survey monuments shall be set at the intersection of street centerlines, beginning, and end of curves in centerlines, and at other locations designated by the Director of Public Works and City Engineer. All other centerline monuments shall be placed in accordance with standard survey practice. A complete set of street centerline ties shall be submitted to the Engineering Division upon completion of improvements or prior to release of the monumentation bond.

289. The engineer/surveyor of record shall submit a copy of the title report, closure calculations, and any separate instruments or necessary right-of-way documents to the Engineering Division for review and approval of the City Engineer prior to any final map approval.

290. An original Mylar of all recorded final maps shall be provided to the City for the record files prior to release of the securities.

**Water**

291. As required by the City Engineer and prior to recordation of the first phase of the final “A” map, Applicant shall prepare and the City shall approve a Focused Water Study to supplement the project’s Water System Hydraulic Analysis and Water Supply Assessment Report. The Focused Water Study shall include but not be limited to identifying well production facility locations, treatment requirements, define on/off site transmission facilities, location and volume of system storage, define system points of connection and booster or reducing stations. The report must verify that water pipeline sizes and pressures meet all required water flow rates and identify offsite system improvements and phase in which they shall be constructed. The report shall also determine the project’s fair share cost for said water facilities.

292. Prior to recordation of each phase of the final “A” map, improvement plans for water facilities shall be prepared by a Licensed Engineer and submitted for review and approval by the City Engineer. The Applicant is required to design and construct all those water facilities identified in the approved Focused Water Study Report, the project’s Water System Hydraulic Analysis report and the Water Supply Assessment report and in accordance with the phasing plan selected and approved by the City Engineer. Water facilities include wells, storage capacity (reservoirs), transmission pipelines, booster stations, pressure reducing station, three permanent points of connections, interim points of connection, looped systems, SCADA systems, emergency generators, and other facilities. As an alternative to constructing certain facilities, the Applicant may
pay the projects fair share for improvements as approved by the City Engineer and Public Works Director. All the proposed new waterlines shall connect into the City’s water supply and be designed and constructed to City Standards.

293. Additional potable water storage is required for this development. There is no acceptable on-site location with sufficient elevation for a new reservoir; therefore an off-site location is required for the construction of a new water storage tank. The City shall identify a reservoir site and the Applicant shall participate in acquiring the property and development of the water facilities as directed by the City Engineer. Timing and completion of the reservoir and all piping required to connect the water facilities to the project shall be evaluated and determined in the Focused Water Study.

294. Above ground water tanks/reservoirs constructed in conjunction with the Specific Plan development shall be buffered from view and nearby residences by berms and/or landscaping. The tanks will be finished with a colored, matte finish intended to allow the tanks to blend into the surrounding hillsides and environment. Access to the tanks will be provided by easements extending from local roads.

295. One year after the initiation of construction, and annually thereafter until build out of the proposed project, City will analyze actual water usage per unit. The City will provide this information to the applicant who will then adjust projected water usage for future development (based on actual on-site usage), and actual City water supplies. At any time should projections show that the proposed project and cumulative development will require water supplies in excess of the Maximum Perennial Yield, the City Engineer may request that the WSA be updated to evaluate this new data.

296. Prior to occupancy release, a backflow device must be installed on all irrigation water connection. The backflow device must be in compliance with the State Department of Health Regulations.

297. Offsite waterlines are to be constructed to and across property boundaries of the project to connect to the existing water system. During phasing of the project, all waterlines are to be looped for each phase with a minimum of two points of connection in each pressure zone and no long dead end pipelines. Points of connection are located along Westward Avenue at Sunset Avenue, 22nd Avenue and 8th Street. The Applicant shall be required to construct an offsite water main in Sunset Avenue from the project boundary to Westward Avenue and a 24-inch water main in Sunset north of Westward Avenue as directed by the City Engineer. Exact alignment, pipe diameter and phasing for these water facilities shall be determined in the Focused Water Study and as approved by the City Engineer.
298. All dead end water mains shall be provided with 4-inch blow off valves or fire hydrants.

299. All water lines shall be a minimum of 8” diameter pipe, and constructed of ductile iron pipe (DIP).

Waste Water

300. As required by the City Engineer and prior to recordation of the first phase of the final “A” map, the applicant shall submit and the City shall approve a supplemental Focused Sewer System Study to the satisfaction of the City Engineer. The study shall determine on/off site conveyance system requirements and project’s fair share cost for the City’s wastewater treatment plant expansion. The study shall also include a phasing plan and timing hooks for treatment plant expansion.

301. Prior to recordation of any phase of the final “A” map, associated improvement plans for sewer facilities shall be submitted to the City for review and approval and shall be substantially complete to the satisfaction of the City Engineer.

302. Prior to occupancy release of the first unit in Phase 1, the Applicant shall construct approximately 600 feet of off-site sewer main to the point of connection with the existing city sewer system. The project would connect to the existing 21” sewer trunk line located south of Wesley Street, east of San Gorgonio Avenue, in the projection of Porter Street, as shown on the Conceptual Sewer Master Plan Exhibit 2-10 of the RSG Specific Plan. The developer is responsible for securing all required easements to the satisfaction of the City Engineer. The Applicant may enter into a reimbursement or fee credit agreement for costs incurred beyond the project’s fair share contribution as approved by the City Attorney. Exact alignment, pipe diameter and phasing for these sewer improvements shall be determined in the Focused Sewer System Study and as approved by the City Engineer.

303. The Applicant is required to participate in the expansion of the existing Waste Water Treatment Plant as required in the executed Development Agreement.

304. The Applicant is required to design and construct all those sewer facilities identified in the City of Banning’s approved Sewer Master Plan. This includes a trunk line (Deutsch Trunk Line) through the project to the existing Wastewater Treatment Plant located at Charles Street, main lines through the project, pumps, SCADA systems, emergency generators, and other facilities. The project sewer flows shall be incorporated into the ultimate design of the Deutsch Trunk Line and an offset in sewer impact fees relative to the cost to upsize the sewer main will be allowed. A reimbursement agreement will be entered into to facilitate reimbursement of fair-share costs from future developments. All facilities shall
be installed per the approved Phasing plan to be included in the Focused Sewer System study.

305. All sewer lines to be constructed within the Public right-of-way shall be extra strength Vitrified Clay Pipe. All sewer laterals shall be a minimum of 4” (residential) and 6” (commercial) and all sewer mains shall be a minimum of 8”. Final sizes shall be approved by the City Engineer.

306. The Applicant shall CCTV all public sewer mains and submit to the City for review and approval prior to surety release and acceptance of sewer improvements.

**Recycled Water**

307. As required by the City Engineer and prior to recordation of the first phase of the final “A” map, applicant shall prepare and City shall approve a supplemental Recycled Water System Study to define system components and shall include a phasing plan and project’s fair share cost analysis for all recycled water facilities. Prior to recordation of each phase of the final “A” map, recycled water plans shall be submitted to the City for review and approval and shall be substantially complete to the satisfaction of the City Engineer. Design and installation of recycled water facilities shall be in accordance with the requirements and specifications of the State Department of Health Services, Riverside County Environmental Health, and the City of Banning. Plans shall include pipelines, services, pumps, etc. Recycled water shall be used to irrigate all common landscape areas, median and parkway landscape areas along the major streets within the project, as well as at the various parks and paseos throughout the master planned community.

308. Prior to any occupancy release of the first unit in Phase 1, the Applicant shall construct an off-site recycled water pipeline from the project boundary to the point of connection to the city system at Lincoln and 8th Streets (Approximately 1,350 LF). The Applicant may enter into a reimbursement or fee credit agreement for costs incurred beyond the project’s fair share contribution as approved by the City Attorney. Exact alignment, pipe diameter and phasing for these recycled water improvements shall be determined in the Focused Recycled Water System Study and as approved by the City Engineer.

309. The applicant is responsible to pay the fair share cost for the additional storage requirement of 0.548 MG generated from the project for recycled water as defined in the Development Agreement.

**Utilities**

310. All new utility systems including gas, electric, telephone, and cable TV shall be provided for underground with easements provided as required and designed
and constructed in accordance with City Codes and the utility provider specifications. The Applicant shall submit improvement plans to all affected utility companies and provide copies of approved plans to the Engineering Division prior to the issuance of any permits for utility work within the public right-of-way.

311. Street lights shall be installed in accordance with the City of Banning Electric Department Standards. A detailed lighting plan shall be submitted for review and approval by the City’s Electric Department and City Engineer prior to recordation of each phase of the final “A” map. The plan shall indicate style, illumination, location, height and length of mast arm.

312. The Applicant shall be responsible for research on private utility lines (Gas, Edison, Telephone, Cable, Internet, etc.) to ensure there are no conflicts with site development. All existing on-site utility lines that conflict with this project shall be relocated, removed, or sealed to the satisfaction of the City Engineer.

313. All existing overhead utility lines located on or along the frontage of the project shall be undergrounded prior to public improvement acceptance and surety release, to the satisfaction of the Public Works Director, including but not limited to, electrical distribution, telephone, and cable lines, with the exception of electric utility lines over 33 kV.

Construction and Maintenance of Public Improvements

314. All required water lines and fire hydrants shall be installed and made operable before any building permits are issued. This may be done in phases if the construction work is in progress for emergency vehicles.

315. All weather vehicular access shall be maintained at all times to all parts of the proposed subdivision, where construction work is in progress, for emergency vehicles.

316. All precautions shall be taken to prevent washouts, undermining and subsurface ponding, caused by rain or runoff to all surface structures (curbs, gutters, sidewalks, paving, etc.). The Engineering Division may order repair, removal and replacement, extra compaction tests, load tests, etc. or any combination thereof for any such structure that was damaged or appears to have been damaged. All of the additional work, testing, etc., shall be at the expense of the Applicant.

Fees

317. Plan check fees for final map review, professional report review (geotechnical, drainage, etc.), and all improvement plans review, shall be paid prior to submittal of said documents for review and approval in accordance with the Fee Schedule in effect at the time of submittal.
318. Public Works Inspection fees shall be paid prior to the scheduling the associated final map for approval by City Council in accordance with the Fee Schedule in effect at time of scheduling. Public Works permits are required prior to construction within the public right of way.

319. A plan storage fee shall be paid for any engineering plans that may be required prior to issuance of certificate of occupancy in accordance with the fee schedule in effect at the time the fee is paid.

320. A fee shall be paid to Riverside County Flood Control and Water Conservation District in the amount specified by them to perform plan checking for drainage purposes for the proposed subdivision.

321. Water, sewer and recycled water connection fees including frontage fees and water meter installation charges shall be paid at the time of building permit issuance in accordance with the Fee Schedule in effect at that time.

322. Development Impact Fees (DIF) shall be paid as required in the Development Agreement.

323. Applicant shall be eligible to enter into a reimbursement agreement to receive reimbursements for offsite traffic improvements completed by Applicant in excess of their fair share contributions as shown in Table 33 of the approved Traffic Impact Analysis. However, traffic fee credits will not be available to Applicant because the City will utilize these fees as they deem necessary to mitigate the remainder of the offsite improvements that are shown to be less than 50% of the projects fair share contribution and therefore not the obligation of the Applicant to complete.

324. Prior to issuance of a building permit for the first unit in Phase I, the Applicant shall prepare and the City shall approve an updated Traffic Impact Fee Study to include development densities and parameters within the Rancho San Gorgonio Specific Plan area. The applicant shall be required to pay Traffic Impact Fees as defined in said fee study and as required in the Development Agreement.
Attachment 6
City Council Resolution No. 2016-86
RESOLUTION NO. 2016-86

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING TENTATIVE TRACT MAP NO. 36586 PERTAINING TO PROPERTY LOCATED SOUTH OF INTERSTATE 10 AND BOUNDED BY SUNSET AVENUE AND TURTLE DOVE LANE ON THE WEST, COYOTE TRAIL AND OLD IDYLLWILD ROAD ON THE SOUTH, SAN GORGONIO AVENUE (STATE ROUTE 243) ON THE EAST, AND PORTIONS OF WESTWARD AVENUE TO THE NORTH, APN#'s 537-150-005 – 007; 537-170-002 – 004; 537-190-001 – 005, 018 – 022; 537-220-031 – 038; 543-020-001, 002, 021, 023; 543-030-001; 543-040-001, 002; 543-050-001 – 003

WHEREAS, an application for Tentative Tract Map. No. 36586 has been duly filed by:

Applicant / Owner: Diversified Pacific
Authorized Agent: Peter J. Pitassi
Project Location: Noted Above
APN: Noted Above
Lot Area: 831 Acres
Application Complete: April 27, 2015

WHEREAS, the Municipal Code allows for the subdivision of the 831 acres of property subject to the approval of a Tentative Tract Map.

WHEREAS, in accordance with Government Code § 65854, the City Council hearing was advertised in the Press Enterprise and Record Gazette newspapers announcing the scheduled City Council public hearing on _____________, 2016, regarding the Tentative Tract Map and other entitlements for consideration regarding the Rancho San Gorgonio Specific Plan, including the proposed certification of the Project’s Final Environmental Impact Report, Mitigation Monitoring and Reporting Program, Statement of Overriding Considerations and Findings of Fact.

WHEREAS, in accordance with Government Code Section 66452.3, the City has provided the applicant and each tenant on the subject property with a copy of the Planning Department’s report and Planning Commission’s determination recommending that the City Council approve the Tentative Tract Map at least three (3) days prior to the below referenced noticed public hearing.

WHEREAS, on September 7, 2016 the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Tentative Tract Map and at which the Planning Commission considered the Tentative Tract Map.
WHEREAS, at this public hearing on ________, 2016, the City Council considered, and heard public comments on the Tentative Tract Map No. 36586 and certified the Final Environmental Impact Report, Mitigation Monitoring and Reporting Program, Statement of Overriding Considerations and determination that the economic, social, planning and other benefits of the Project outweigh the significant and unavoidable impact and consequently adopt the Findings of Fact for the project by Resolution 2016-83.

NOW THEREFORE, the City Council of the City Of Banning does hereby find, determine, and resolve as follows:

SECTION 1. ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City’s Local CEQA Guidelines and Thresholds of Significance, the recommendation of the Planning Director as provided in the Staff Report dated ________, 2016, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. CEQA: The approval of this Tentative Tract Map No. 36586 is in compliance with requirements of the California Environmental Quality Act (“CEQA”), in that on ________, 2016 at a duly noticed public hearing, the City Council considered the Findings and Project Alternatives of the Final Environmental Impact Report, including associated comments from persons and agencies received during the 45 day EIR review and comment period, and certified the Final Environmental Impact Report, Mitigation Monitoring Reporting Program, and adopted the Statement of Overriding Considerations and Findings of Fact reflecting its independent judgment and analysis and documenting that economic, social, planning, and other benefits of the Project outweighed the significant and unavoidable impacts. The documents comprising the City’s environmental review for the project are on file and available for public review at Banning City Hall, 99 East Ramsey Street, Banning, California 92220.

SECTION 2. MAP ACT FINDINGS.

In accordance with Banning Municipal Code Title 16 and Government Code § 66473.1, § 66473.5 and § 66474, the City Council, in light of the whole record before it, including but not limited to the Planning Department’s staff report and all documents incorporated by reference therein, the City’s General Plan, Subdivision Ordinance, Zoning Ordinance, standards for public streets and facilities, and the City’s (Single Family Residential / Multi-Family Residential / Commercial / Design Guidelines) and any other evidence within the record or provided at the public hearing of this matter, hereby finds and determines as follows:
1. Tentative Tract Map No. 36586 is consistent and compatible with the objectives, policies, general land uses, and programs specified the City’s General Plan in that:

The City’s General Plan land use designation and Zoning Map will indicate the designation of the project site as “Specific Plan”. Through the adoption of the Rancho San Gorgonio Specific Plan, the proposed Map provides for the accommodation of forty-four (44) planning areas, consisting of a variety of residential densities, lot types and housing types, common open spaces, an elementary school, and a commercial area. The proposed development Specific Plan will result in the development mix of up to 3,385 residential units on approximately 540 acres. The density level and number of units for each housing type will be commensurate with each residential zoning classification. The proposed TTM furthers the objectives and policies of the General Plan in that 540 acres of the project area is dedicated exclusively to housing.

2. The design and improvement of the subdivision proposed under Tentative Tract Map No. 36586 is consistent with the City’s General Plan in that:

The design of the subdivision is in conformance with the City’s General Plan, Zoning Ordinance and Subdivision Ordinance in that the construction of all units on the site will comply with all applicable City of Banning Ordinances, codes, and standards including but not limited to the California Uniform Building Code, the City’s Ordinances relating to Stormwater runoff management and controls. The design and construction of all improvements for the subdivision will be in conformance with the Rancho San Gorgonio Circulation Plan which establishes the general layout and design standards or the major vehicular roadways and non-vehicular paths within the project area. The Specific Plan codes and standards have been created based on currently accepted standards and practices for the preservation of the public health, safety and welfare in accordance with the City’s General Plan. By means of the project’s circulation design, the proposed street system throughout the Project area will not impede emergency vehicle access and response times throughout the neighborhoods.

3. The site is physically suitable for the type of development proposed under Tentative Tract Map 36586 in that:

The 831 acre site is relatively flat with slight, hilly undulations ranging in elevation from 2,200 to 2,420 feet above mean sea level. Three previous subdivision entitlements reflect the historic interest to develop the property for residential development purposes in that the site lies adjacent to single-family residential zoned districts supported and supplied with the necessary infrastructure required for residential development. In that the Project intends to connect to with existing infrastructure, the Project will be consistent with the goals and objectives of the General Plan.
Furthermore, the site is not located within an Alquist-Priolo Act, earthquake fault setback zone. The geotechnical review prepared by Aragon Geotechnical of Riverside California dated July 1, 2015, and incorporated by this reference is of the opinion that the project is feasible from geotechnical design and geotechnical risk management viewpoints. No impediments to development were found in the analysis; and, as is required by law and industry practice, additional detailed analysis shall be performed prior to construction.

4. The site is physically suitable for the density of development proposed under Tentative Tract Map 36586 in that:

The Project 831 acre site is currently vacant and undeveloped. The site’s elevation ranges from approximately 2,200–2,420 feet above mean sea level (amsl). The topography is fairly level with low, rolling hills. The subject site the Map encompasses contains 831 acres, including the 161 acres presently outside of the current Banning City limits, but within the City’s Sphere of Influence. The 161 acres will be annexed to the City of Banning upon approval of the RSG Specific Plan. The TTM as conditioned, including the mitigation measures contained within the Final Environmental Impact Report and the Mitigation Monitoring Response Program will ensure that the Project’s development is in accordance with the Subdivision’s phasing plan and as the phasing developments coincides with the implementation of public improvements and mechanism whereby the necessary facilities and resources will be available for future residents.

5. The design of the subdivision and improvements proposed under Tentative Tract Map 36586 is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat in that:

With the exception of the significant and unavoidable environmental effects of the project identified in the FEIR and the MMRP, the design of the subdivision and proposed improvements are not expected to cause substantial environmental damage or to substantially injure fish or wildlife or their habitat. The project site is not in a linkage designated under the MSHCP that is a connection between substantial habitat blocks with adequate size, configuration, and vegetation characteristics to generally provide for “live-in” habitat and/or provide for genetic flow for identified covered species. Significant cumulative effects of the project on the MSHCP-covered plans and wildlife, wildlife movement, riparian/riverine areas and habitat connectivity are fully mitigated by the City of Banning’s signatory status under the MSHCP and the requisite measures for mitigation of project-specific impacts to burrowing owl, Los Angeles pocket mouse and Stephens’ kangaroo rat and these species’ habitats. Cumulative effects not specially covered under the MSHCP are nevertheless mitigated to less than significant levels by the broad range of habitats covered by the MSHCP and project design feasts and mitigation measures required for the proposed project.
6. The design of the subdivision and improvements proposed under Tentative Tract Map 36586 is not likely to cause serious public health problems in that:

The design of the subdivision is in conformance with the City's General Plan, Zoning Ordinance and Subdivision Ordinance. Moreover, the construction of all units on the site will comply with all applicable City of Banning Ordinances, codes, and standards including but not limited to the California Uniform Building Code, the City's Ordinances relating to Stormwater runoff management and controls. The design and construction of all improvements for the subdivision will be in conformance with the Rancho San Gorgonio Circulation Plan which establishes the general layout and design standards or the major vehicular roadways and non-vehicular paths within the project area. The Specific Plan codes and standards have been created based on currently accepted standards and practices for the preservation of the public health, safety and welfare. By means of the project's circulation design, the proposed street system throughout the Project area will not impede emergency vehicle access and response times throughout the neighborhoods.

7. The design of the subdivision and improvements proposed under Tentative Tract Map 36586 will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision in that:

The subdivision design contained within Tentative Tract Map No. 36586 will not conflict with any easements acquired by the public at large for access through or use of the property. The design of the subdivision and type of improvements will maintain or reconfigure easements when necessary for public access and services, abandon those easements no longer needed for public purposes, and dedicate new easements as needed to provide for public access and services through the property within the proposed subdivision.

8. The design of the subdivision proposed Tentative Tract Map 36586 adequately provides for future passive or natural heating and cooling opportunities in the subdivision in that:

Taking into consideration local climate and the existing contour and configuration of the site and its surroundings, the size and configuration of the master plan Tentative Tract Map lots within the proposed subdivision have been arranged, to the greatest extent feasible to permit the orientation of structures to maximize natural shade, sunlight, prevailing breezes minimize and reduce the utility and power dependence.
CITY COUNCIL ACTIONS.

The City council hereby takes the following action:

1. Approve Tentative Tract Map No. 36586 as shown in Exhibit “A” and incorporated herein by this reference, subject to the Conditions of Approval attached hereto and incorporated herein by reference as Exhibit B.

PASSED APPROVED AND ADOPTED this _____ day of ________, 2016.

__________________________
Art Welch, Mayor
City of Banning

ATTEST:

_______________________
Marie A. Calderon, City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

__________________________________
John C. Cotti
Interim City Attorney
City of Banning

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1499 was duly introduced at a regular meeting of the City Council of the City of Banning held on the _______ day of __________, 2016 and was duly adopted at a regular meeting of said City Council held on the _____day of ___ ____________, 2016, by the following vote, to wit:
AYES:
NOES:
ABSENT:
ABSTAIN:

Marie Calderon, City Clerk
City of Banning, California
Rancho San Gorgonio Tentative Tract Map
I. GENERAL/ONGOING

COMMUNITY DEVELOPMENT DEPARTMENT

1. Approved General Plan Amendment and Zone Change. The General Plan Amendment and Zone Change are approved as shown in Exhibit “A” to Resolution No 2016-88 and Ordinance No. 1501, respectively. A Development Agreement (the "Development Agreement") was approved concurrent with the General Plan Amendment and Zone Change. Capitalized terms used herein bear the same meaning as defined in the Development Agreement.

2. Approved Rancho San Gorgonio Specific Plan – Approval of the Rancho San Gorgonio Specific Plan is based upon the plan dated January 26, 2015. This approval includes development of up to 3,385 new residential units on approximately 830.8 acres, a minimum of 9.3 acres of commercial, 210.3 acres of open space including 184.6 acres of parks, paseos, and trails and 25.7 acres of natural open space, potentially one school site as determined by the school district, a 0.2 acre utility substation site, and approximately 77 acres of backbone roads as shown in the table below ("Project").
3. Within sixty (60) days, the Rancho San Gorgonio Specific Plan shall be updated by the applicant to incorporate any required conditions of approval and shall be resubmitted to the City Planning Department for review. Upon approval, the applicant shall print and submit ten final copies of the approved Specific Plan to the City.

4. The Rancho San Gorgonio Specific Plan shall be amended at Section 4.3.7 Projections Into Required Yards to add language under the third bullet indicating
that pergolas and/or covered but unenclosed landings may extend a maximum of two feet into a side yard, subject to all Building and Fire Code requirements.

5. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-2 to specify that Large Day Care Homes shall require a Conditional Use Permit and under “Other Uses”, to specify that private schools shall be subject to a Conditional Use Permit.

6. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-2 to specify that Second Dwelling Units shall be subject to City of Banning Zoning Ordinance Section 17.08.100 Second Unit Standard requirements.

7. The Rancho San Gorgonio Specific Plan shall be amended at Section 4.3 General Development Criteria, to specify that for non-gated communities, all building setbacks shall be measured to property line and that for gated communities, setbacks may be measured from street or back of sidewalk. General references throughout the document to setback measurements from street or back of sidewalk shall be amended as to be consistent with this requirement. Section 4.3 shall also be amended to specify that all required 2-car garages shall measure 20’x 20’ interior dimensions; and to limit freestanding walls to 6’ in height excepting within a required front yard setback where the maximum height shall be 48”. On a corner lot, no fence, wall, hedge, or other structure, shrubbery, mounds of earth, or other visual obstruction over thirty-six inches in height above the nearest street curb elevation shall be erected, placed, planted, or allowed to grow within a traffic safety sight area.

8. The Rancho San Gorgonio Specific Plan shall be amended at Section 4.3.10 Interim Uses, to specify that the listed interim or temporary uses may be permitted in any planning area ultimately planned for development uses prior to construction, rather than entitlement, of its primary permitted use. Section 4.3.10 shall be further amended to require that (c) festivals or fairs; (e) farmers markets, and (f) Christmas tree lots, pumpkin patches, and similar seasonal uses, shall require a Temporary Use Permit, subject to City of Banning Zoning Ordinance Chapter 17.108 requirements.

9. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-3 VLDR Residential Uses Development Standards to require a minimum lot depth of 100’ and a maximum lot coverage of 50%.

10. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-4 LDR Residential Uses Development Standards-4500 to require a minimum lot depth of 90’ and to require that the front yard garage setback shall be a minimum of 19’ from back of sidewalks.

11. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-5 LDR Residential Uses Development Standards-5000 to require a minimum lot depth of
100’ and to require that the front yard garage setback shall be a minimum of 19’ from back of sidewalk.

12. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-6 LDR Residential Uses Development Standards-5500 to require a minimum lot depth of 100’.

13. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-7 LDR Residential Uses Development Standards-6000 to require a minimum lot depth of 100’ The Rancho San Gorgonio Specific Plan shall be amended at Table 4-8 LDR Residential Uses Development Standards-7000 to require a minimum lot depth of 100’ and to require that the front yard garage setback shall be a minimum of 19’ from back of sidewalks.

14. The Rancho San Gorgonio Specific Plan shall be amended at Section 5.1.5 Minor Modifications to be consistent with City of Banning Zoning Code Chapter 17.84.

15. The Rancho San Gorgonio Specific Plan shall be amended at Section 5.1.6 Amendments to the Specific Plan to specify that any modifications not listed under 5.1.5 Minor Modifications shall require an amendment to the Specific Plan requiring public hearings, a recommendation by the Planning Commission and approval by the City Council.

16. The Rancho San Gorgonio Specific Plan shall be amended at Section 5.2.3 Subsequent Approvals and Plans, third bullet, to specify that Design Review applications shall require Planning Commission consideration and approval.

17. **Precedence of Conditions.** If any of the Conditions of Approval conflict with the Rancho San Gorgonio Specific Plan text or map exhibits, the conditions enumerated herein shall take precedence unless superseded by the Development Agreement, which shall govern over any conflicting provisions of any other approval.

18. **Compliance with City Codes and Conditions.** Development of the property shall conform substantially to the approved Rancho San Gorgonio Specific Plan as filed in the Planning Division, unless otherwise amended. Should the regulations in the Specific Plan differ from the City of Banning Zoning Ordinance, the regulations in the Specific Plan shall take precedence. Regulations that are not addressed in the Rancho San Gorgonio Specific Plan shall be subject to the City of Banning Zoning Ordinance.

19. **Outside Agencies.** Development of the property shall be in accordance with the plans and procedures of various responsible agencies. These include the following:
a) **State and Federal Standards.** The Project shall conform where applicable to all disabled access requirements in accordance with the State of California, Title 14, and Federal Americans with Disabilities Act (ADA).

b) **Southern California Edison.** If construction is proposed within the area of the Southern California Edison power transmission easement or immediately adjacent thereto, the Developer shall contact the area service planner for Southern California Edison to coordinate construction related activities.

c) **School Districts.** The Developer shall demonstrate payment of standard requirements and mitigation fees established by the State of California and the Banning Unified School District.

d) **Riverside County Flood Control.** Prior to approval of any Final Tract or Parcel Map for which a Riverside County Flood Control master plan facility is included, the Developer shall obtain a written statement from the Riverside County Flood Control District, in a form satisfactory to the City, indicating that the Developer has adequately demonstrated the viability of proposed drainage facilities. The written statement could be the approval of the facility by RCFCD.

e) **Caltrans District 8.** Prior to issuance of applicable roadway improvement or encroachment permits, the Developer is required to receive approval of any construction or work within the Caltrans right-of-way(s).

f) **California Department of Fish and Game.** The Developer shall apply for and receive approval of an agreement under Section 1602 of the California Fish and game Code.

g) **United States Army Corps of Engineer.** The owner, Developer, or successor in interest shall receive approval of a permit under Section 404 of the Clean Water Act.

h) **Regional Water Quality Control Board.** The owner, Developer, or successor in interest shall receive approval of a permit under Section 401 of the State Porter-Cologne Act from the Colorado River basin Regional Water Quality Control Board.

i) **Riverside Conservation Authority.** The owner, Developer, or successor in interest shall comply with the Multi-Species Habitat Conservation Program mitigation fees.
j) **South Coast Air Quality Management District (SCAQMD).** The owner, Developer, or successor in interest shall comply with the air quality regulations promulgated by the SCAQMD.

20. **Mitigation Measures and Mitigation Monitoring Program.** The owner, Developer, or successor in interest shall comply with the Mitigation Measures and Mitigation Monitoring Program as approved in the Final Environmental Impact Report (SCH# 2015041064) as certified by the City Council on _____, 2016 and incorporated herein by reference. The owner, Developer, or successor in interest shall pay for the cost of implementing and monitoring the mitigation measures.

21. **City Approvals.** All approvals by City, unless otherwise specified, shall be by the department head of the department requiring the condition. All agreements, covenants, easements, deposits and other documents required herein where City is a party shall be in a form approved by the City Attorney. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.

22. **Homeowner’s Associations.** The owner, Developer, or successor in interest shall form a Home Owner’s Association (HOA) to maintain private amenities and areas that are determined by the City to be under the area of responsibility of the Homeowners Association as addressed in the Development Agreement, subject to review and approval by the City Attorney and the City Engineer.

23. **Property Management Association.** The owner, Developer, or successor in interest shall form a Property Management Association for maintenance of common areas within the commercial component of the Project, subject to review and approval by the City Attorney and the City Engineer.

24. **Covenant, Conditions, and Restrictions (CC&Rs).** Covenants, Conditions, and Restrictions (CC&Rs) shall be established for residential and commercial development. The owner, Developer, or successor in interest shall pay for the cost of review and approval of the CC&Rs by the City Attorney. The CC&Rs shall provide for proper maintenance of all property and include other necessary conditions to carry out the terms herein, and shall be enforceable by City, and recorded prior to development of any parcels. An initial deposit of $5,000 is required to cover processing costs. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.

25. **Reciprocal Ingress and Egress.** Reciprocal ingress and egress shall be established between the parcels within each of the commercial areas, in a form approved by the City Attorney.
26. **Mandatory Solid Waste Disposal.** Mandatory solid waste disposal services shall be provided by the City franchised waste hauler to all parcels/lots or uses affected by approval of this Project.

27. **Community Facilities District (CFD).** This Project is not within an existing Community Facilities District (CFD). As a requirement of this Project, one or more CFD’s (and LMDs) shall be required to fund the maintenance of infrastructure, landscaping, police, and fire services. The formation of the CFD must be completed prior to recordation and shall be subject to review and approval by the City Attorney and City Engineer. An initial deposit of $5,000 is required to cover processing costs associated with the proceedings for the establishment of the CFD. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.

28. **Addresses.** All numbered lots shall have addresses assigned by the Building and Safety Department.

29. **Fair Share Agreements, Reimbursement and Covenant Agreements.** All fair share agreements, covenant agreements and agreements subject to recordation will be subject to review and approval by the City Attorney and will include appropriate enforcement provisions by the City and be properly securitized. The City may require the Developer to enter into fair share and reimbursement and other covenant agreements which may be recorded against property and bind owners of property and their successors. A “fair share” agreement shall provide for Developers of property to pay their fair share for infrastructure improvements as determined by an independent study of the respective benefit received by the benefited property. A reimbursement agreement requires the initial Developer to install infrastructure which will also serve other property when it is developed, and the initial Developer is reimbursed by the future development in accordance with the benefit received by the future development. The benefit formulas and terms of the fair share and reimbursement agreements shall contain provisions for securitization and enforcement and shall be in form and content approved by the City Attorney in accordance with law. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.

30. **Development Impact Fees.** The development is required to comply with the provisions agreed upon in the Development Agreement regarding the payment of and timing of Development Impact Fees (“DIFs”).

31. **School District Fees.** Prior to the issuance of any building permit, The Developer shall provide certification from Banning USD as required by California
Government Code Section 53080(b) that state mandated school fees have been satisfied.

32. **Processing Fees.** The development is subject to all appropriate City Processing fees, charges, deposits for services to be rendered, and securities required pursuant to the Development Agreement.

33. **One hundred sixty-one (161) Acre Property.** The 161-acre property that is part of the Rancho San Gorgonio Specific Plan and designated as portions of Planning Area 2-B, 2-C, 3-A, 14-A, 15-A, and 15-B; and, and Planning Area 1, 2-A, and 4-A is for the establishment of pre-zoning for the property. If the property is annexed into the City, the property shall be annexed into the Community Facilities District and Landscape Maintenance District as established for the Project.

34. **Fire Station Site.** The Developer, owner, or successor in interest shall dedicate the fire station site to the City of Banning. The Owner will receive fee credits as provided in the appraised value of the property at the time of purchase. The dedication shall occur in accordance with the phasing plan in the Development Agreement.

35. **Bicycle Path and Neighborhood Electric Vehicle and Multi-purpose Trails.** The development shall provide bicycle paths/lanes, neighborhood electric vehicle/golf cart lanes, and walking trails in substantial conformance with the Rancho San Gorgonio Specific Plan. The dedication shall occur as the appropriate phase of the TTM 36586 is recorded and in accordance with the Development Agreement. The developer shall provide an exhibit depicting typical bicycle paths, neighborhood electric vehicles, and multi-purpose trails for review and approval by the City Attorney and City Engineer prior to submittal of tentative subdivision maps.

37. **Trust Deposit Accounts.** Trust deposit accounts shall be established for future submittal and review of tentative tract or parcel maps. All trust deposits shall be maintained with no deficits. The trust deposits shall be governed by deposit agreements. The trust deposit account shall be maintained separate from other City funds and shall be non-interest bearing. City may make demands for additional deposits to cover all expenses over a period of 60 days and funds shall be deposited within 10 days of the request therefore, or work may cease on the Project.

38. **Indemnification.** The Developer shall indemnify the City and its elected boards, commissions, officers, agents and employees and will hold and save them and
each of them harmless from any and all actions, suites, claims, liabilities, losses, damages, penalties, obligations and expenses (including but not limited to attorneys’ fees and costs) against the City and/or Agent for any such Claims or Litigation (as defined in Section ______ of the Development Agreement) and shall be responsible for any judgment arising therefrom. The City shall provide the Developer with notice of the pendency of such action and shall request that the Developer defend such action. The Developer may utilize the City Attorney’s office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City. The Developer shall provide a deposit in the amount of 150% of the City’s estimate, in its sole and absolute discretion, of the cost of litigation, including the cost of any award of attorneys fees, and shall make additional deposits as requested by City to keep the deposit at such level. The City may ask for further security in the form of a deed of trust to land of equivalent value. If the Developer fails to provide or maintain the deposit, the City may abandon the action and the Developer shall pay all costs resulting therefrom and City shall have no liability to the Developer. The Developer’s obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. The Developer shall have the right, within the first 30 days of the service of the complaint, in its sole and absolute discretion, to determine that it does not want to defend any litigation attacking this Agreement or the Development Approvals in which case the City shall allow the Developer to settle the litigation on whatever terms the Developer determines, in its sole and absolute discretion, but Developer shall confer with City before acting and cannot bind City. In that event, the Developer shall be liable for any costs incurred by the City up to the date of settlement but shall have no further obligation to the City beyond the payment of those costs. In the event of an appeal, or a settlement offer, the Parties shall confer in good faith as to how to proceed. Notwithstanding the Developer’s indemnity for claims and litigation, the City retains the right to settle any litigation brought against it in its sole and absolute discretion and the Developer shall remain liable except as follows: (i) the settlement would reduce the scope of the Project by 10% or more, and (ii) the Developer opposes the settlement. In such case the City may still settle the litigation but shall then be responsible for its own litigation expense but shall bear no other liability to the Developer.

39. The developer shall provide a dedicated space in the Community Center for use by the Banning Library District. The size of the space shall be determined by Parks and Recreation Director at time of submittal of construction documents. Upon occupancy of the Community Center, the developer shall provide desks with computers for 14 stations.
40. Any future library facilities associated with the project shall be reviewed and approved by the City for compliance with applicable environmental and other regulations.

41. Model Homes. Prior to the issuance of building permits, the Developer shall submit a model home plan that shows building elevations, plotting plan(s), and precise grading for review and approval for each phase of development, or per neighborhood, or per each master or merchant builders for review and approval by the Community Development Director as long as the plans conform to the Design Guidelines depicted in the Specific Plan. Subsequent minor technical change/adjustment after approval of the model homes and plotting is subject to an additional approval of the Community Development Director.

42. Landscaping. Prior to issuance of building permits, the Developer shall submit and obtain approval of three (3) copies of construction level Landscape and Irrigation Plans to the Community Development Department accompanied by the appropriate trust deposit. The plans shall be prepared by a registered landscape architect and include the location, number, genus species, and container size of the plants. Plants shall be consistent with the Banning Municipal Code. The cover page shall identify the total square footage of the landscaped area and note that it shall be maintained in accordance with the City Code. Water efficient fixtures and drought tolerant plants shall be utilized where possible. Required landscape areas specific to this Project include front yards of all lots; side yards of corner lots; streetscapes on the Project side for Sunset Avenue, Westward Avenue, and Old Idyllwild Road; landscaping of slopes and entry theme walls; streetscapes for both sides of all in-tract roadways; and landscaping of all lettered lots including the detention basin, and all drainage channels which include Smith Creek and Pershing Creek.

43. Walls & Fences. Prior to issuance of building permits in each phase of the map, the Developer shall submit and obtain approval from the Community Development Department of any wall or fence plans. These plans shall be consistent with intent of the Rancho San Gorgonio Specific Plan. Plans for the construction of retaining walls shall be reviewed and approved by the Building and Safety and Planning divisions.

44. Disclosure Statement. The Developer, property owner or successor in interest shall submit the disclosure statement for review and approval by the City Attorney prior to the issuance of building permit for the first home within the Specific Plan.

45. A permanent homeowners association (HOA) will be established for the Specific Plan area to assume ownership and maintenance responsibility for all common areas, private streets/ drives, recreation areas, open space and landscaped
areas not dedicated to the City/public. An area-wide or local Landscape Maintenance District will be accepted for any area dedicated to the City for public use provided that the organization is legally and financially capable of assuming the responsibilities for ownership and maintenance. Maintenance organizations will be established prior to or concurrent recording of land division maps or issuance of building permits for construction within that land division.

46. **CC&Rs.** A property owners' association shall be established following grading permit issuance and the applicable Conditions, Covenants & Restrictions ("CC&Rs"), shall be prepared for review and approval of the City Engineer and City Attorney providing for maintenance of the parkways, slopes adjacent to public right-of-ways, drainage areas, water quality facilities, detention basins, debris basins, common area landscaping, and median island landscaping. The Developer shall appoint the members of the Board of Directors of the property owners' association, or take such other steps as may be reasonably necessary to assure that members have been appointed or elected to such Board of Directors, until under the terms of the applicable CC&Rs individual lot owners have the power to elect the members of the Board of Directors in accordance with the CC&Rs.

47. **CC&Rs shall contain provisions which prohibit dissolution of the property owners' association unless another entity has agreed to assume the operation and maintenance responsibilities of the property owners' association.** The CC&Rs shall contain provisions that prohibit the Developer and his/her successors-in-interest from amending said covenants, conditions and restrictions to conflict with these conditions of approval, City codes and/or standards.

48. **CC&Rs shall be subject to prior review and approval of the City Attorney.** The Developer shall bear the cost of the review and make a deposit pursuant to a deposit agreement. The City shall be a party of the CC&Rs with full rights to enforce the provisions pertaining to the City including lien rights. The CC&Rs shall be submitted for review prior to issuance of grading permits and recorded prior to issuance of building permits unless approved by the City Attorney.

49. **Fair Share of Cumulative Impacts.** The Developer shall pay a fair share toward cumulative impacts not otherwise captured in existing fee programs, funding sources or in lieu improvements noted above, if such a program is in place at the time of building permit issuance, based on Project contribution percentages identified in Table 4.13-16 of the Rancho San Gorgonio Specific Plan Draft Environmental Impact Report (June 2016). (FEIR Mitigation Measure XXXXX).

50. **Artifact Disposition/Tribal Monitoring:** Prior to grading permit, the landowner(s) shall relinquish ownership of all cultural resources, including sacred items, burial
goods, and all archaeological artifacts and non-human remains as part of the
required mitigation for impacts to cultural resources. The Applicant shall
relinquish the artifacts through one or more of the following methods and provide
the County Archaeologist with evidence of same.

a) The developer shall provide to the City of Banning evidence a fully
executed reburial agreement with the appropriate culturally
affiliated Native American tribe(s) or band(s). This shall include
measures and provisions to protect the future reburial area from
any future impacts. Reburial shall not occur until all cataloguing,
analysis and special studies have been completed.

b) The developer shall provide to the City of Banning evidence a
curation agreement with an appropriate qualified repository within
Riverside County that meets federal standards per 36 CFR Part 79
and therefore would be professionally curated and made available
to other archaeologists/researchers for further study. The
collections and associated records shall be transferred, including
title, to an appropriate curation facility within Riverside County, to
be accompanied by payment of the fees necessary for permanent
curation.

c) If more than one Native American Group is involved with the project
and cannot come to an agreement as to the disposition of cultural
materials, they shall be curated at the Western Science Center.

d) Should reburial of collected cultural items be preferred, it shall
occur in coordination with the consulting federally recognized Indian
tribes. Should curation be preferred, the developer/permit applicant
is responsible for all costs and the repository and curation method
shall be described in the Phase IV monitoring report.

51. TRIBAL MONITORING: Prior to Grading Permit the developer shall provide to
the City of Banning evidence of fully executed monitoring agreement(s) with the
appropriate culturally affiliated Native American tribe(s) or band(s) for all ground
disturbing activities associated with the project. If more than one tribe Federally
Recognized Indian Tribe has requested monitoring, an equal rotation shall be
created around the grading and ground disturbing schedule. This shall include a
scope of work and a description of tribal monitoring activities.

52. Paleo/Archeological Conditions. In the event that Native American cultural
resources are discovered during project development/construction, all work in the immediate vicinity of the find shall cease and a qualified archeologist meeting the Secretary of Interior Standards shall be hired to access the find. Work on the overall project may continue during this assessment period. If significant Native American cultural resources are discovered, for which a Treatment Plan must be prepared, the developer or his archeologist shall contact the Morongo Band of Mission Indians (“Tribe”). If requested by the Tribe, the developer of the project archeologist shall, in good faith, consult on the discovery and its disposition.

53. The applicant shall comply with all conditions and requirements identified in the Airport Land Use Commission, Riverside County, letter dated January 21, 2014.

PARKS, RECREATION, AND OPEN SPACE

54. Prior to the recordation of any phase of the final “A” map that contains a designated public park lot, the Applicant shall make an irrevocable offer of fee dedication for park purposes to the City of Banning or its designee for said parks. The form of the offer shall be suitable for recordation as approved by the City Engineer. Said offer shall be free and clear of money and all other encumbrances, liens, leases, fees, easements (recorded and unrecorded), assessments and unpaid taxes except those meeting the approval of the City Attorney.

55. Developer shall fully improve all public parks, including design, construction and final completion as required in the approved specific plan. Developer’s obligation for improvement costs of said parks shall be as set forth in the Development Agreement. OR shall not be limited to the amount of the park portion of the City’s Development Impact Fees, but shall include full obligation to provide fully improved parks.

56. Prior to the issuance of rough grading permit, the applicant shall ensure the following applicable components are incorporated into the rough grading plans:

- All public and private parks
- Linear parks
- Detention basins
- Major entry monuments
- Pedestrian trails, equestrian trails, paseos, and/or bicycle trails
- Paseo connections between cul-de-sacs to and from other paseos and trails where feasible
57. The graphics for parks and monuments in the Specific Plan are conceptual in nature. Prior to issuance of precise grading permits for parks and monuments, the developer shall submit and obtain approval of construction plans from the Community Development Director that are in substantial conformance with the concepts introduced in the Specific Plan.

58. Prior to issuance of a building permit, the applicant shall submit a comprehensive architectural plan package for review and approval by the Community Development Department, Public Works Department, Building Department and Fire Department, including, but not limited to, the following items: site plan, landscape plan, photometric plan, floor plans, elevations, roof plan, and mechanical, electrical, and structural plans wet stamped and signed by a California licensed architect and/or structural engineer. The plans shall demonstrate compliance with the current California Building, Plumbing, Mechanical, Electrical, Fire, Energy, and Green Codes and Banning Municipal Code, Public Works Standards, and all conditions contained herein.

59. Active park sites shall be developed in accordance with the conceptual design shown in the approved Specific Plan. The plans submitted into plan check shall demonstrate compliance with the following items:

- Building elevations shall have varied design elements on each unit within a unified design theme. Enhanced articulation shall be provided on elevations visible from common areas;
- All mechanical equipment shall be adequately screened from public view through landscaping or architectural compatible screens to the satisfaction of the Community Development Director;
- Exterior lighting shall be designed as an integral part of the building and landscape design and shall complement and enhance the selected style of the building. In areas adjacent to existing residential properties, shields shall be used to contain light on-site by directing lighting downward;
- Illumination levels shall be provided to address security concerns, especially for parking lots, pedestrian paths, outdoor gathering spaces, at building entries and any other pedestrian accessible areas; and,
- Landscaping, gateway signs, perimeter and internal walls and fences shall be designed to be compatible with the architectural style of the buildings.
- Active Recreational Facilities, such as pools, spas and playgrounds, shall not be located closer than 40-feet to any dwelling unit.

60. Landscape and irrigation plans shall be submitted for review and approval and shall be prepared in accordance with the provisions of the RSG Specific Plan and Banning Municipal Code requirements. All landscape and irrigation construction...
plans shall be substantially complete, to the satisfaction of the Community Development Director. The plans shall demonstrate compliance with the following items:

- All landscaping and hardscape within a City park, utility easement or right of way shall be subject to approval by the Public Works Director. Trees shall be planted a minimum of five (5) feet from dry utilities, a minimum of ten (10) feet from driveways, water meters, water lines, sewer mains and lines, traffic and directional signs, and fire hydrants, a minimum of fifteen feet (15) from street lights, and a minimum of thirty feet (30) from street corners.

- Water efficient planting and irrigation practices shall be utilized to conserve water, reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides.

- Location of all new water facilities, including water mains, valves, landscape services, meters and backflow devices shall require approval from the Public Works Department prior to issuance of a permit to install landscaping and irrigation.

- Landscaping plans that include work in public right-of-way shall include a note stating: "A permit shall be obtained from the Public Works Department prior to any work commencing in the public street parkway. The approved Street Improvement Plans shall be assumed correct if they conflict with these plans".

- All plant materials shall be installed in a healthy and vigorous condition typical to the species and shall be maintained in a neat and healthy condition.

61. After City approval of the landscaping and irrigation installation, the developer shall provide 180-day maintenance during the plant establishment period. The City or LLMD shall take over maintenance responsibilities at the completion of the plant establishment period.

62. Prior to issuance of a grading permit, the Applicant shall submit plans for review and approval to provide for grading & erosion control and shall stub out sewer, water, gas, electricity, telephone, storm drain, etc., connections to the property lines. Grading, erosion control, utility, stub-outs, etc. would be done in conjunction with park construction.

63. Site Lease. Developer shall enter into a separate lease agreement with the City ("Site Lease") that defines the arrangement by which Developer shall lease the Project site from the City and have the Project constructed and presented upon completion to the City. Breach of the Site Lease shall also constitute a violation of these Conditions of Approval.

64. Payment of Project Approval Costs. Prior to the issuance of City permits, Developer shall pay all Project Approval Costs for the Project as approved by the
City, according to a reimbursement process acceptable to the City. “Project Approval Costs” shall include, but are not limited to, reasonable costs for consultants, including the City Attorney and City Engineer during approval process, and shall include any outstanding amounts owed to the City. Project Approval Costs do not include costs of construction of the Project ("Project Construction Costs"), which are provided for under the separate Site Lease.

65. CEQA Mitigation Measures. The Mitigation Monitoring and Reporting Program (MMRP) related to the Final Environmental Impact Report prepared pursuant to the California Environmental Quality Act for this project are incorporated herein by reference. Compliance with the MMRP is required.

66. Traffic Construction Management Plan. Prior to issuance of a grading or construction permit, a Traffic Construction Management Plan (TCMP) shall be submitted and approved by the City Engineer. The TCMP shall be developed to avoid conflicts with large vehicles removing or delivering materials to the Project site during commute hours, and shall employ traffic control measures as specified by Caltrans Standards and approved by the City Engineer and Director of Public Works.

67. Geotechnical Report and Review. At the time of plan submittal for City Permits, the Developer shall submit a report prepared by a geotechnical engineer, selected by the Developer with the City’s prior approval, that fully assesses the existing site conditions, and addresses all issues regarding excavation and grading, foundations and their construction, drainage, retaining wall systems, periodic on-site observations, and other related items involving the Project.

68. Storm Water Discharges. Prior to issuance of grading permits, the developer shall submit a copy of the Notice of Intent (NOI) indicating that coverage has been obtained under the National Pollutant Discharge Elimination System (NPDES) State General Permit for Storm Water Discharges Associated with Construction Activity from the State Water Resources Control Board. Evidence that the NOI has been obtained shall be submitted to the City Engineer and Building Official. In addition, the developer shall include notes on the grading plans indicating that the project will be implemented in compliance with the Statewide Permit for General Construction Activities.

69. Consultant Cost Recovery. The Developer shall, at the time of the City Permit Application, make a cash deposit with the City in the amount of $10,000 to be used to pay for the fees and expenses of City consultants as deemed necessary by the City, or in any way otherwise required to be expended by the City for professional assistance (other than City Staff). If the cash deposit has been
reduced to $5,000 or less at any time, the Director of Public Works may require the Developer to deposit additional funds to cover any further estimated fees and expenses associated with consultants retained by the City for the Developer’s Project. Any unexpended amounts shall be refunded to the Developer within 120 days after the Project has an approved Final Inspection and Notice of Completion by the City.

70. **City Attorney and City Engineer Cost Recovery.** The Developer shall, at the time of the City Permit Application, make a cash deposit with the City in the amount of $10,000 to be used to offset time and expenses of the City Attorney and City Engineer relating to the Project. If such cash deposit has been reduced to $5,000 or less at any time, the Director of Public Works may require the Developer to deposit additional funds to cover any further estimated additional City Attorney and City Engineer time and expenses. Any unused amounts shall be refunded to the Developer within 120 days after the Project has an approved Final Inspection and Notice of Completion by the City.

71. **California’s Water Efficient Landscape Ordinance:** The Developer shall comply with the requirements of California’s Model Water Efficient Landscape Ordinance that went into effect January 1, 2010. Landscape & Irrigation plans shall be submitted for review and approval prior to issuance of a grading permit.

- The Developer shall submit a copy of the Water Efficient Landscape Worksheet to the City prior to issuance of a grading permit.
- After completion of work, the Developer shall submit to the City a Certificate of Completion, including an irrigation schedule, an irrigation maintenance schedule, and an irrigation audit report. The City may approve or deny the Certificate of Completion.

72. **ALTA Survey.** Prior to issuance of building permits, Developer shall have prepared and submitted for review and approval by the Public Works Director and City Engineer an ALTA Survey for the Park Site.

73. **Parks, Recreation and Open Space.** The Land Use Plan includes development of a total of 210.3 acres of neighborhood parks, paseos, and open space as
depicted in Table 2-1 and described in Section 3 *Design Guidelines*, and 4.7 and 4.8 of the approved Rancho San Gorgonio Specific Plan. All dedications and improvements shall be in accordance with the Development Agreement except as specifically provided herein.

75. **Parks Completion and Use by the Public.**

   a. Prior to the construction of any parks, the Developer shall meet with both the Director and the Director of Parks and Recreation to review the provisions set forth in the Specific Plan outlining the facilities to be provided at each park and discuss the Developer’s plans for near-term construction of the parks. Prior to development of each park, a detailed site plan consistent with the Specific Plan shall be prepared by the Developer and approved by the Director and the Parks and Recreation Commissions. The Developer shall complete the construction of the neighborhood parks as follows: PA-13 shall be completed prior to the issuance of the final certificate of occupancy for Phase 1. PA’s 14C and 14D shall be completed prior to the issuance of the final certificate of occupancy for Phase 1. PA-11 shall be completed prior to the issuance of the final certificate of occupancy for Phase 2. PA-14B shall be completed prior to the issuance of the final certificate of occupancy for Phase 2. PA-12 shall be completed prior to the issuance of the final certificate of occupancy for Phase 3. PA-15B shall be completed prior to the issuance of the final certificate of occupancy for Phase 3. PA-10 shall be completed prior to the issuance of the final certificate of occupancy for Phase 4. PA-14A shall be completed prior to the issuance of the final certificate of occupancy for Phase 4. PA-15A shall be completed prior to the issuance of the final certificate of occupancy for Phase 4. Upon completion of each neighborhood park, the City shall after the 90 day one-year maintenance period has expired, within 10 working days, develop final punch lists of items to be corrected prior to acceptance by the City. Upon correction of final punch list items by the Developer, the City shall accept the park within 30 days of the date of the final inspection.

76. **Alternative Use of the School Sites.** If the school site(s) is not needed, then any alternative use(s) of the site(s) shall be subject to the City discretionary
Design Review process as provided for in the Specific Plan and the City’s Zoning Ordinance.

77. All parks plans shall be reviewed by the City Engineer and the Director of Parks and Recreation.

78. **One Year Maintenance of Parks and Open Space.** The Developer shall maintain all parks, parkways, medians, berms, lakes, drainage facilities not accepted by Riverside County Flood Control District and irrigation systems within streets or otherwise annexed into the Maintenance Districts, excluding facilities maintained by the Homeowners Association (HOA), for a period of one year after construction until accepted by the receiving agency. All facilities shall be operable and in good working order and any dead or dying landscaping shall be replaced with like materials. If these conditions are not met, or if landscaping has not been in a consistently healthy condition, the one year period can be extended. The Developer shall pay one year cash deposit or post a bond in an amount equal to one year’s maintenance plus City administrative costs (value to be determined prior to recordation of each final map) to ensure maintenance for one year, and shall securitize the obligation in a form approved by the City Attorney. After one year, these operations shall be accepted by the appropriate Maintenance District. That maintenance district will then maintain the facilities to the same level as required by Owner during the maintenance period.

79. **Confluence Park Planning Area 11.** The Developer, owner, or successor in interest shall develop amenities around the basin for recreational purposes as described in the Specific Plan and approved as noted in conditions. Maintenance of the amenities shall be provided by the Community Facilities District (CFD) or Landscape Maintenance District (LMD).

80. **Installation of Plant Material.** Landscaping and permanent irrigation facilities shall be installed with street improvements including landscaped medians on Rancho San Gorgonio Parkway, "C" Street, and Sunset Avenue in accordance with the approved Rancho San Gorgonio Specific Plan as they pertain to plant and irrigation standards. The Developer shall have appropriate right-of-way improvements, landscaping, street lighting and irrigation installed and in good working order prior to final release of occupancy of the homes within the phase adjacent to the improvements.

81. **Content of Plans.** Landscape Improvement plans shall conform to the concepts, features, and standards established in the approved Rancho San Gorgonio Specific Plan and the conditions enumerated herein, and shall be prepared by a licensed landscaped architect.
82. **Security Camera.** For security reasons, the Developer, property owner or successor in interest shall provide a security camera at the City’s discretion in selected neighborhood and/or community parks where restroom facilities and other structures are provided. Specifications of the security camera shall be subject to review and approval of the Police Department. The cameras, once installed, will be maintained and operated by the City of Banning Police Department. Developer shall convey the equipment to City with all warranties therein.

**SITE AND ARCHITECTURAL DESIGN**

83. **Architectural Styles.** The architectural styles for the Project shall be consistent with the conceptual architectural design as approved in the Rancho San Gorgonio Specific Plan.

84. **Community Entry Monument Program and Project/Tract Identification.** Consistent with the Rancho San Gorgonio Specific Plan, community entry statements, including theme walls, monumentation, and enhanced landscaping at each entrance to the Project shall be consistent with the locations as approved in the Rancho San Gorgonio Specific Plan. Theme walls and monuments shall not occur within the public right-of-way. All entry monumentation programs shall be submitted for review and approval by the Community Development Department and shall be in substantial conformance with the approved Rancho San Gorgonio Specific Plan. Construction of the monumentation shall occur based on phasing and shall be completed and open prior to final occupancy of the first home in each phase.

85. **Unit/Building Identification.** Each building and unit in the Project shall include a lighted address fixture. This fixture shall allow for replacement of the bulbs, and shall be reviewed and approved by the Community Development Department, the Fire Department, and the Police Department.

86. **Phasing.** Any Phasing Plan shall be reviewed and approved by the Community Development Department and Public Works Department. Each Phase of the Project shall provide adequate drainage, domestic water, and at least two points of access to all lots. A phasing plan shall be submitted with the Design Review application. The phasing plan shall be in accordance with the Master Phasing Plan in the Development Agreement and shall include the installation of any necessary backbone infrastructure.

87. **Satellite Waste Water Treatment Facility.** The architecture of the building for the satellite wastewater treatment facility, if the construction of such a facility is requested by City, shall be designed to be compatible with the architecture of residential homes and the surrounding environment. The facility shall be
constructed on a site approved by the Director of Public Works and dedicated to City, in accordance with the terms of the Development Agreement. If built off site, Developer will pay its fair share fees for such development in accordance with an approved fair share agreement. Plans for construction shall be prepared by appropriately certified architects and engineers and approved by the Director of Public Works.

88. **Mechanical Equipment.** All mechanical equipment, including air conditioning units, pool equipment, etc., shall be screened from the public right-of-way by a view obscuring fence, wall, or landscaping to the satisfaction of the Community Development Department.

89. **Spark Arresters.** All spark arresters in the proposed tract shall be screened by enhanced architectural enclosures or other material acceptable to the Building Official and Planning Division and painted according to the approved paint palette.

90. **Decorative Paving within Streets at the Primary and Secondary Entries.** Decorative paving could be provided within the right-of-way at sufficient distance at the primary and secondary entries. The type of enhancement could include stamped asphalt or other similar applications.

91. **Street Paving.** Public streets in each tract, planning area, or phase of development shall be paved and accessible prior to the issuance of building permits for the first production unit.

92. **Lighting for the Garages and Porches.** Light fixtures for the garage exteriors and porches shall be provided with decorative light fixtures.

93. **Trash Enclosures for Commercial and Multi-Family Residential Development.** Trash enclosures for the commercial development and multi-family residential development shall be provided with a walk-in enclosure with decorative cap and lattice covers.

**LANDSCAPE DEVELOPMENT**

94. **Landscape Construction and Water Conservation.** All landscape architecture documents and landscape construction shall comply with the City of Banning Municipal Code with regard to water conservation in landscaping.

95. **Registered Landscape Architect Licensed by the State of California.** All landscape architecture documents, used as part of the entitlement and landscape construction process, shall be designed by a registered landscape architect licensed by the State of California.
96. **Review and approval of Landscape Architecture Documents.** All landscape architecture documents shall be submitted to Community Development Department for review and approval.

97. **Future Changes to Approval Landscape Architecture Documents.** All future changes to the landscape architecture documents after City approval, shall be reviewed by the City for conformance to the Specific Plan. If major changes are proposed, the Developer, owner, or successor in interest shall submit the landscape plans and shall deposit funds in the City's trust deposit account for review and approval of the plans. The determination of whether a change is major or minor shall be made by the Director.

98. **Landscape Maintenance.** The owner, Developer, or its successors agrees to maintain the landscape construction, including trails, in accordance with the following:

   a) The landscape construction shall be neat, of good quality and design, and show good horticultural practice.

   b) The landscape construction shall preserve the design intent in accordance with the approved landscape architecture documents.

   c) The landscaped areas shall have appropriate irrigation and drainage systems to assure healthy landscaping and prevent runoff and debris flows.

   d) The landscape construction shall be maintained in good 1st class condition in accordance with the approved Landscape Maintenance Guidelines approved with the Project.

   e) The landscape maintenance shall be provided by the owner, the owner's representatives, or by the proper professionals registered with the State of California until such time that the appropriate entity accepts the areas for maintenance.

   f) Any diseased or dead landscaping shall be replaced by landscaping of similar size and in good and healthy condition.

99. **Clear Sight Triangles.** All vehicular sight line triangles shall be shown on the landscape construction planting plans.

100. **Trail Easement.** Trail easements shall be dedicated to the City of Banning, where appropriate, and shall be shown on the final map in accordance with the
requirements of the City of Banning. The Developer shall provide information sufficient to confirm to the City of Banning that the trails are terminated in a safe manner at the tract boundaries. Trail crossings shall be shown on the road improvement plans and the final map, where appropriate. Unless otherwise approved by City, all trails shall be fully improved, when dedicated in accordance with Rancho San Gorgonio Specific Plan and all Project approvals. The Developer may be required to provide temporary trail connections to be replaced by permanent improvements in accordance with agreements approved by the City Attorney.

101. **Landscape Inspection.** All landscape inspections shall be requested at least 48 hours in advance.

102. **Avoidance of Trees Conflict with Light Standard and Utility Lines.** Trees shall be planted in such a way as to avoid conflict between light standards and electric utility distribution lines. Street tree size shall be a minimum 15-gallon and at least 50% of all street trees should be a minimum of 24-inch box size consistent with the provision of the Rancho San Gorgonio Specific Plan. All residential landscaping shall conform to the Rancho San Gorgonio Specific Plan. All residential lots for single-family residential development shall be provided with a minimum of one 15-gallon front yard tree, one, 15-gallon accent tree. The plant list shall be provided consistent with the Specific Plan. If there are conflicts between the landscaping requirements of the Banning Municipal Code versus the Rancho San Gorgonio Specific Plan, the requirements in the Rancho San Gorgonio Specific Plan shall prevail.

103. **Landscape Inspections.** The Project Developer shall be aware and inform the on-site project or construction manager and the landscape contractor of their responsibility to call for landscape inspections. A minimum of three (3) landscape inspections are required in the following order, and the landscape inspection card shall be signed by the City’s landscape inspector to signify approval at the following stages of landscape installation:

   a) At installation of irrigation equipment, when the trenches are still open;

   b) After soil preparation, when plant materials are positioned and ready to plant; and,

   c) At final inspection, when all plant materials are installed and the irrigation system is fully operational.

**PUBLIC WORKS DEPARTMENT**
104. Prior to issuance of a building permit for the first unit in Phase I, the Applicant shall prepare and the City shall approve an updated Traffic Impact Fee Study to include development densities and parameters within the Rancho San Gorgonio Specific Plan area. The applicant shall be required to pay Traffic Impact Fees as defined in said fee.

105. Plan Submittal for Public Works. The issuance of these Conditions of Approval do not negate the requirements of the Public Works Department for submittal, review, and approval of street improvement plans, signing and striping plans, grading plans, storm drain improvement plans, street lighting plans, water, sewer, and electrical improvement plans, or other plans as deemed necessary by the Public Works Director.

106. Public Works Permit. A Public Works Permit shall be required prior to commencement of any work within the public right-of-way. The contractor working within the public right-of-way shall submit proof of a Class "A" State Contractor's License, City of Banning Business License, and Liability Insurance. Any existing public improvements, or public improvements not accepted by the City that are damaged during construction shall be removed and replaced as determined by the City Engineer or his/her representative.

107. Other Engineered Improvement Plans. Other engineered improvement plans. Other engineered improvement plans prepared for City approval that are not listed herein shall be prepared in formats approved by the City Engineer prior to commencing plan preparation.

108. Street Plans. All off-site plan and profile street improvement plans and signing & striping plans shall show all existing improvements for a distance of at least 200-feet beyond the Project limits, or at a distance sufficient to show any required design transitions.

109. Signs & Striping. All on-site signing and striping plans shall show the following at a minimum: stop signs, limit lines and legends, no parking signs, raised pavement markers (including blue raised pavement markers at fire hydrants) and street name signs per Public Works standard plans and/or as approved by the City Engineer.

110. Index Map. A small index map shall be included on the title sheet of each set of plans, showing the overall view of the entire work area.

111. All street improvement design shall provide pavement and lane transitions per City standards for transition to existing street sections.
112. Driveway Grades. Driveway grades shall not exceed eight percent unless approved by the City Engineer.

113. Construction Debris. Construction debris shall be disposed of at a certified recycling site. It is recommended that the Developer shall contact the City's franchised solid waste hauler for disposal of construction debris.

114. Plan Check Fees. Required plan check fees for professional report review (geotechnical, drainage, etc.), and all improvement plans review, shall be paid prior to submittal of said documents for review and approval in accordance with the fee schedule in effect at the time of submittal and in accordance with the Development Agreement.

115. Fire Marshal Approval. The Developer shall submit and obtain approval in writing from the Fire Marshall for the plans for all public or private access roads, drives, streets, and alleys. The plans shall include plan and sectional views and indicate the grade and width of the access road measured flow-line to flow-line. When a dead-end access exceeds 150 feet or when otherwise required, a clearly marked fire apparatus access turnaround must be provided and approved by the Fire Marshall. Applicable covenant, conditions or restrictions or other approved documents shall contain provisions which prohibit obstructions such as speed bumps/humps, control gates or other modifications within said easement or access road unless prior approval of the Fire Marshall is granted. Secondary Access for certain Planning Areas, as depicted in the Specific Plan (Exhibit 3.3D, Secondary Access Drives) and reviewed and approved by Fire Marshall, shall be constructed accordingly at the time of construction of all other improvements in the tract.

ELECTRIC UTILITY DEPARTMENT

116. Plan Submittal Requirements. Prior to the issuance of grading permit, the Developer, owner, or successor in interest shall submit detailed plans indicating lot lines, streets, easements, building layout, etc. These plans are required in electronic format AutoCAD 2010 or equivalent at the time of development.

117. Electric Utility Backbone Infrastructure. Prior to the issuance of grading permit, electric utility infrastructure backbone plans for this Project must be completed.

118. Permit Fees. Developer shall pay current required fees - electrical permit, plan check fee, inspection fees, meter fee and cost of electrical apparatus for completing the underground line extension in accordance with the city policies and the Development Agreement.
119. **Electricity Easements.** Developer shall dedicate all easements for electric facilities installation/maintenance, etc.

120. **Electric Utility Infrastructure.** Electric Utility Infrastructure for each Phase in accordance with the Phasing Plan in the Development Agreement. The dedication shall be in a form approved by the City Attorney. Prior to the issuance of building permit, electric utility infrastructure (conduits, vaults, etc.) must be completed as well any temporary or permanent electric infrastructure to supply power to each phase as constructed.

121. **Electric Utility Materials.** The Developer shall provide install all conduits, vaults, and other materials associated with electric facility installations (except cables and their terminations).

122. **Streetlights.** The Developer shall install, complete and test streetlight poles and conduits.

123. **Secondary Service Entrance Conductors.** Secondary service entrance conductors to be provided and installed by the Developer. The Developer shall install, complete and test secondary service entrance conductors.

124. **Completion of Electric Utility Infrastructure prior to Issuance of Certificate of Occupancy.** Prior to the issuance of certificate of occupancy, the Developer, owner, or successor in interest shall install, complete and test all electric utility infrastructure including primary and secondary cabling, transformers, etc.

125. **Cost of Electrical Line in Aid of Construction.** Prior to the issuance of certificate of occupancy, the Developer, owner, or successor in interests shall pay the required cost of electrical line extension and in aid of construction for the particular phase under construction.

126. The new area for the future Electric Utility Substation shall be increased from 114’ x 104’ to 114’ x 130’ to accommodate future right of way and setback requirements.

127. All new public distribution and transmission lines shall be placed underground throughout the Specific Plan area. All existing overhead distribution and transmission lines along Westward Street shall be relocated or placed underground to accommodate new right-of-way alignment/setback requirements.

128. All streetlight designs will require approval from City of Banning Electric Utility for future maintenance purposes.

**POLICE DEPARTMENT**
129. The Developer shall provide a 110 outlet at the top of any light post in the designated parks for future camera placements.

130. The Developer shall ensure any water and power outlets in the parks are securable so they cannot be used after hours.

131. The Developer shall ensure the foliage in the parks and pathways does not create unsafe blind spots that cannot be seen from the street and/or parking lots and trail systems by patrolling officers.

FIRE DEPARTMENT

132. Prior to the City’s issuance of the 200th building permit, Developer will submit to City applications for all entitlements necessary for the construction of the San Gorgonio Station (i.e., zoning changes, plot planning, CEQA study, etc.) and thereafter shall diligently process such applications.

133. Prior to the City’s issuance of the 500th building permit, Developer will retain duly licensed and authorized design and engineering consultants for the designing and planning of the Station and complete the design of the Station totaling between 7,000 to 8,000 square feet consisting of two (2) or three (3) apparatus bays, five (5) bedrooms to accommodate a staff of ten (10) personnel, and four (4) restrooms. The design of the San Gorgonio Station shall be in accordance with fire guidelines. Further, Developer will purchase one fire engine that meets the RCFD specifications. The proposed fire station will be in accordance with the Riverside County Fire Department Design Standards. Developer shall identify an alternative funding mechanism for the completion of the fire station that parallels the project phasing.

134. Prior to the County’s issuance of the 800th building permit for the Project, and subject to the approval by the RCFD Manager or his designee (the “Strategic Planning Bureau”) of the final plans and specifications for the San Gorgonio Station (collectively the “Improvement Plans”) and an estimate of the total costs to construct the San Gorgonio Station, the Developer and City shall execute the Construction Agreement and Developer shall proceed to solicit bids for the construction of the San Gorgonio Station and award and administer the contract(s) for such construction.
135. Prior to the 1000th building permit, Developer shall commence construction of the San Gorgonio Station in accordance with the Improvement Plans and the Construction Agreement.

136. Prior to the 1500th building permit, Developer shall complete construction of the San Gorgonio Station in accordance with the Improvement Plans and the Construction Agreement.

137. The Developer shall provide traffic control signal light adjacent to the fire station along the arterial roadway.

138. The Fire department shall concurrently review proposed roundabouts with the city traffic engineer.

The following are the minimum Banning Fire Marshal’s office requirements. These requirements will satisfy for the Club House, Commercial Occupancies, and Park Buildings for this Project. There may be additional requirements when the Project specifics are defined and the final proposal is submitted for approval.

139. Any fees will be set pursuant to the Development Agreement. The current fee schedules at this time are as follows:
   Commercial, Industrial and/or Office Complex –
   $579.00 for 50,000 square feet or less
   $ 25.00 per unit Disaster Planning

   Plan Check and Inspection - $ 134.00 per hour

140. All contractors, subcontractors etc. are required to obtain a City of Banning Business license prior to submitting plans or starting construction.

141. All Plans, Specifications and Construction shall comply with and conform to the current edition of the California Fire Code (CFC), California Building Code (CBC), and other state and local laws and ordinances as applicable.

142. Three (3) sets of Plans and Specifications shall be submitted for review prior to obtaining a permit. This requirement applies to all work regardless of the size of the job; new construction or remodel.
143. Fire Sprinkler Systems shall be installed as required by the CFC or in any and all structures that are thirty six hundred (3,600) sq. ft. or more, or if the applicable codes require a more restrictive system.

144. With the adoption of the 2010 codes, all residential homes shall be protected with fire sprinkler systems. Three (3) sets of plans and calculations, including three (3) sets of manufacturer’s hardware specifications, shall be submitted to a State Certified Fire Protection Engineering Firm, designated by the Fire Marshal, for review for compliance with recognized codes and standards.

145. No fire sprinkler work shall be started prior to issuance of the permit.

146. The minimum size for water supply to the base of the riser shall be six (6) inches for commercial systems.

147. An approved AWWA double check detector check assembly, as approved by the C.O.B Water Department located as close to the property line as possible, and a minimum of twelve (12) inches above the ground shall be provided.

148. The Water Department shall approve all plans involving water main service.

149. Prior to construction or renovation, fire hydrants shall be provided when any portion of any structure exceeds 150 feet from a water supply on a public street.

150. All hydrants must be installed, working and inspected by the Public Works Department and the Banning Fire Marshal’s office before any combustible materials can be placed at the worksite.

151. Spacing of fire hydrants shall comply with CFC Appendix C and the City of Banning Public Works Standards. (Maximum 250 feet between hydrants).

152. Minimum 6-inch riser, street valve, approved shear valve and blue dot identification marker shall be provided for each fire hydrant. The City standard fire hydrant is the Commercial, James Jones #J3765, Residential, James Jones #J3700, or an equivalent approved by the Fire Marshal.

153. Fire Hydrants are to be painted by the Developer, contractor, etc., prior to the final inspection. (EOS Standard W714) Rustoleum Red, damp proof #769 and two (2) coats of Rustoleum semi-gloss yellow #659, or an approved equivalent.

154. Fire flow shall be established by the Fire Department using the information provided in the CFC Appendix B. Fire Flow may be adjusted upward where
conditions indicate an unusual susceptibility to fire. (1000 gallons/minute for 2 hours).

155. Fire department access shall be required when any portion of the first story of any structure is more than 150 feet from Fire Department apparatus access.

156. Minimum clearances or widths may be increased when the minimum standards are not adequate for Fire Department access.

157. Surfaces shall be designed and maintained to support the imposed loads of fire apparatus (75,000gvw). Surfaces shall have all-weather driving capabilities, including bridges. All roads must be place and meet the above standard before any combustible materials can be delivered to the site.

158. Minimum unobstructed width shall be 20 feet.

159. Minimum unobstructed vertical clearance shall not be less than 13 feet 6 inches.

160. Minimum turning radius shall be 42 feet.

161. All dead-end access roads in excess of 150 feet shall have approved provisions for turning around of fire apparatus.

162. Maximum grade shall be established by the Banning Fire Marshal's office.

163. Vehicles shall not be parked or otherwise obstruct the required width of any fire apparatus access.

164. Two means of ingress/egress shall be provided for emergency vehicles and fire apparatus. Surfaces shall have all-weather driving capabilities, including bridges. All roads must be place and meet the above standard before any combustible materials can be delivered to the site, and approved by the Banning Fire Marshal’s office. See Secondary Access Plans as depicted Exhibit 3.3D, Secondary Access Drives, in the approved Rancho San Gorgonio Specific Plan.

165. A “Knox” box will be required for fire department access and location approved by the Banning Fire Marshal’s office.

166. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background.
167. Inspections shall be requested a minimum of forty-eight (48) hours prior to the time the required inspection is needed.

168. Developer shall pay the inspection fees that are effective at that time. Work begun without a permit or without an approved set of plans at the job site will result in a triple fee and/or the work stopped.

169. The storage, dispensing, use or handling of hazardous materials shall be in accordance with the provisions of CFC Chapter 27 and CBC in addition to all federal, state and local laws or ordinances.

170. Business Plans may be required per SB 2186 and 2187 including MSDS, HMMP and RMPP.

171. If there are no existing fire hydrants within 150 feet of the proposed building, then there will be a requirement for the installation of two commercial grade hydrants as described above. If a hydrant then only one additional hydrant will be required.

172. A fire alarm system, designed to NFPA 72 standards, will be required.

PUBLIC WORKS DEPARTMENT

General Requirements

173. The subject property shall substantially conform to the approved tentative map and specific plan. The City Engineer may approve minor design modifications to the project plans during the plan check process, if such modifications conform to the provisions of the Banning Municipal Code. Substantial changes shall not be permitted except upon application for, and approval of modification of this entitlement in compliance with all applicable procedures and requirements.

174. Termination of approval of the Tentative “A” Tract Map shall occur under the terms of the Development Agreement.

175. All Ordinances, Policy Resolutions, and Standards of the City in effect at the time this project is approved shall be complied with as a condition of this approval.

176. All applicable mitigation measures specified in the approved Environmental Impact Report (EIR) and the approved Traffic Impact Analysis (TIA) shall be incorporated as conditions of approval for this project and shall be addressed to the satisfaction of the Public Works Director and City Engineer.
177. A Public Works Permit shall be required prior to commencement of any work within the public right-of-way. The contractor working within the public right-of-way shall submit proof of a Class “A” State Contractor’s License, City of Banning Business License, and Liability Insurance.

178. Prior to the issuance of any grading, construction, or public works permit by the City, the Applicant shall obtain any necessary clearances and/or permits from the following agencies. Permits will not be unreasonably withheld if the developer has met all typical standards for a permit and satisfied all relevant conditions of approval and items in the development agreement for the appropriate permit.

- City of Banning Fire Marshal
- City of Banning Police Department
- City of Banning Public Works Department
- City of Banning Community Development Department
- City of Banning Water/Wastewater Department
- City of Banning Electric Department
- Riverside County Transportation Department
- Riverside County Flood Control & Water Conservation District (RCFC&WCD)
- Riverside County Environmental Health Department
- California Department of Transportation (Caltrans)
- California Regional Water Quality Control Board Colorado River Basin (RWQCB)
  - Provide copy of Section 401 water quality certification.
- South Coast Air Quality Management District (SCAQMD)
- United States Army Corps of Engineers (USACE)
  - Provide copy of executed Section 404 permit.
- California Department of Fish and Game (DFG)
  - Provide copy of executed Streambed Alteration Agreement.
- US Fish and Wildlife Services

179. The applicant is responsible for meeting all requirements of permits and/or clearances from the above listed agencies. When the requirements include approval of improvement plans, the applicant shall furnish proof of such approvals when submitting improvements plans to the City. The applicant shall comply with all conditions and mitigation measures and submit copies of all correspondence with the agencies to the Engineering Division.

180. Prior to recording of each phase of the final “A” map, the following improvement plans shall be prepared by a qualified civil engineer or architect licensed by the State of California as allowed and submitted to the Engineering Division for review and approval. A separate set of plans shall be prepared for each line item listed below. Unless otherwise authorized by the City Engineer in writing, the
plans shall utilize the minimum scale specified and shall be drawn on 24" x 36" Mylar on City standard title block. Plans may be prepared at a larger scale if additional detail or plan clarity is desired (Note: the applicant may be required to prepare other improvement plans not listed here pursuant to improvements required by other agencies and utility purveyors).

a) Grading Plans 1" = 40' Horizontal
b) Clearing Plans 1" = 50' Horizontal
   Include fuel modifications zones
   Include construction fencing plan
c) Construction Haul Route Plans 1" = 50' Horizontal
d) Erosion Control, SWPPP & WQMP 1" = 40' Horizontal
   (Note: A, B, C, D & E shall be processed concurrently.)
e) Storm Drain Plan 1" = 40' Horizontal
f) Street Improvement Plans 1" = 40' Horizontal
   1" = 4' Vertical
g) Signing & Striping Plans 1" = 40' Horizontal
h) Traffic Signal Plans 1" = 20' Horizontal
i) Construction Traffic Control Plans 1" = 40' Horizontal
j) Sewer Improvement Plans 1" = 40' Horizontal
   1" = 4' Vertical
k) Recycled Water Improvement Plans 1" = 40' Horizontal
   1" = 4' Vertical
l) Water Improvement Plans 1" = 40' Horizontal
   1" = 4' Vertical
m) Landscaping Plans for Streets and Parks 1"=20' Horizontal
n) On-site Utility Plans
   1"=40'

181. Other engineered improvement plans prepared for City approval that are not listed herein shall be prepared in formats approved by the City Engineer prior to commencing plan preparation.

182. All off-site plan and profile street improvement plans and signing & striping plans shall show all existing improvements for a distance of at least 200-feet beyond the project limits, or at a distance sufficient to show any required design transitions.

183. A small index map shall be included on the title sheet of each set of plans, showing the overall view of the entire work area. All plans shall be complete to
the satisfaction of the City Engineer, prior to final map recordation and determination of surety estimates.

184. Prior to release of surety and upon completion of construction, the applicant shall furnish the City with reproducible record drawings on Mylar of all improvement plans that were approved by the City Engineer. Each sheet shall be clearly marked "As-Built" or "As-Constructed" and shall be stamped and signed by the engineer or surveyor certifying the accuracy and completeness of the drawings. The applicant shall have all AutoCAD or raster-image files submitted to the City, revised to reflect the “As-Built” conditions.

185. Prior to issuance of any permit, the Applicant shall submit a construction access plan and schedule for the development of all facilities for Community Development Director and City Engineer approval; including, but not limited to, public notice requirements, special street posting, phone listing for community concerns, hours of construction activity, dust control measures, and security fencing.

186. Prior to recordation of phase 2 of the final “A” map, the unincorporated portions of the site which include 161 acres in the City’s sphere of influence, must be formally annexed into the City. The Applicant shall submit proof to the City Engineer that the annexation has been processed and approved by LAFCO. No work within the unincorporated area may commence until annexation has been completed.

187. Prior to recordation of any final map, the applicant shall either demonstrate that the CFD has already been created or that a CFD application has been submitted and accepted as complete by the City of Banning Financial Services Division and shall include all maps, related Engineers report, and the required information (CFD boundary maintenance areas by location and type, etc.) to the satisfaction of the City Engineer.

188. A Landscape, Lighting and Maintenance District (LLMD) or other approved mechanism shall be established promptly following grading permit issuance and prior to recordation of the first phase of the final “A” map. The LLMD shall provide for maintenance of the public parkways and median island landscaping, slopes adjacent to public right-of-ways, debris basins, detention and retention basins, public parks, linear parks and trails along the creeks, open space areas, BMP's referenced in the approved WQMP, and other items as required by the City Engineer.

189. In the event that the Applicant creates a Homeowners’ Association (HOA), the Covenants, Conditions, and Restrictions (CC&Rs) and Articles of Incorporation of
the Homeowners' Association are subject to the approval of the Planning and Engineering Divisions and the City Attorney. They shall be recorded concurrently with the associated Final Map. A recorded copy shall be provided to the City Engineer. The Homeowners' Association shall submit to the Planning Division a list of the name and address of their officers on or before January 1 of each and every year and whenever said information changes.

190. The conditions, covenants and restrictions shall contain provisions which prohibit dissolution of the Homeowners' Association unless another entity has agreed to assume the operation and maintenance responsibilities of the Homeowners' Association. The conditions, covenants and restrictions shall contain provisions that prohibit the Applicant and his/her successors-in-interest from amending said covenants, conditions and restrictions to conflict with these conditions of approval unless the subject property is reverted to acreage and the subdivision abandoned.

191. If the elementary school site is approved for Planning Area 16-C as provided for in the Rancho San Gorgonio Specific Plan, the Applicant will be required to provide a mass graded pad, street access and utility connection stubs for the school site.

Rights of Way, Easements and Dedications

192. Prior to issuance of any permit(s), the applicant shall, in good faith, put forth his best efforts to acquire or confer property rights necessary for the construction and proper functioning of the proposed project/development. Conferred rights shall include right-of-way dedications, irrevocable offers to dedicate or grant of easements to the City for public access, emergency services, maintenance, utilities, storm drain facilities, or temporary construction purposes including the reconstruction of essential improvements as directed by the City Engineer. All costs associated with acquiring rights-of-way or easements shall be paid by the Applicant. In the event that the applicant is unsuccessful in acquiring said property rights, the City will consider and possibly act on the option to acquire through eminent domain.

193. Prior to recordation of any final map; to determine intersection right of way dedication and ultimate street improvement locations, applicant shall prepare an alignment study of all roadway intersections of collector and above to the satisfaction of the City Engineer. The approved alignment study, in the form of a 1” = 40’ scale striping plan, will establish interim and ultimate alignments for all applicable roadways. The approved alignment study shall consider the design requirements for all project mitigation identified in the Traffic Impact Analysis to include lane geometry and capacities, any new traffic signal locations or relocations, roundabouts, striping transitions, bus bay locations (if any), driveway locations and future medians.
194. During the improvement plan checking process, turning radius template checks shall be submitted for access to all storm drain facilities, open space, and other utility easements that are accessed from a publicly accessible paved street. These templates shall clearly show that the easements are sufficient for full access under emergency conditions. The City of Banning's review of the easements shall include appropriateness of the vehicle turning radius, easement slopes and easement widths. Additional easement widths shall be required when the design vehicle is likely to use outriggers or other means of load stabilization.

195. Prior to recordation of each phase of the final “A” map, the Applicant shall dedicate Public Street, Parkway and Utility Easements associated with that phase of the map and in accordance with the Approved Traffic Impact Analysis, further referenced in the Circulation Element of the adopted San Gorgonio Specific Plan, and as shown on the Tentative Tract Map to the satisfaction of the City Engineer. Additional right of way (ROW) shall be acquired and/or dedicated for the following streets which require street alignment and intersection geometry to be submitted to the City Engineer for review and approval prior to map approval:

   a) Sunset Avenue – Sufficient right of way to accommodate its ultimate half street width on the east side plus an additional 10 foot dedication west of the centerline to allow for two way traffic. (44’ half street plus 10’) from the south end of the MSJCC property to Bobcat Road. This dedication is associated with Phase 5.

   b) 8th Street – Sufficient right of way to accommodate its ultimate full width street section (60’ feet) from Westward Avenue to Lincoln Street. Refer to Condition 16 regarding acquisition of Right of Way. This dedication is associated with Phase 1.

   c) 22nd Street - Sufficient right of way to accommodate its ultimate full width street section (66 feet) from Westward Avenue to Dysart Park located just south of Victory Avenue. Refer to Condition 16 regarding acquisition of Right of Way. This dedication is associated with Phase 2.

   d) Victory Avenue – A City owned public park fronts the south side of Victory Avenue between 22nd Avenue and Lovell Street. Applicant shall work with City to ensure sufficient right of way is allocated to accommodate the ultimate half street width on the south side of Victory plus an additional 10 foot dedication north of centerline to allow for two way traffic from 22nd Avenue to Lovell Street. This condition is associated with Phase 4.

   e) Bob Cat Road, Turtle Dove Lane, Lovell Street, Old Idyllwild Rd and Coyote Trail – Sufficient right of way to accommodate their ultimate
half street width along the property frontage. City Engineer may require additional ROW dedication beyond the half street centerline as deemed necessary to allow for two way traffic. Ultimate right of way widths shall be determined by the City Engineer. Any excess right of way that currently exists beyond the ultimate half street width shall be vacated.

196. Prior to map recordation of each phase of the map, applicant shall dedicate right-of-way beyond either the phased construction and/or tract boundary required to provide utility service, public and/or emergency vehicular ingress and egress access to the nearest paved and publically maintained street as follows:

- A minimum width of 36 feet for a paved public access (Primary, Secondary, Tertiary etc).

- A minimum width of 20 feet for a paved or all weather emergency access.

197. The applicant shall be responsible for right-of-way acquisition, design and construction for the offsite portions of “C” Street from the project boundary to SR-243. Said right-of-way acquisition and improvements shall be completed prior to recordation of the first phase of the final “A” map. “C” Street shall intersect SR-243 at a right angle. Off-Site Cross-Section shall match On-Site Cross Section in this segment. Street alignment and geometry require approval by the City Engineer. City and Applicant acknowledge that a portion of the property needed to secure road access alignment is on private property and not owned or controlled by Applicant. Applicant shall make in good faith and put forth his best efforts to secure said right-of-way; however, in the event that Applicant is unsuccessful, City may elect to acquire required right of way through its power of eminent domain. Applicant shall pay all costs related to right-of-way acquisition, design and construction of these offsite improvements.

198. Any public right-of-way or streets to be vacated from public use, pursuant to Street and Highway Codes Sections 8300 through 8363, shall conform to the complete vacation procedure and show specific circulation alternative, where required. All street vacations shall be shown on the final tract map.

199. Prior to or concurrently with the recordation of the first phase of the final “A” map, Old Idyllwild Road from SR-243 to the intersection of “C” Street shall be vacated as required by the City Engineer.

200. The Applicant shall grant slope easements to the City of Banning for road maintenance purposes for all locations where slopes adjoin the public right-of-ways as shown on the final “A” tract map. The easements shall extend 10 feet from the toe of slope and 5 feet from the top of slope. All private slopes shall be maintained by the Homeowners’ Association or other approved mechanism.
201. The applicant shall not grant any easements over any property subject to a requirement of dedication or irrevocable offer to the City of Banning or the Riverside County Flood Control and Water Conservation District unless such easements are expressly made subordinate to the easements to be offered for dedication to the City or RCFC&WCD. Prior to granting any of said easements, the Applicant shall furnish a copy of the proposed easement to the City Engineer for review and approval. Further, a copy of the approved easement shall be furnished to the City Engineer prior to the issuance of any certificate of use and/or occupancy.

202. All public facilities including sewer, water, reclaimed water and drainage shall be located in a public right of way or public utility easement. All final maps shall include appropriate easements per the approved tentative map and as required by the City Engineer and/or RCFC&WCD. All easements shall meet minimum width and access requirements as mandated by the City or governing agency.

203. Montgomery Creek will be captured at Westward Avenue and conveyed through the project in an underground storm drain system. If it is determined by the City Engineer that off-site improvements will be necessary on the north side of Westward Avenue to accommodate the collection of natural flows into the pipe system, the Applicant shall be required to make every effort to obtain the necessary right-of-way, temporary and permanent easements required for the facilities. All costs associated with these improvements and right-of-way and/or easement acquisitions shall be the responsibility of the Applicant. Interception of these flows on the south side of Westward may be considered.

Street and Traffic

204. All public improvements shall be financed, designed, and constructed by the Applicant. This may include the formation of a regional financial mechanism for the construction of required improvements. Additionally, the Applicant may enter into a reimbursement agreement for those improvements constructed that may provide benefit outside the development in accordance with Banning Municipal Code. Prior to recordation of the first phase of the final “A” map, the Applicant shall prepare and submit for approval by City, a fair share cost analysis for the project’s offsite traffic improvements.

205. Prior to recordation of each phase of the final “A” map, the applicant shall provide estimates to construct, improve, or finance the proposed public improvements to the City Engineer for review and approval. The estimate shall differentiate between public improvements within the property boundaries of the tentative map, improvements outside the project boundaries and public improvements which abut the boundary of the property to be subdivided.
206. All street improvement design, not specifically addressed by City of Banning approved engineering standards and specifications, shall be per Caltrans Standards or the latest edition of the Standard Plans for Public Works Construction and/or approved Specific Plan.

207. Prior to recordation of any phase of the final “A” map, the Applicant shall provide evidence that all mitigation measures identified for that phase from the approved Traffic Impact Analysis (TIA) have been designed and approve by the City Engineer.

208. Prior to recordation of each phase of the Final “A” Map or any subsequent development final maps, all associated improvement plans shall be submitted for review and approval by the City Engineer and Public Works Director and shall include all mitigation measures/recommendations resulting from the final approved Traffic Impact Analysis (TIA). Street improvements shall include but not be limited to the following: construction of roadway grading and paving as required, curb and gutter, the installation of sidewalk, multi-purposes trails, parkway trees, parkway landscaping, street lights, all roadway striping, pavement markings, traffic signing, traffic signals and other improvements to the satisfaction of the City Engineer.

209. Prior to recordation of the appropriate phase of the final “A” map, full width street improvement plans shall be submitted for review and approval by the City Engineer for the following streets. Street alignment and intersection geometry to be submitted to the City Engineer for review and approval prior to final map approval.

   a) 22nd Street from Westward Avenue to Dysart Park (just south of Victory Avenue) in accordance with the Specific Plan designation for this section of Rancho San Gorgonio Parkway and as adjusted to accommodate existing conditions at the intersection of Westward Avenue and 22nd Street to the Satisfaction of the City Engineer. Said improvements shall be completed prior to the first occupancy release in Phase 2

   b) 8th Street from Lincoln Street to Westward Avenue in accordance with the Secondary Highway Section shown on Figure 8 of the City of Banning General Plan Roadway Cross-Sections. Said improvements shall be completed prior to the first occupancy release in Phase 1.

210. Prior to recordation of each phase of the final “A” map, street improvements shall be required and associated plans shall be submitted for review and approval by the City Engineer for half street improvements plus additional improvements as deemed necessary by the City Engineer to allow for two way traffic. Ultimate
street section widths shall be determined by the City Engineer. This condition applies to the following streets:

a) Sunset Avenue: Minimum east side plus 10’ from existing improvements adjacent to the college property to Bob Cat Road. Improvements to be completed prior to the first occupancy release in Phase 5.

b) As required by the City Engineer, Old Idyllwild Road from Coyote Trail to the southeast corner of Lot 36 (PA 3-D). Improvements to be completed prior to the first occupancy release in Phase 6.

c) Old Idyllwild Road from the intersection of “C” St. to the southeast corner of Lot 36 (PA 3-D). The applicant will be required to resurface but not widen the existing bridge that crosses the creek south of “C” Street. Said improvements to be completed prior to the last occupancy release in Phase 1. Access to Old Idyllwild Road from Lot 36 (PA 3-D) shall be gated and for emergency vehicles only.

d) Bob Cat Road along the project boundary (improvements to be completed prior to the first occupancy release phase 5)

e) Turtle Dove Lane along the project boundary. Improvements to be completed prior to the first occupancy release in Phase 5.

f) Lovell Street along the project boundary. Improvements to be completed prior to the first occupancy release in Phase 4.

g) As required by the City Engineer, Coyote Trail along the project boundary. Improvements to be completed prior to the first occupancy release in Phase 5.

h) Victory Avenue: Minimum south side plus 10’ between 22nd Street and Lovell Street. Improvements to be completed prior to the first occupancy release in Phase 4.

211. In addition to the above improvements, all remaining existing pavement beyond the improvement requirements for each street shall be cold planed 1 ½ inch and overlayed with a minimum of 1 ½ inch A.C. pavement or as otherwise specified by the City Engineer. All above improvements shall be constructed and accepted by the City prior to issuance of the first occupancy release for the associated phase.

212. Prior to recordation of Phase 6 of the final “A” map, bridge/street improvement plans shall be submitted for review and approval by the City Engineer to extend “B” Street southerly from “C” Street across Smith Creek to Lot 36. These
improvements shall be constructed and accepted by the City prior to issuance of the first occupancy release for phase 6.

213. Prior to recordation of the first phase of the final “A” map, full width street improvement plans shall be submitted for review and approval by the City Engineer for construction of Westward Avenue from the east edge of the MSJCC property to San Gorgonio Avenue. Improvements shall include full street width improvements including but not be limited to construction of roadway grading and paving, curb and gutter, the installation of ROW adjacent sidewalk, parkway trees, parkway landscaping, street lights, all roadway striping, pavement markings, traffic signing, traffic signals, and other improvements to the satisfaction of the City Engineer in accordance with Collector Highway (66-foot ROW) shown on Figure 8 of the City of Banning General Plan Roadway Cross-Sections. Parkway improvements including landscaping and sidewalk will not be required along sections of Westward Avenue that are not adjacent to the project boundary. Street lights shall be installed on both sides of the street for the entire length. Improvements from the 8th Street intersection easterly to the High School shall be completed prior to the first certificate of occupancy in Phase 1. The remaining Westward Avenue improvements shall be completed prior to issuance of the 200th certificate of occupancy in Phase 1. Street alignment and intersection geometry to be submitted to the City Engineer for review and approval prior to final map approval.

214. Prior to recordation of each phase of the final “A” map, all traffic improvements not located within the City of Banning’s jurisdiction will require written evidence of plan approval, permits and bonding from appropriate agencies. Plans shall include all required mitigations/public improvements identified in the approved Traffic Impact Analysis Table 33 and the approved Environmental Impact Report. Such improvements include but are not limited to traffic signals and intersection improvements in the City of Beaumont and improvements to State Highway 243 (San Gorgonio Avenue) and other intersections and lane improvements to facilities owned by Caltrans.

215. Timing goals for completion of proposed improvements to SR-243 (San Gorgonio Avenue) should take into account the lengthy Caltrans Streamline Oversight Review process and separate CEQA environmental approval process that may be required for this project. All construction within the Caltrans right of way will require a Caltrans Encroachment Permit and plans shall be in compliance with all current Caltrans design standards, applicable policies and construction practices.

216. Grading and excavations in the public right-of-way shall be supplemented with a soils and geology report prepared by a professional engineer or geologist licensed by the State of California.

217. In accordance with the California Building Code, Title 24, and the requirements of the Americans with Disabilities Act (ADA), facilities for disabled persons shall be
constructed and existing facilities adjacent to the project limits shall be reconstructed in locations specified by the City Engineer (i.e., accessible paths of travel, curb ramps, etc.).

218. Prior to construction of any improvements, a Traffic Control Plan based on the Work Area Traffic Control Handbook shall be submitted, for review and approval by the City Engineer. The Traffic Control Plan shall be prepared by a California Registered Traffic Engineer or Civil Engineer experienced in this type of plan preparation. Traffic control shall be included as a line item in the Engineer's Estimate for bonding purposes. No construction shall be allowed prior to the approval of this plan.

219. Prior to recordation of each phase of the final “A” map, a line item shall be included in the Engineer's Estimate for the personnel needed for twenty-four hours a day, seven days per week for tending and maintaining all construction signage and safety apparatus. To the best extent possible, a person should be available twenty-four hours a day and seven days a week. The police department and fire department shall have access to the phone number. If there is a public concern, any person can contact the police/fire department who will be able to get a hold of the personnel. The personnel shall be available as on-call and the telephone number for the on-call person shall be publicly available at the Banning Police and Fire Departments. This condition applies to Tentative Tract Map 36586 and all subsequent tracts and phases related to Tentative Tract Map 36586. The City of Banning's construction inspectors shall have the authority to stop the work in progress until the safety signage/lighting has been restored to a condition acceptable to said inspector.

220. Prior to laying of the aggregate base layer for any new streets, all landscaping irrigation services (or sleeves to accommodate said services) shall be installed. Street cut permits may be denied and alternate methods may be required for any construction within a street that was accepted by the City within the prior five years.

221. Prior to recordation of each phase of the final “A” map, signing and striping plans shall approved by the Public Works Department. Prior to release of bonds, the Applicant shall install all street name signs, striping, and related signage as shown on the approved plans to the satisfaction of the City Engineer and Public Works Director.

222. Prior to bond release, the applicant shall make pavement repairs necessary to mitigate the impacts of project construction traffic on all affected existing streets. Prior to map recordation or issuance of permits, the applicant shall post a bond with the City of Banning to guarantee the repair of the roads.

223. Prior to the issuance of any certificate of occupancy, all fire hydrants shall have a blue reflective pavement marker indicating the hydrant location on the street as
approved by the Fire Marshall, and must be maintained in good condition by the property owner until the street is accepted for maintenance.

224. Street pavement design shall take into account the subgrade soil strength, the projected traffic loading, and have a design life of 20 years.

225. Traffic improvements for the final “A” map shall adhere to the phasing criteria shown in the approved Traffic Impact Analysis and Environmental Impact Report. Prior to map recordation for any subsequent development phases, detailed phasing plans shall be submitted for review and approval by the Public Works Director, Community Development Director and City Engineer. Each phasing plan shall identify construction access, public access and emergency access routes. The City Engineer reserves the right to modify any phasing plan.

226. Prior to issuance of a Certificate of Occupancy for any tract or development phase, all onsite and offsite mitigation measures/public improvements identified in the approved Traffic Impact Analysis, approved Environmental Impact Report, the approved Specific Plan, these conditions of approval and related engineering studies and reports shall be completed in place, tested, and approved by the Engineering Division for each tract or development phase.

227. Prior to recordation of tract “B” maps, Focused Traffic Impact Analysis Reports may be required, at the discretion of the City Engineer, for each Planning Area with project application process. These reports shall not limit or eliminate Specific Plan mitigations identified but instead address additional mitigation as required.

228. Prior to map recordation for the final “A” Map or any individual phase tract map, the Developer shall provide horizontal and vertical site distance calculations for review and approval by the City Engineer. Safe horizontal traffic sight distances and vertical curve sight distances shall be maintained regardless of street intersection angles, street grades, landscaping, or the lot configuration shown on the approved tentative tract map, as follows:

   a) All vertical curve sight line design shall be per the Caltrans Design Manual (Figures 201-latest, Topic 405-latest, et al). The vertical curve design speed along with the requisite vertical curve geometric data shall be shown on the improvement-drawing sheet where the curve occurs.

   b) All horizontal curve sight line design shall be per Riverside County Standards (Plates 114, 821, et al). Horizontal curve design speeds along with the related geometric data shall be tabulated on the improvement drawing sheets where the curves occur.

   c) Horizontal and vertical sight distances shall be maintained even if such compliance results in reconfigured lots and/or a reduction in the lot
count shown on the approved tentative map. All Rancho San Gorgonio Specific Plan requirements and City of Banning Ordinances shall be met while achieving the required safety requirements.

229. Access to any phased construction site shall be restricted by a temporary installation of a chain link fence with locks to restrict public access, but allowing emergency vehicle access per City acceptable arrangements as required by the City Engineer.

**Grading and Drainage**

230. Prior to recordation of each phase of the final “A” map, the Applicant shall submit grading and erosion control plans to the City Engineer for review and approval. All other provisions of this Specific Plan notwithstanding, all grading shall conform to the California Building Code and all other applicable laws, rules and regulations governing grading in the City of Banning, including Banning Ordinance No. 1388, Grading Manual and Ordinance No. 1415.

231. A grading permit shall be obtained prior to commencement of any grading activity.

232. Prior to approval of any grading permits the applicant shall submit a construction haul route plan to the City Engineer for review and approval. Deviation during construction from the approved plan shall constitute a violation of the conditions of the grading permit.

233. Grading work shall be balanced on-site, wherever possible. If export is required as a result of the final grading plan, then measures will be taken to be in compliance with the applicable City of Banning Ordinances at time of final grading plan approval.

234. Any retaining walls proposed within the limits of the rough grading plans shall include top of wall and top of footing elevations shown. All footings shall have a minimum of 1-foot of cover, and/or sufficient cover to clear any obstructions. The Applicant shall submit design calculations and obtain permits for all perimeter and retaining walls from the Building and Safety Department.

235. All streets shall have a maximum grade of 15 percent or less. Wherever feasible street grades should be kept to 10 percent or less.

236. Prior to issuance of a grading permit, a soils report and geotechnical study shall be submitted in conjunction with the grading plan with further analyses of on-site soil conditions and appropriate measures to control erosion and dust. Any issues or recommendations provided in the report shall be addressed to the satisfaction of the City Engineer. The responsible geotechnical engineer shall sign and stamp all grading plans indicating the plan complies with the recommendations of the comprehensive soils and geotechnical report.
237. Prior to issuance of any grading permits, the applicant shall retain a qualified archeologist, paleontologist, and biologist for observation of grading and excavation activities in accordance with the approved mitigation program.

238. The height of grading dirt stockpiles shall be minimized and promptly removed as grading allows. Such stockpiles shall be setback from the boundaries of the Specific Plan area a minimum of 150 feet.

239. Prior to issuance of a grading permit, construction documents shall include language that requires all construction contractors to strictly control the staging of construction equipment and the cleanliness of construction equipment stored or driven beyond the limits of the construction work area. Construction equipment shall be parked and staged within the project site. Staging areas shall be screened from view from adjacent properties. Vehicles shall be kept clean and free of mud and dust before leaving the development site. Surrounding streets shall be swept daily and maintained free of dirt and debris.

240. Prior to recordation of the first phase of the final “A” map or issuance of a grading permit, the Applicant shall finalize the Drainage Study to the satisfaction of the City Engineer and Riverside County Flood Control and Water Conservation District (RCFC&WCD). Drainage design shall be in accordance with Banning Master Drainage Plan adopted by RCFC&WCD Hydrology Manual, and standard plans and specifications. The study shall include hydrologic and hydraulic analysis for developed and undeveloped conditions, the 10-year storm flows shall be contained within the street curbs, and the 100-year storm shall be contained within the street right-of-way. The design flow rate for Gilman Home Creek shall be a Q100 of 3,665 cfs (Q includes the 25% bulked flow). All other creeks flow rates shall be bulked (increased) 25% for debris. All findings within the final report shall be implemented to the satisfaction of the City Engineer.

241. The approved drainage study for this project determined the developed peak flows for the ultimate, built-out condition; therefore, prior to issuance of a grading permit or recordation of the applicable final map, a separate drainage analysis will be required for each phase of construction to determine what additional temporary mitigation measures are warranted to reduce runoff to the existing condition and protect new improvements from potential flooding.

242. Prior to recordation of the final “A” map or subsequent planning area final maps that contains a detention basin, the developer shall identify the exact location and sizing of each detention basin in conjunction with submittal and acceptance of a complete hydrology report. Depending upon the results of the report, minor adjustments shall be made to the final map to ensure that the detention basins will be designed and constructed to meet the RCFC&WCD standards. It is anticipated that RCFC&WCD will assume ownership and responsibility for maintenance of the basins. If RCFC&WCD elects not to own and maintain a
basin, the developer shall provide other means such as a LLMD, CFD or other publicly controlled mechanism to maintain these facilities.

243. Prior to recordation of each phase of the final “A” map or issuance of a grading permit, the Applicant shall submit drainage improvement plans for the proposed subdivision with the accompanying hydrology and hydraulic analysis and shall be designed per the RCFC&WCD Hydrology Manual and the City of Banning flood control standards. Finalized studies shall verify the size of flood control facilities. Drainage facilities shall be in accordance with the approved tentative map and specific plan. Plans shall be submitted to RCFC&WCD and the City of Banning for review and approval. A Cooperative Agreement between the District, the City, and the Developer is required.

244. The proposed drainage improvement plans shall be designed such that drainage facilities will maintain or reduce the 100-year peak runoff rates presently exiting all Project boundaries. The Project will use on-site detention basins to reduce the storm water flows to or below the existing condition flows prior to their discharge to areas located downstream of the project. The project shall be designed to retain the 100 year 3 hour storm. Detention facilities shall have a maximum draw down time of 72 hours.

245. Prior to plan approval, a fee shall be paid to the RCFC&WCD in the amount as specified by the District for performing plan checking and an inspection for the proposed subdivision.

246. The areas within the creeks are the only areas within the project site that are situated within a designated Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) Special Flood Hazard Zone. Prior to release of sureties, a letter of map revision (LOMR) shall be processed through FEMA to remove the flood limits as related to Montgomery Creek and a portion of Gilman Home Creek, as it is proposed to place those flows in pipes. The LOMR may also need to address minor changes to Smith Creek as related to grading and proposed improvements.

247. The design of the development shall not cause any increase in flood boundaries, levels or frequencies in any area outside the development. Prior to issuance of any grading permits, FEMA requires a hydrologic and hydraulic analysis to be submitted and approved that demonstrates that the development will not cause any rise in base flood levels.

248. The project grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage areas, outlet points and outlet conditions. Otherwise, a drainage easement shall be obtained for the release of concentrated or diverted storm flows. A copy of the recorded drainage easement shall be submitted to the City of Banning and District for review prior to the recordation of each associated final map.
249. The applicant shall comply with Chapter 13.24 "Storm Water Management Systems" and Title 18 "Grading, Erosion and Sediment Control" of the Banning Municipal Code (BMC), the California Building Code related to excavation and grading; and, the State Water Resources Control Board's orders, rules and regulations.

   a) For construction activities including clearing, grading or excavation of land that disturbs one (1) acre or more of land, or that disturbs less than one (1) acre of land, but which is a part of a construction project that encompasses more than one (1) acre of land, the applicant shall be required to submit a Storm Water Pollution Protection Plan (SWPPP) and file a Notice of Intent (NOI) with the Regional Water Quality Control Board.

   b) The applicant’s SWPPP shall be reviewed and approved by Regional Water Quality Control Board prior to any on-site or off-site grading being done in relation to this project.

   c) The applicant shall ensure that the required SWPPP is available for inspection at the project site at all times through and including acceptance of all improvements by the City.

   d) The applicant’s SWPPP shall include provisions for all of the following Best Management Practices ("BMPs"):

      i. Temporary Soil Stabilization (erosion control)
      ii. Temporary Sediment Control
      iii. Wind Erosion Control
      iv. Tracking Control
      v. Non-Storm Water Management
      vi. Waste Management and Materials Pollution Control

   e) All erosion and sediment control BMPs proposed by the applicant shall be approved by the City Engineer prior to any onsite or offsite grading, pursuant to this project.

   f) The approved SWPPP and BMPs shall remain in effect for the entire duration of project construction until all improvements are completed and accepted by the City.

250. Prior to issuance of any grading or building permit, a Project-Specific Water Quality Management Plan (WQMP) shall be reviewed and approved in accordance with the City Engineer and California Regional Water Quality Control Board Colorado River Basin Region Order No. R7-2008-0001. Best
Management Practices (BMPs) shall be implemented to enhance pollutant removal during storms and to improve the quality of storm water runoff. Project Water Quality Management Plans (WQMP’s) shall be prepared for project phases as required by the State Water Resource Control Board.

251. Prior to approval of any final map the applicant shall identify and include in its improvement plans those routine structural and non-structural Best Management Practices (BMP’s) as outlined in Supplement A to the Riverside County Drainage Area Management Plans and any attachments or revisions.

252. Prior to issuance of grading permits, the potential for conveyance of debris by the offsite watershed shall be accounted for in design of onsite drainage facilities to the satisfaction of the City.

253. Prior to approval of any grading permits the applicant shall submit a PM10 Management Plan for construction operations to the City Engineer and SCAQMD for review and approval.

254. Upon the completion of construction, the Applicant shall file a letter with the SWRCB or submit information to the SMART System stating that the construction activity is complete. A copy of this letter shall be submitted to the City prior to any occupancy.

255. Low flow creek crossings shall not be permitted.

256. Prior to issuance of any grading permits, a phase plan for the designated tract or development area shall be submitted and approved by the Community Development Director and City Engineer. Each phase shall provide for adequate vehicular access, public facilities, and infrastructure to service the development and as needed for public health and safety. A separate analysis is required for each phase of construction to determine what additional temporary mitigation measures are warranted in order to reduce runoff to the existing condition, and protect the new improvements from potential flooding. Such improvements might include temporary detention basins, natural channels, and minor levees. Additionally, each development proposal will need to meet current MS4 Permit requirements in effect at time of building permit issuance as directed by the Colorado River Basin Regional Water Quality Control Board.

257. Detailed grading plans shall be prepared and approved by the City prior to any on-site grading for each project or group of projects.

258. Construction of each phase shall include an assessment of the size and flow patterns of the adjacent undeveloped areas on the Specific Plan area.

259. Each phase shall prepare an erosion control plan that provides the developed phases with the required flood protection. Flood protection shall be determined by the size of the undeveloped areas and the flow patterns.
260. Temporary basins shall be constructed to meet detention requirements and earthen channels/berms shall be used to divert and convey flows during construction phases.

261. Within park areas or areas accessible to the public, detention/retention basins will be protected from public entry as required.

262. Impacts to jurisdictional streams, creeks and drainages shall be reviewed and approved by the appropriate regulatory agencies with jurisdiction in this area and will require the appropriate required permits issued. Long term regular maintenance and operation of drainage improvements, such as detention basins, shall be included in the initial regulatory permitting applications.

263. Streambed protection along Pershing Creek and Smith Creek shall include a 100-foot setback for infrastructure and residential improvements. These setback areas are proposed to include a linear trail system, native and drought- tolerant landscaping, and some of the retention-detention basin facilities. Bridge encroachments into this setback area are proposed at two locations along Pershing Creek, one being a steel bridge crossing at B Street and the other being a series of culverts crossing under Sunset Avenue, designed such that the full 100-year storm would be conveyed through the culverts, leaving Sunset Avenue passable during a storm. Bridge piers, culvert headwalls, cutoff walls and slope protection measures for these road crossings should be extended well below the existing streambed to account for channel scouring due to high flow velocities. Additional freeboard in accordance with RCFC&WCD standards shall be included in the design of these road crossings to account for possible sediment deposits.

264. Prior to recordation of the first phase of the final “A” map, the Applicant shall submit a wash study and protection plan for the washes/creeks within the boundaries of the development for review and approval of the City Engineer. The study shall include provision to protect the trails from erosion at locations where drainage flows enter the creeks. Slope stability measures shall incorporate those requirements as established by the RCFC&WCD.

265. As a means to mitigate the impact of piping the Montgomery Creek flows, the project proposes to construct three interconnected retention-detention basins located in Confluence Park (Lot 17). The retention component would contain smaller storm events, daily nuisance flows and other sources, and would ensure that storm water released to Smith Creek downstream would not occur at a faster rate than occurs in the existing condition. The basins are anticipated to be approximately 10 to 20 feet deep, depending on the ultimate park design. Within park areas or areas accessible to the public, the basins shall be protected from public entry as required. The aforementioned retention-detention basins are proposed to enhance storm water runoff quality and maintaining the creeks in their natural state. Prior to recordation of the applicable final map, all
retention/detention basin plans and accompanying hydrology and hydraulics reports shall be submitted for review and approval to the City Engineer.

266. Prior to the issuance of any earth moving permit on the site, all improvement plans which cross or abut the Gas Company easement or SCE easement (containing transmission towers and lines) will be submitted to the Gas Company and SCE for review, approval and any required permits. Any conditions or requirements from said utility agencies shall be incorporated onto the plans and be made part of the grading permit(s) for the project. The location of the easement shall be surveyed, staked and clearly marked immediately following rough grading of the project site. The staking and signage shall be maintained in visible order until all construction adjacent to it is complete.

267. All public drainage facilities shall be located within a public right-of-way or a publicly dedicated drainage easement. Additionally, if the inlet works are required on the north side of Westward Avenue and are outside the project boundaries, permission/easements from the property owners for construction of the inlet works shall be secured by the Applicant. Easements shall meet minimum width and access requirements as mandated by the City and District.

268. All storm drains 36 inches in diameter or less shall be designed and constructed to RCFC&WCD Standards and shall be maintained by the City of Banning, except as modified by separate agreement between the Applicant and the City of Banning. All Water Quality Management Plan (WQMP) basins shall be maintained by an LLMD or other approved mechanism.

269. All storm drains greater than 36 inches in diameter, and structures proposed for maintenance by RCFC&WCD shall be designed and constructed to RCFC&WCD standards. All plan sets related to any RCFC&WCD facilities shall be reviewed, checked, and approved by said District prior the recordation of the applicable final map.

270. Prior to acceptance of public streets, all catch basins and storm drain inlet facilities shall be stenciled with the appropriate no dumping message as required by the Public Works Department.

271. The Contractor shall comply with SCAQMD Rule 403 - Fugitive Dust requirements. Dust control operations shall be performed by the Contractor at the time, location and in the amount required and as often as necessary to prevent the excavation or fill work, demolition operation, or other activities from producing dust in amounts harmful to people or causing a nuisance to persons living nearby or occupying buildings in the vicinity of the work. Dust control shall consist of sprinkling water, use of approved dust preventatives, modifications of operations or any other means acceptable to the Engineer, City of Banning, the Regional Water Quality Control Board (RWQCB), the Air Quality Management District (AQMD), and any Health or Environmental Control Agency having
jurisdiction over the site. The City shall have the authority to suspend all construction operations if, in their opinion, the Contractor fails to adequately provide for dust control.

272. Prior to issuance of a grading permit, the project Applicant shall implement all applicable mitigation measures identified in the approved Environmental Impact Report (EIR) prepared for the proposed project. All mitigation measures shall be addressed on the grading plans as applicable.

Landscaping

273. Prior to recordation of each phase of the final “A” map, landscape and irrigation plans for all required facilities including backbone street parkways and medians shall be submitted for approval. The final design of the parkways, walls, landscaping, and sidewalks shall be included in the plans and shall be subject to approval by the Community Development Director and City Engineer.

274. Landscaping and irrigation systems required to be installed within the public right-of-way shall be continuously maintained by the Applicant until maintenance is assumed by a Landscape, Lighting & Maintenance District (LLMD) as required by the Public Works Director.

275. An automatic sprinkler system and landscaping shall be installed, prior to release of bonds/sureties and prior to occupancy of the first unit of the development, within the parkway and median islands fronting collector streets; secondary, major and arterial highways. The system shall include a landscape controller, a separate water meter and electric meter, and plantings as approved by the Community Development Director.

276. The Applicant shall prepare a water conservation plan to reduce water consumption in the landscape environment using xeriscape principles. “Xeriscape" shall mean a combination of landscape features and techniques that in the aggregate reduce the demand for and consumption of water, including appropriate low water using plants, non-living groundcover, a low percentage of turf coverage (limited to 25% of the planted area), permeable paving and water conserving irrigation techniques and systems.

277. Prior to release of bonds/sureties, landscape improvements shall be certified by a licensed landscape architect or licensed landscape contractor as having been installed in accordance with the approved detailed plans and specifications. The applicant shall furnish said certification, including an irrigation management report, for each landscape irrigation system and any other required implementation report determined applicable, to the City Engineer for review and approval.
278. Public landscaped areas shall be irrigated with recycled water once recycled water becomes available. The use of recycled water shall be accounted for in the design of the irrigation system and plant selection. The Water Supply Assessment Report based its calculations and conclusions on the assumption that recycled water would be used for landscaping purposes. Prior to recordation of the first phase of the final “A” map, the Applicant shall include calculations in a Supplemental Water Study to deduce the timing of when the project must be connected to recycled water. No building permits will be issued beyond the timing conclusions of the above report unless recycled water is available.

**Final Map, Monuments & Surety**

279. This project includes a master tract map referred to as the “A” map that will be recorded in six phases as described on TTM 36586. The applicant will develop improvement plans and provide construction improvements or bonding/sureties for the improvements that are required by each phase. All improvement plans and construction improvements or bonding/sureties for the entire project shall be in place by the recordation of the Phase 6 “A” map.

280. The approval of this project is subject to, and contingent upon, the recordation of six phases of the final “A” map. The submittal, approval, and recordation of any final map shall be in accordance with the provisions of the State Subdivision Map Act and Title 16, Subdivisions, of the Banning Municipal Code.

281. Prior to approval of each Final Map, the applicant shall construct all on-site and off-site improvements in accordance with the approved plans and satisfy its obligations for same, or shall furnish a fully secured and executed Agreement for Construction of Public Improvements guaranteeing the construction of such improvements and the satisfaction of its obligations for same, or shall agree to any combination thereof, as may be required by the City.

282. Each final map shall have adequate reservations for public ingress and egress as well as public and/or private utility easements and abandonment of existing utility easements to the satisfaction of the Public Works Director. The applicant shall be responsible for contacting all utility providers to establish appropriate easements required to provide services to each development area.

283. Prior to release of surety, the Applicant shall comply with Assembly Bill 1414, which was enacted on January 1, 1995, and amended Section 8771 of the Business and Professions Code of the Land Surveyors Act. Assembly Bill 1414 requires that two (2) corner records be filed when:

   a) Monuments exist that control the location of subdivisions or tracts, streets or highways; or provides survey control. The monuments are located and referenced by a licensed Land Surveyor before any streets or highways are reconstructed or relocated. The corner record(s) of
the references are filed with the County Surveyor.

b) Monuments are reset in the surface of the new construction and a corner record is filed with the County Surveyor before recording of a Certificate of Completion for the project.

284. The applicant shall file an Environmental Constraint Sheet. An Environmental Constraint Sheet means a duplicate of the final map on which are shown the Environmental Constraint Notes. This sheet shall be filed with the County Surveyor simultaneously with the final map and labeled ENVIRONMENTAL CONSTRAINT SHEET in the top margin. Applicable items will be shown under a heading labeled Environmental Constraints Notes. The Environmental Constraint Sheet shall contain the statement:

THE ENVIRONMENTAL CONSTRAINT INFORMATION SHOWN ON THIS MAP SHEET IS FOR INFORMATIONAL PURPOSES DESCRIBING CONDITIONS AS OF THE DATE OF FILING, AND IS NOT INTENDED TO AFFECT RECORD TITLE INTEREST. THIS INFORMATION IS DERIVED FROM PUBLIC RECORDS OR REPORTS, AND DOES NOT IMPLY THE CORRECTNESS OR SUFFICIENCY OF THOSE RECORDS OR REPORTS BY THE PREPARER OF THIS MAP SHEET.

As required by the City Engineer, the sheet shall delineate constraints involving, but not limited to, any of the following that are conditioned by the Advisory Agency: archaeological sites, geologic mapping, grading, building, building setback lines, flood hazard zones, seismic lines and setbacks, fire protection, water availability, and sewage disposal.

285. Security for the construction of public improvements in accordance with Government Code Section 66499 shall be as follows:

- Faithful Performance Bond - 100% of estimated cost
- Labor and Material Bond - 100% of estimated cost
- Monumentation Bond – In the amount as supplied by the Record Engineer/Land Surveyor and as approved by the City Engineer

286. Securities for the public improvements shall be on file with the City Clerk prior to scheduling the final map for approval by City Council. Unit prices for bonding estimates shall be those specified or approved by the City Engineer.

287. Revisions to the tentative map during plan check including, but not limited to, lot line alignments, easements, improvement plan revisions, and similar minor changes which do not alter the design (property rights, number of lots, environmental impact, etc.) may be administratively approved through the plan check process with the mutual consent and approval of the Community Development Director and City Engineer. Final maps shall be amended in
accordance with the Subdivision Map Act. Changes to points of access to existing roadways other than those shown in the approved Specific Plan shall be cause for revision of the tentative tract map and preparation of revised conditions of approval.

288. Prior to release of surety, permanent survey monuments shall be set at the intersection of street centerlines, beginning, and end of curves in centerlines, and at other locations designated by the Director of Public Works and City Engineer. All other centerline monuments shall be placed in accordance with standard survey practice. A complete set of street centerline ties shall be submitted to the Engineering Division upon completion of improvements or prior to release of the monumentation bond.

289. The engineer/surveyor of record shall submit a copy of the title report, closure calculations, and any separate instruments or necessary right-of-way documents to the Engineering Division for review and approval of the City Engineer prior to any final map approval.

290. An original Mylar of all recorded final maps shall be provided to the City for the record files prior to release of the securities.

Water

291. As required by the City Engineer and prior to recordation of the first phase of the final “A” map, Applicant shall prepare and the City shall approve a Focused Water Study to supplement the project’s Water System Hydraulic Analysis and Water Supply Assessment Report. The Focused Water Study shall include but not be limited to identifying well production facility locations, treatment requirements, define on/off site transmission facilities, location and volume of system storage, define system points of connection and booster or reducing stations. The report must verify that water pipeline sizes and pressures meet all required water flow rates and identify offsite system improvements and phase in which they shall be constructed. The report shall also determine the project’s fair share cost for said water facilities.

292. Prior to recordation of each phase of the final “A” map, improvement plans for water facilities shall be prepared by a Licensed Engineer and submitted for review and approval by the City Engineer. The Applicant is required to design and construct all those water facilities identified in the approved Focused Water Study Report, the project’s Water System Hydraulic Analysis report and the Water Supply Assessment report and in accordance with the phasing plan selected and approved by the City Engineer. Water facilities include wells, storage capacity (reservoirs), transmission pipelines, booster stations, pressure reducing station, three permanent points of connections, interim points of connection, looped systems, SCADA systems, emergency generators, and other facilities. As an alternative to constructing certain facilities, the Applicant may
pay the projects fair share for improvements as approved by the City Engineer and Public Works Director. All the proposed new waterlines shall connect into the City’s water supply and be designed and constructed to City Standards.

293. Additional potable water storage is required for this development. There is no acceptable on-site location with sufficient elevation for a new reservoir; therefore an off-site location is required for the construction of a new water storage tank. The City shall identify a reservoir site and the Applicant shall participate in acquiring the property and development of the water facilities as directed by the City Engineer. Timing and completion of the reservoir and all piping required to connect the water facilities to the project shall be evaluated and determined in the Focused Water Study.

294. Above ground water tanks/reservoirs constructed in conjunction with the Specific Plan development shall be buffered from view and nearby residences by berms and/or landscaping. The tanks will be finished with a colored, matte finish intended to allow the tanks to blend into the surrounding hillsides and environment. Access to the tanks will be provided by easements extending from local roads.

295. One year after the initiation of construction, and annually thereafter until build out of the proposed project, City will analyze actual water usage per unit. The City will provide this information to the applicant who will then adjust projected water usage for future development (based on actual on-site usage), and actual City water supplies. At any time should projections show that the proposed project and cumulative development will require water supplies in excess of the Maximum Perennial Yield, the City Engineer may request that the WSA be updated to evaluate this new data.

296. Prior to occupancy release, a backflow device must be installed on all irrigation water connection. The backflow device must be in compliance with the State Department of Health Regulations.

297. Offsite waterlines are to be constructed to and across property boundaries of the project to connect to the existing water system. During phasing of the project, all waterlines are to be looped for each phase with a minimum of two points of connection in each pressure zone and no long dead end pipelines. Points of connection are located along Westward Avenue at Sunset Avenue, 22nd Avenue and 8th Street. The Applicant shall be required to construct an offsite water main in Sunset Avenue from the project boundary to Westward Avenue and a 24-inch water main in Sunset north of Westward Avenue as directed by the City Engineer. Exact alignment, pipe diameter and phasing for these water facilities shall be determined in the Focused Water Study and as approved by the City Engineer.
298. All dead end water mains shall be provided with 4-inch blow off valves or fire hydrants.

299. All water lines shall be a minimum of 8” diameter pipe, and constructed of ductile iron pipe (DIP).

**Waste Water**

300. As required by the City Engineer and prior to recordation of the first phase of the final “A” map, the applicant shall submit and the City shall approve a supplemental Focused Sewer System Study to the satisfaction of the City Engineer. The study shall determine on/off site conveyance system requirements and project’s fair share cost for the City’s wastewater treatment plant expansion. The study shall also include a phasing plan and timing hooks for treatment plant expansion.

301. Prior to recordation of any phase of the final “A” map, associated improvement plans for sewer facilities shall be submitted to the City for review and approval and shall be substantially complete to the satisfaction of the City Engineer.

302. Prior to occupancy release of the first unit in Phase 1, the Applicant shall construct approximately 600 feet of off-site sewer main to the point of connection with the existing city sewer system. The project would connect to the existing 21” sewer trunk line located south of Wesley Street, east of San Gorgonio Avenue, in the projection of Porter Street, as shown on the Conceptual Sewer Master Plan Exhibit 2-10 of the RSG Specific Plan. The developer is responsible for securing all required easements to the satisfaction of the City Engineer. The Applicant may enter into a reimbursement or fee credit agreement for costs incurred beyond the project’s fair share contribution as approved by the City Attorney. Exact alignment, pipe diameter and phasing for these sewer improvements shall be determined in the Focused Sewer System Study and as approved by the City Engineer.

303. The Applicant is required to participate in the expansion of the existing Waste Water Treatment Plant as required in the executed Development Agreement.

304. The Applicant is required to design and construct all those sewer facilities identified in the City of Banning’s approved Sewer Master Plan. This includes a trunk line (Deutsch Trunk Line) through the project to the existing Wastewater Treatment Plant located at Charles Street, main lines through the project, pumps, SCADA systems, emergency generators, and other facilities. The project sewer flows shall be incorporated into the ultimate design of the Deutsch Trunk Line and an offset in sewer impact fees relative to the cost to upsize the sewer main will be allowed. A reimbursement agreement will be entered into to facilitate reimbursement of fair-share costs from future developments. All facilities shall
be installed per the approved Phasing plan to be included in the Focused Sewer System study.

305. All sewer lines to be constructed within the Public right-of-way shall be extra strength Vitrified Clay Pipe. All sewer laterals shall be a minimum of 4" (residential) and 6" (commercial) and all sewer mains shall be a minimum of 8". Final sizes shall be approved by the City Engineer.

306. The Applicant shall CCTV all public sewer mains and submit to the City for review and approval prior to surety release and acceptance of sewer improvements.

**Recycled Water**

307. As required by the City Engineer and prior to recordation of the first phase of the final “A” map, applicant shall prepare and City shall approve a supplemental Recycled Water System Study to define system components and shall include a phasing plan and project’s fair share cost analysis for all recycled water facilities. Prior to recordation of each phase of the final “A” map, recycled water plans shall be submitted to the City for review and approval and shall be substantially complete to the satisfaction of the City Engineer. Design and installation of recycled water facilities shall be in accordance with the requirements and specifications of the State Department of Health Services, Riverside County Environmental Health, and the City of Banning. Plans shall include pipelines, services, pumps, etc. Recycled water shall be used to irrigate all common landscape areas, median and parkway landscape areas along the major streets within the project, as well as at the various parks and paseos throughout the master planned community.

308. Prior to any occupancy release of the first unit in Phase 1, the Applicant shall construct an off-site recycled water pipeline from the project boundary to the point of connection to the city system at Lincoln and 8th Streets (Approximately 1,350 LF). The Applicant may enter into a reimbursement or fee credit agreement for costs incurred beyond the project’s fair share contribution as approved by the City Attorney. Exact alignment, pipe diameter and phasing for these recycled water improvements shall be determined in the Focused Recycled Water System Study and as approved by the City Engineer.

309. The applicant is responsible to pay the fair share cost for the additional storage requirement of 0.548 MG generated from the project for recycled water as defined in the Development Agreement.

**Utilities**

310. All new utility systems including gas, electric, telephone, and cable TV shall be provided for underground with easements provided as required and designed
and constructed in accordance with City Codes and the utility provider specifications. The Applicant shall submit improvement plans to all affected utility companies and provide copies of approved plans to the Engineering Division prior to the issuance of any permits for utility work within the public right-of-way.

311. Street lights shall be installed in accordance with the City of Banning Electric Department Standards. A detailed lighting plan shall be submitted for review and approval by the City’s Electric Department and City Engineer prior to recordation of each phase of the final “A” map. The plan shall indicate style, illumination, location, height and length of mast arm.

312. The Applicant shall be responsible for research on private utility lines (Gas, Edison, Telephone, Cable, Internet, etc.) to ensure there are no conflicts with site development. All existing on-site utility lines that conflict with this project shall be relocated, removed, or sealed to the satisfaction of the City Engineer.

313. All existing overhead utility lines located on or along the frontage of the project shall be undergrounded prior to public improvement acceptance and surety release, to the satisfaction of the Public Works Director, including but not limited to, electrical distribution, telephone, and cable lines, with the exception of electric utility lines over 33 kV.

Construction and Maintenance of Public Improvements

314. All required water lines and fire hydrants shall be installed and made operable before any building permits are issued. This may be done in phases if the construction work is in progress for emergency vehicles.

315. All weather vehicular access shall be maintained at all times to all parts of the proposed subdivision, where construction work is in progress, for emergency vehicles.

316. All precautions shall be taken to prevent washouts, undermining and subsurface ponding, caused by rain or runoff to all surface structures (curbs, gutters, sidewalks, paving, etc.). The Engineering Division may order repair, removal and replacement, extra compaction tests, load tests, etc. or any combination thereof for any such structure that was damaged or appears to have been damaged. All of the additional work, testing, etc., shall be at the expense of the Applicant.

Fees

317. Plan check fees for final map review, professional report review (geotechnical, drainage, etc.), and all improvement plans review, shall be paid prior to submittal of said documents for review and approval in accordance with the Fee Schedule in effect at the time of submittal.
318. Public Works Inspection fees shall be paid prior to the scheduling the associated final map for approval by City Council in accordance with the Fee Schedule in effect at time of scheduling. Public Works permits are required prior to construction within the public right of way.

319. A plan storage fee shall be paid for any engineering plans that may be required prior to issuance of certificate of occupancy in accordance with the fee schedule in effect at the time the fee is paid.

320. A fee shall be paid to Riverside County Flood Control and Water Conservation District in the amount specified by them to perform plan checking for drainage purposes for the proposed subdivision.

321. Water, sewer and recycled water connection fees including frontage fees and water meter installation charges shall be paid at the time of building permit issuance in accordance with the Fee Schedule in effect at that time.

322. Development Impact Fees (DIF) shall be paid as required in the Development Agreement.

323. Applicant shall be eligible to enter into a reimbursement agreement to receive reimbursements for offsite traffic improvements completed by Applicant in excess of their fair share contributions as shown in Table 33 of the approved Traffic Impact Analysis. However, traffic fee credits will not be available to Applicant because the City will utilize these fees as they deem necessary to mitigate the remainder of the offsite improvements that are shown to be less than 50% of the projects fair share contribution and therefore not the obligation of the Applicant to complete.

324. Prior to issuance of a building permit for the first unit in Phase I, the Applicant shall prepare and the City shall approve an updated Traffic Impact Fee Study to include development densities and parameters within the Rancho San Gorgonio Specific Plan area. The applicant shall be required to pay Traffic Impact Fees as defined in said fee study and as required in the Development Agreement.
ORDINANCE NO. 1499

AN ORDINANCE OF THE CITY COUNCIL CITY OF BANNING, CALIFORNIA ADOPTING THE DEVELOPMENT AGREEMENT FOR THE RANCHO SAN GORGONIO SPECIFIC PLAN DEVELOPMENT AGREEMENT AND MAKING FINDINGS IN SUPPORT THEREOF

WHEREAS, Diversified Pacific filed an application with the City for a Development Agreement in conjunction with General Plan Amendment No. 13-2503, Zone Change No. 11-3501, Rancho San Gorgonio Specific Plan, Tentative Tract Map 36586, Development Agreement, and Annexation as the Parties desire to define the parameters within which the obligations of the Developer for infrastructure and public improvements and facilities will be met. Likewise to provide for the orderly development of the Developer’s Property, assist in attaining the most effective utilization of resources within the City and otherwise achieve the goals of the Development Agreement associated with establishment and adoption of the Rancho San Gorgonio Specific Plan and approval of an EIR to allow the development mix of up to 3,385 residential units on approximately 540 acres; 9.3 acres for Neighborhood Commercial uses, 14 acres for an elementary school site, 210 acres for parks and recreational areas, with varying passive open space trails and sports fields, and 77 acres for circulation uses, including roadways, pathways and bridges for vehicles, bikes, pedestrian and equestrian use. The total 831 acre master plan includes 161 acres annexation.

The project also includes the construction of major on-site and off-site infrastructure, including but not limited to: various on-site and off-site street improvements to provide access to and from the project site; various on-site and off-site conveyance pipelines for sewer, water, storm drain; a multi-purpose detention basin, and grading, the construction of infrastructure and public facilities related to the Project, whether located within or outside the Developer’s Property; the construction of structures and buildings; the installation of landscaping; and the operation, use and occupancy of, and the right to maintain, repair, or reconstruct, any private building, structure, improvement or facility after the construction.

Project Applicant: Peter J. Pitassi

Property Owners: Diversified Pacific owns 831 acres of vacant property, of which 161 acres are located in the County of Riverside

Project Location: South of Interstate 10 and bounded by Sunset Avenue and Turtle Dove Lane on the west, Coyote Trail and Old Idyllwild Road on the south, San Gorgonio Avenue (State Route 243) on the east, and portions of Westward Avenue to the north.

APN: 537-150-005 – 007; 537-170-002 – 004; 537-190-001 – 005, 018 – 022; 537-220-031 – 038; 543-020-001, 002, 021, 023; 543-030-001; 543-040-001, 002; 543-050-001 – 003
WHEREAS, Diversified Pacific requests approval of the Rancho San Gorgonio Specific Plan in conjunction with General Plan Amendment No. 13-2503 and Zone Change 11-3501, Tentative Tract Map No. 36586, Development Agreement, and Annexation, which would provide the Applicant with a vested right to develop their property consistent with the Rancho San Gorgonio Specific Plan development and design standards in exchange for the public benefits to the City.

WHEREAS, Chapter 17.60 of the Banning Municipal Code provides for the purpose, application and public hearing procedures, content of the Development Agreement, and environmental review.

WHEREAS, the City Attorney and the City Manager have negotiated the Development Agreement with the Applicant.

WHEREAS, the City Attorney has prepared the Development Agreement consistent with the requirements of Section 17.60.040 of the Banning Zoning Code.

WHEREAS, the approval of the Development Agreement including its companion applications for the General Plan Amendment No. 13-2503, Zone Change No. 13-3501, Water Supply Assessment, the Rancho San Gorgonio Specific Plan, Tentative Tract Map 36586 and Annexation, is considered a project pursuant to CEQA Guidelines Section 21065.

WHEREAS, consistent with Section 15083 of the California Environmental Quality Act ("CEQA") and prior to completing the draft Environmental Impact Report (EIR), the City held an early consultation regarding the issue areas to be considered in the EIR. The City published the Notice of Preparation ("NOP") including the Scoping Meeting in the Record Gazette and on the City’s website. The City also mailed the NOP to members of the public, organizations/groups, public agencies and persons who have requested to be on the mailing lists. As part of early consultation, the City held a public scoping meeting on April 29, 2015 at the City of Banning Council Chambers, 99 East Ramsey Street, Banning, California.

WHEREAS, consistent with Section 15086 and 15087 of CEQA, the City published the Notice of Availability ("NOA") of the Draft EIR and made available for a 45-day public review period from June 20, 2016 through August 3, 2016. The NOA was published in the Press Enterprise and the Record Gazette, as well as on the City’s website. The City also mailed the NOA to the State Clearinghouse for distribution to State Agencies, and to organizations/groups, public agencies and members of the public who requested to be on the mailing list of the Project.
WHEREAS, the City received comment letters from members of the public, public agencies, groups/organizations, and persons who requested to be a part of the mailing list of the Project regarding the Draft EIR and the impacts of the Ranch San Gorgonio Specific Plan, including its associated applications referenced herein.

WHEREAS, consistent with Section 15088 of CEQA, the City evaluated the responses received from members of the public, public agencies, groups/organizations, and persons who requested to be a part of the mailing list of the Project and prepared written responses which culminated in a Final EIR for the Project and is referenced herein. The Final EIR was made available for 10-day public review on ________, 2016. The Final EIR was made available at City Hall Community Development Counter, the Banning Public Library, and on the City’s website.

WHEREAS, on September 7, 2016, the Planning Commission held a duly-noticed public hearing, at which time the Commission considered the public testimony, staff report, full documentation of the Final EIR and all other documentation relating to the Project, and the Commission recommended approval of the Project, certification of the Final EIR, adoption of the Statement of Overriding Considerations and Findings of Fact to the City Council.

WHEREAS, on ______________, 2016, the City gave public notice by advertisement in the Press Enterprise and the Record Gazette newspaper of a public hearing concerning the Project to be held before the City Council. In addition, the City mailed public hearing notices to the owners of properties that are located within a 1200’ radius of the project boundaries and to interested persons who requested to be on the mailing lists for the project. On _______________, 2016, the City Council held its public hearing on the Project and the Final EIR, to consider public testimony, the staff reports and presentations, full copy of the Final EIR, Statement of Overriding Considerations and Findings of Fact and all other documentation relating to the Project.

NOW THEREFORE, the Planning Commission of the City of Banning does hereby ordain, determine, find, and order as follows:

SECTION 1. ENVIRONMENTAL FINDINGS.

A Final Environmental Impact Report [EIR] (SCH No. 2015041064), including Draft EIR and Mitigation Monitoring and Reporting Program, Statement of Overriding Considerations and Findings of Fact was prepared in accordance with the California Environmental Quality Act (“CEQA”), the State CEQA Guidelines, and the City of Banning Environmental Review Guidelines. City Council Resolution No. 2016-83 as referenced herein provides environmental findings for the project.
SECTION 2. REQUIRED FINDINGS FOR DEVELOPMENT AGREEMENT:

Finding No. 1: The proposed Development Agreement is consistent with the General Plan and Applicable Specific Plan.

Finding of Facts: With approval of the Development Agreement, the City has approved the Specific Plan, which contemplates very low, low, medium and medium-high density residential development, to a maximum total of 3,385 dwelling units, 9.3 acres of neighborhood commercial development, parks and other public uses, a Tentative Tract Map No. 36586, Annexation to incorporate 161 acres of property within the Project Sphere of Influence and has certified a Final Environmental Impact Report, State Clearinghouse No. 2015041064 and adopted a Statement of Overriding Considerations and Findings of Fact. Through the adoption of the Rancho San Gorgonio Specific Plan, the proposed Map provides for the accommodation of forty-four (44) planning areas, consisting of a variety of residential densities, lot types and housing types, common open spaces, an elementary school, and a commercial area. The density level and number of units for each housing type will be commensurate with each residential zoning classification. The Project’s density meets the objectives and policies of the General Plan Housing Element in meeting the City’s Regional Housing Needs Assessment (RHNA) objectives.

Finding No. 2: The proposed Development Agreement would promote the welfare and interest of the City.

Finding of Facts: The proposed Development Agreement would promote the welfare and interest of the city. The development of the Rancho San Gorgonio Specific Plan requires an up-front and substantial investment in public infrastructure costs. The infrastructure to be developed includes streets, sewer, water, storm drain and flood control. The City of Banning and Developer therefore desire to define the parameters within which the obligations of the Developer for infrastructure and public improvements and facilities will be met and to provide for the orderly development of the Developer's property, assist in attaining the most effective utilization of resources within the City and otherwise achieve the goals of the Development Agreement Statute. In consideration of these benefits to the City, the Developer will receive assurances that the City shall grant all permits and approvals required for total development of the Developer's property and will provide for the assistance called for in this Agreement in accordance with the terms of this Agreement.
With the vested right to develop the property, the City will receive the following benefits that promote the general welfare and interest of the City:

- The term of the Development Agreement shall commence on the Effective Date and shall continue for a period of forty (40) years, subject to review, to determine whether the development goals have been met.
- A substantial investment in infrastructure as mentioned above.
- New master planned community that provides a cohesive, well-coordinated development that would provide a sense of place.
- A mix of up to 3,385 residential units and variety of home types that includes single-family homes with lot sizes, homes sizes and design, Neighborhood Commercial uses intended to provide a location for businesses and day-to-day shopping, 14 acres for an elementary school site, 210 acres for parks and recreational areas and 77 acres for circulation uses.
- Revenue from property tax, sales tax, and development impact fees as the property will be developed and improved from the current vacant state.
- The developer will provide the City with fully improved parks as part of the development that include approximately 50 acres of community and neighborhood parks and 160 acres of paseos, trails and other open space.
- The Rancho San Gorgonio Specific Plan will be developed in six (6) phases. Through the phasing plan, the project will provide construction jobs for the construction of the homes and for the various trades that are associated with home building which include draftsman, architects engineers, electricians, plumbing, roofing, interior design and home furnishing.
- Increase home construction provides incentives for future retailers and other commercial services to locate in Banning once the homes are occupied. The project would incentivize the local economy.

SECTION 3. CITY COUNCIL ACTION.

The City Council hereby takes the following action:

1. Adopt Ordinance No. 1499, approving the Development Agreement for the improvement of the Developer’s property for purposes of effecting the structures, improvements and facilities composing the Project including, without limitation: grading, the construction of infrastructure and public facilities related to the Project, whether located within or outside the Developer’s property; the construction of structures and buildings; the installation of landscaping; and the operation, use and occupancy of, and the right to maintain, repair, or reconstruct,
any private building, structure, improvement or facility after the construction and completion thereof, provided that such repair, or reconstruction takes place during the Term of this Agreement on parcels subject to this Agreement within and associated with the Rancho San Gorgonio Specific Plan as attached hereto as Exhibit “A”, based on the findings of facts indicated in this resolution and the administrative record.

PASSED, APPROVED AND ADOPTED this ______day of ________ 2016.

____________________________________
Art Welch, Mayor
City of Banning

ATTEST:

____________________________________
Marie Calderon, City Clerk
City of Banning, California

APPROVED AS TO FORM
AND LEGAL CONTENT:

____________________________________
John C. Cotti
Interim City Attorney
City of Banning, California
CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1499 was duly introduced at a regular meeting of the City Council of the City of Banning held on the ________ day of __________, 2016 and was duly adopted at a regular meeting of said City Council held on the ________ day of __________, 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

________________________________
Marie Calderon, City Clerk
City of Banning, California
Rancho San Gorgonio Specific Plan Development Agreement
DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF BANNING

(“CITY”)

AND

RANCHO SAN GORGONIO, LLC,
a Delaware limited liability company

(“DEVELOPER”)
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is entered into on ____________, 2016, between the CITY OF BANNING, a California municipal corporation and general law city (the “City”), and RANCHO SAN GORGONIO, LLC, a Delaware limited liability company (the “Developer”), pursuant to Article 2.5 of Chapter 4 of Division 1 of Title 7, §§ 65864 through 65869.5 of the Government Code. The City and the Developer shall be referred to within this Agreement jointly as the “Parties” and individually as a "Party".

RECATALS:

A. Capitalized Terms. The capitalized terms used in these Recitals and throughout this Agreement shall have the meaning assigned to them in Section 1. Any capitalized terms not defined in Section 1 shall have the meaning otherwise assigned to them in this Agreement or apparent from the context in which they are used.

B. Development of the Developer’s Property. Developer has legal title to that certain real property of approximately 831 acres in size, a portion of which is located within the jurisdictional boundaries of City, commonly known as Rancho San Gorgonio and more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference (the “Developer’s Property”). Concurrent with the approval of this Agreement, the City has approved the Specific Plan, which contemplates very low, low, medium and medium-high density residential development, to a maximum total of 3,385 dwelling units, 9.3 acres of neighborhood commercial development, parks and other public uses, and a general plan amendment and a zone change for the Developer’s Property, and City has certified a Final Environmental Impact Report for said project, State Clearinghouse No. 2015041064.

C. Legislation Authorizing Development Agreements. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Statute, authorizing the City to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein. The legislative findings and declarations underlying the Development Agreement Statute and the provisions governing contents of development agreements state, in Government Code §§ 65864(c) and 65865.2, that the lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing, and that applicants and local governments may include provisions in development agreements relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

D. Intent of the Parties. The Developer and the City have determined that the Project is a development for which a development agreement is appropriate. The Parties desire to define the parameters within which the obligations of the Developer for infrastructure and public improvements and facilities will be met and to provide for the orderly development of the Developer’s Property, assist in attaining the most effective utilization of resources within the City and otherwise achieve the goals of the Development Agreement Statute.
E. **Purpose of Agreement.** The purpose of this Agreement is to facilitate the implementation of the Project Approvals through the development of the Project, thereby realizing the public benefits to the City and private benefits to Developer, including those described in these Recitals. The development of the Project requires a major investment by the Developer in public facilities, substantial front-end investment in on-site and off-site improvements, dedications of land, participation in other programs for public benefit and purposes, and substantial commitments of resources to achieve both private benefits of the Project for the Developer and the public purposes and benefits of the Project for the City. The Developer will be unable to make and realize the benefits from such commitments of land and resources without the assurances of a realized Project provided by this Agreement.

F. **Additional Obligations of Developer.** Some or all of those expenditures and dedications of land by Developer specified in this Agreement may be over and above those that City could require of Developer in the normal course of granting project approvals. Developer is willing to make said additional expenditures and/or grant such additional dedications in consideration for receiving the benefits conferred on Developer by this Agreement.

G. **City Findings of Public Interest.** City desires the timely, efficient, orderly, and proper development of the Project, and believes it is in the public interest to accept the benefits conferred by the additional expenditures and additional dedications by Developer referred to above. City further believes it is in the public interest to provide for the vesting of Developer’s rights to develop the Project in conformance with the Project Approvals and the terms and conditions contained herein so that such vested rights shall not be disturbed by changes in laws, rules, or regulations, including measures passed by initiative, that occur after the Effective Date of this Agreement.

H. **Public Benefits of the Project.** This Agreement provides assurances that the public benefits identified below in this Recital H will be achieved in accordance with the terms of this Agreement. Developer is willing, pursuant to the terms of this Agreement, to make expenditures and provide benefits to the City including, without limitation, construction of improvements in a manner that benefits a wider area, and mitigates impacts resulting in part from certain existing conditions and cumulative development in addition to those impacts caused by the Project, thus conferring a public benefit on the City. The Project will provide local and regional public benefits to the City, including, without limitation:

1. **Increased Tax Revenues.** The development of the Developer’s Property in accordance with the terms of this Agreement will result in increased real property and sales taxes and other revenues to the City.

2. **Reduced Vehicle Miles Travelled.** The Project will reduce vehicle trips by implementing a transportation demand management program that takes advantage of alternative modes of mass transit within the City.

3. **Pedestrian Mobility.** The Project encourages pedestrian mobility through the provision of walking paths, through signage guiding pedestrians to nearby destinations and through preservation of significant open space to create pleasant environments that will encourage walking.
4. **Sustainable Design.** The Developer will, to the extent reasonably feasible, include sustainable design for commercial and industrial uses and green building standards for residential construction.

5. **Pedestrian Connection.** The Project will include a series of public pedestrian trails throughout the Developer’s Property.

6. **Reduced Traffic Congestion.** The Project will include improvements and contribute fees to improvements that will reduce congestion on local streets and the regional transportation network.

7. **Parks and Recreation.** Park and recreation improvements include:
   
   (a) approximately 50 acres of community and neighborhood parks, and
   
   (b) approximately 160 acres of paseos, trails and other open space.

8. **Employment.** Providing both short-term construction employment and long-term permanent employment within the City.

9. **Goals.** Fulfilling long-term economic and social goals for the City and surrounding communities.

I. **Public Hearings: Findings.** In accordance with the requirements of the California Environmental Quality Act (Public Resources Code § 21000, et seq. (“CEQA”)), appropriate studies, analyses, reports and documents were prepared and considered by the Planning Commission and the City Council. The Planning Commission, after a public hearing on _____________, recommended, and the City Council, after making appropriate findings, certified, by Resolution No. _____ adopted on _____________ a Final Environmental Impact Report for the Project, more specifically identified as the Final Environmental Impact Report for the Rancho San Gorgonio Specific Plan, State Clearinghouse No. __________, as having been prepared in compliance with CEQA. On ____________, the Planning Commission, after giving notice pursuant to Government Code §§ 65090, 65091, 65092 and 65094, held a public hearing on the Developer’s application for this Agreement. On ____________, the City Council, after providing the public notice required by law, held a public hearing to consider the Developer’s application for this Agreement. The Planning Commission and the City Council have found on the basis of substantial evidence based on the entire administrative record, that this Agreement is consistent with all applicable plans, rules, regulations and official policies of the City.

J. **Consistency Findings.** The City Council has found that, among other things, this Agreement is consistent with the City’s General Plan; that this Agreement is compatible with the uses authorized in, and the regulations prescribed for, the Property; that this Agreement is in conformity with public convenience, general welfare, and good land use practice; that this Agreement will not be detrimental to the health, safety, or general welfare; and that this Agreement will not adversely affect the orderly development of property or the preservation of property values.

K. **Mutual Agreement.** Based on the foregoing and subject to the terms and
conditions set forth herein, City has determined that development of the Developer’s Property is appropriate for a development agreement under the Development Agreement Statute, and Developer and City desire to enter into this Agreement on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true and correct and should be, and hereby are, incorporated into this Agreement, the Parties agree as follows:

1. **DEFINITIONS.**

The following words and phrases are used as defined terms throughout this Agreement. Each defined term shall have the meaning set forth below.

1.1 **Acquisition Agreement.** “Acquisition Agreement” shall have the meaning set forth in Section 5.1 below.

1.2 **A Map.** “A Map” means a map within the meaning of the Subdivision Map Act, as further defined in Section 9.8.

1.3 **Anniversary Date.** “Anniversary Date” means the date of the anniversary of each year following the Effective Date established in Section 3.5.


1.5 **Applications.** “Application(s)” means a complete application for the applicable land use approvals (such as a subdivision map, conditional use permit, etc.) meeting all of the current ordinances of the City provided that any additional or alternate requirements in those ordinances enacted after the Effective Date which affect the Project application shall apply only to the extent permitted by this Agreement.

1.6 **Appraisal of Land Value.** "Appraisal of Land Value" means the determination by an experienced and independent MAI appraiser retained by City in a written appraisal at fair market value assuming the existing infrastructure, and with the development restrictions of the Specific Plan.

1.7 **Authorizing Ordinance.** “Authorizing Ordinance” means Ordinance No. _________ approving this Agreement, introduced on ____________, 2016, and adopted on ____________, 2016,.

1.8 **Building Permit.** “Building Permit”, with respect to any building or structure to be constructed on the Developer’s Property, means a building permit for not less than the shell and core of such building or structure issued by the City’s Division of Building and Safety.

1.9 **CC&Rs.** “CC&Rs” shall have the meaning set forth in Section 14.4 below.
1.10 Certificate of Occupancy. “Certificate of Occupancy”, with respect to a particular building or other work of improvement, means the final certificate of occupancy issued by the City with respect to such building or other work of improvement.

1.11 CFD. “CFD” means a community facilities district allowed to be formed pursuant to the CFD Act by a Local Agency.

1.12 CFD Act. “CFD Act” means the Mello-Roos Community Facilities Act of 1982 (Government Code § 53311 et seq.), as it may be amended from time to time.

1.13 City. “City” means the City of Banning, California.

1.14 City Council. The “City Council” means the governing body of the City.

1.15 City Development Agreement Ordinance. “City Development Agreement Ordinance” means Chapter 17.60 of the Zoning Ordinance which establishes a procedure for the consideration and approval of development agreements pursuant to the Development Agreement Statute.

1.16 City Manager. “City Manager” means the City Manager of City.

1.17 City Wide Traffic Improvements. “City Wide Traffic Improvements” means those traffic improvements identified in the Traffic Impact Mitigation Fee established in Article 7.

1.18 Claims or Litigation. “Claims or Litigation” means any challenge by adjacent owners or any other third parties (i) to the legality, validity or adequacy of the General Plan, Land Use Regulations, this Agreement, Development Approvals or other actions of the City pertaining to the Project, or (ii) seeking damages against the City as a consequence of the foregoing actions, for the taking or diminution in value of their property or for any other reason.

1.19 Dedicate or Dedication. “Dedicate” or “Dedication” means to offer the subject land to the City.

1.20 Default. “Default” refers to any material default, breach, or violation of a provision of this Development Agreement as defined in Section 13 below. “City Default” refers to a Default by the City, while “Developer Default” refers to a Default by the Developer.

1.21 Developed Property. “Developed Property” shall mean residential property for which a certificate of occupancy has been issued or a final inspection conducted.

1.22 Developer. “Developer” means Rancho San Gorgonio, LLC, a Delaware limited liability company, and its successors and assigns.

1.23 Developer’s Property. “Developer’s Property” means the 831 acres of land, more or less, described in Exhibit “A” in which Developer holds a legal or equitable interest and upon which the Project will be developed.
1.24 **Develop or Development.** “Develop” or “Development” means the improvement of the Developer’s Property for purposes of effecting the structures, improvements and facilities composing the Project including, without limitation: grading, the construction of infrastructure and public facilities related to the Project, whether located within or outside the Developer’s Property, and formation of CFDs for Eligible Facilities; the construction of structures and buildings; the installation of landscaping; and the operation, use and occupancy of, and the right to maintain, repair, or reconstruct, any private building, structure, improvement or facility after the construction and completion thereof, provided that such repair, or reconstruction takes place during the Term of this Agreement on parcels subject to this Agreement.

1.25 **Development Agreement Statute.** “Development Agreement Statute” means §§ 65864 through 65869.5 of the Government Code as it exists on the Effective Date.

1.26 **Development Approvals.** “Development Approvals” means all site-specific (meaning specifically applicable to the Developer’s Property only and not generally applicable to some or all other properties within the City) plans, maps, permits, and entitlements to use of every kind and nature. Development Approvals includes, but is not limited to, specific plans, site plans, tentative and final subdivision maps, vesting tentative maps, variances, zoning designations, planned unit developments, conditional use permits, grading, building and other similar permits, the site-specific provisions of general plans, environmental assessments, including environmental impact reports, and any amendments or modifications to those plans, maps, permits, assessments and entitlements. The term Development Approvals does not include rules, regulations, policies, and other enactments of general application within the City.

1.27 **Development Goals.** “Development Goals” shall have the meaning set forth in Section 6.2 below.

1.28 **Development Impact Fees.** “Development Impact Fees” means the monetary consideration, other than a tax or assessment, charged by the City in connection with mitigating the Project’s specific impacts and the development of the public facilities related to the Development of the Project, including those fees, calculated on the basis of the number of residential units or square footage of non-residential development to be constructed, as set forth on Exhibit “D” attached hereto as well as those Development Impact Fees which may be amended or adopted in accordance with Section 6.5.2 hereof. Development Impact Fees do not include Processing Fees.

1.29 **Development Period.** “Development Period” means a ten-year time period described in Section 6.2.

1.30 **Development Plan.** “Development Plan” means the Existing Development Approvals, Future Development Approvals and Existing Land Use Regulations.

1.31 **Director.** “Director” means the City’s Director of Community Development or equivalent official.

1.32 **Effective Date.** “Effective Date” means the date this Agreement becomes effective as set forth in Section 3.5.
1.33 **Eligible Facilities.** “**Eligible Facilities**” means the Proposed Project Facilities and other public facilities, fees and contributions for public facilities, as described in the Financing Plan.

1.34 **Estoppel Certificate.** “**Estoppel Certificate**” shall mean a certificate substantially in the form attached hereto as Exhibit “C”. The Parties will cooperate if a request for ministerial or nonmaterial changes to said form of estoppel certificate is reasonably requested by a third party hereafter dealing with City, Developer, or the Developer’s Property.

1.35 **Exaction.** “**Exaction**” means Dedications, payment of Development Impact Fees and/or construction of public infrastructure by the Developer as part of the Development of the Project.

1.36 **Existing Development Approvals.** “**Existing Development Approvals**” means only the Development Approvals which are listed on Exhibit “B”.

1.37 **Existing Land Use Regulations.** “**Existing Land Use Regulations**” means those Land Use Regulations applicable to the Property in effect on the Effective Date.

1.38 **Financing Plan.** “**Financing Plan**” means Exhibit “G” attached hereto.

1.39 **Flood Control District.** “**Flood Control District**” means the Riverside County Flood Control and Water Conservation District.

1.40 **Force Majeure.** “**Force Majeure**” shall have the meaning set forth in Section 19.2 below.

1.41 **Future Development Approvals.** “**Future Development Approvals**” means those Development Approvals applicable to the Developer’s Property approved by the City after the Effective Date such as tentative tract maps, subdivision improvement agreements and other more detailed planning or engineering approvals.

1.42 **General Plan.** “**General Plan**” means the City’s General Plan as it exists on the Effective Date, and as expressly amended by (i) General Plan Amendment No. 13-2503 approved by the City Council concurrently with this Agreement; and (ii) future amendments applicable to the Developer’s Property, if permitted, by Article II.

1.43 **Goals and Policies for Financing.** “**Goals and Policies for Financing**” or “**Goals and Policies**” means the City’s goals and policies for CFDs adopted in accordance with Section 5.1.

1.44 **Grading Permit.** “**Grading Permit**” means a permit issued by the City’s Division of Building and Safety which allows the excavation or filling, or any combination thereof, of earth.

1.45 **Improvement Area.** “**Improvement Area**” shall have the meaning set forth in Section 5.1 below.
1.46 **Innocent Owner.** “**Innocent Owner**” shall have the meaning set forth in Section 13.6 below.

1.47 **LAFCO.** “**LAFCO**” means the Riverside County Local Agency Formation Commission.

1.48 **Land Use Regulations.** “**Land Use Regulations**” means those ordinances, laws, statutes, rules, regulations, initiatives, policies, requirements, guidelines, constraints, codes or other actions of the City which affect, govern, or apply to the Developer’s Property or the implementation of the Development Plan. Land Use Regulations include the ordinances and regulations adopted by the City which govern permitted uses of land, density and intensity of use and the design of buildings, applicable to the Property, including, but not limited to, the General Plan, the Specific Plan, zoning ordinances, development moratoria, implementing growth management and phased development programs, ordinances establishing development exactions, subdivision and park codes, any other similar or related codes and building and improvements standards, mitigation measures required in order to lessen or compensate for the adverse impacts of a project on the environment and other public interests and concerns or similar matters. The term Land Use Regulations does not include, however, regulations relating to the conduct of business, professions, and occupations generally; taxes and assessments; regulations for the control and abatement of nuisances; building codes; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; any exercise of the power of eminent domain; or similar matters.

1.49 **Local Agency.** “**Local Agency**” means any public agency authorized to levy, create or issue any form of land secured financing over all or any part of the Project, including, but not limited to, the City.

1.50 **Lot.** “**Lot**” means any of the parcels legally created within the Project as a result of any approved final subdivision, parcel or tract map, pursuant to the Subdivision Map Act or recordation of a condominium plan pursuant to Civil Code § 1352.

1.51 **Major Review.** “**Major Review**” means the review performed upon the 6th, 14th, 22nd, 30th, 35th and 40th anniversaries of the Effective Date as provided in Section 6.5.

1.52 **Master Tract Map.** “**Master Tract Map**” means Tract Map No. 36586 covering all Planning Areas which may include all infrastructure necessary to Develop the tract and a Phasing Plan as to the development of the infrastructure and the subsidiary subdivisions within the tract. The Master Tract Map is a subdivision map within the meaning of the Subdivision Map Act and shall meet the requirements of the Act and of this Agreement.

1.53 **Mortgage.** “**Mortgage**” means a mortgage, deed of trust, sale and leaseback arrangement or other transaction in which all, or any portion of, or any interest in, the Developer’s Property is pledged as security.

1.54 **Mortgagee.** “**Mortgagee**” refers to the holder of a beneficial interest under a Mortgage.
1.55 **Mortgagee Successor.** “Mortgagee Successor” means a Mortgagee or any third party who acquires fee title or any rights or interest in, or with respect to, the Developer’s Property, or any portion thereof, through foreclosure, trustee’s sale, deed in lieu of foreclosure, lease termination, or otherwise from, or through, a Mortgagee. If a Mortgagee acquires fee title or any right or interest in, or with respect to, the Developer’s Property, or any portion thereof, through foreclosure, trustee’s sale or by deed in lieu of foreclosure and such Mortgagee subsequently conveys fee title to such portion of the Developer’s Property to a third party, then such third party shall be deemed a Mortgagee Successor.

1.56 **Municipal Code.** “Municipal Code” means the City’s Municipal Code as it existed on the Effective Date and as it may be amended from time to time consistent with the terms of this Agreement.

1.57 **Non-Defaulting Party.** “Non-Defaulting Party” shall have the meaning set forth in Section 13.1 below.

1.58 **Owner.** “Owner” means Rancho San Gorgonio, LLC, a Delaware limited liability company, and any successors during the period of time that each such person or entity owns fee title to any portion of the Developer’s Property prior to the development of such portion of the Developer’s Property and subject to the terms of this Agreement.

1.59 **Park Fees.** “Park Fees” means Development Impact Fees levied by the City for Open Space and Park Development pursuant to Chapter 15.68 of the Municipal Code.

1.60 **Phasing Plans.** “Phasing Plans” shall mean the detailed plans for development of the Proposed Project Facilities and other infrastructure and for the Project which are developed pursuant to Section 6.4 as a part of processing the Subdivision Maps.

1.61 **Planning Area.** “Planning Area” means each of the 44 planning areas described in the Specific Plan, and shown on Exhibit “A”.

1.62 **Planning Commission.** “Planning Commission” means the City’s Planning Commission.

1.63 **Property Owner’s Association or POA.** “Property Owner’s Association” or “POA” means one or more associations formed among the owners of real estate located within the Property (as the same may be subdivided from time to time), including, but not limited to, one or more associations of homeowners and/or other associations of owners of industrial, commercial, educational and retail property.

1.64 **Processing Fees.** “Processing Fees” means (i) the City’s normal fees for processing, environmental assessment/review, tentative tracts/parcel map review, plan checking, site review, site approval, administrative review, building permit (plumbing, mechanical, electrical, building), inspection and similar fees imposed to recover the City’s costs associated with processing, review and inspection of applications, plans, specifications, etc., and (ii) fees and charges levied by any other public agency, utility, district or joint powers authority, whether or not City is a member of such body or such fees are collected by the City, and whether or not such fees are used for maintenance or capital outlay purposes.
1.65 **Project.** “**Project**” means the Development of the Developer’s Property, pursuant to this Agreement and the Existing Land Use Regulations, as depicted on **Exhibit “A”** attached hereto.

1.66 **Proposed Project Facilities.** “**Proposed Project Facilities**” means those improvements set forth on **Exhibit “F”** attached hereto or otherwise included in conditions of approval of the maps.

1.67 **Reimburse or Reimbursement.** “**Reimburse**” or “**Reimbursement**” means the provision by the City of cash or credit in return for land, improvements, goods or services provided to the City by the Developer.

1.68 **Reservations of Authority.** “**Reservation of Authority**” shall have the meaning set forth in Article II below.

1.69 **Specific Plan.** “**Specific Plan**” means the Rancho San Gorgonio Specific Plan, prepared by RBF Consulting and approved by the City Council by Ordinance No. __ introduced on ____________, 2016, and adopted on ______________, 2016.

1.70 **Subdivision Map.** “**Subdivision Map**” (or “**B Map**”) means the subsidiary subdivision maps for the Development of any Planning Area or portion thereof which shall be consistent with the conditions of the Master Tract Map and shall contain its own Phasing Plan for the installation of the infrastructure and other improvements within the subdivision. All subdivision maps shall meet the requirements of the Subdivision Map Act.

1.71 **Subdivision Map Act.** “**Subdivision Map Act**” means Government Code § 66412 et seq. as implemented by Title 16 of the Municipal Code.

1.72 **Taxes.** “**Taxes**” means general or special taxes, including but not limited to ad valorem property taxes, sales taxes, transient occupancy taxes, utility taxes or business taxes of general applicability citywide which do not burden the Developer’s Property disproportionately to similar types of development in the City and which are not imposed as a condition of approval of a development project. Taxes do not include Development Impact Fees, Processing Fees or Traffic Control Facility Fees.

1.73 **Term.** “**Term**” means that period of time during which this Agreement shall be in effect and bind the Parties, as defined in Article 3 below.

1.74 **Traffic Control Facility Fee.** “**Traffic Control Facility Fee**” means the fee set forth in Exhibit “D” attached hereto, as it may be amended pursuant to Section 6.5.2 hereof.

1.75 **TUMF.** “**TUMF**” means the Transportation Uniform Mitigation Fee promulgated by the Western Riverside Council of Governments and implemented by Chapter 15.76 of the Municipal Code.

1.76 **Zoning Code.** “**Zoning Code**” means Title 17 of the Municipal Code as it existed on the Effective Date except (i) as amended by any zone change relating to the
Developer’s Property approved concurrently with the approval of this Agreement, including Zone Change No. 13-3501, and (ii) as the same may be further amended from time to time consistent with this Agreement.

2. **EXHIBITS.**

The following are the Exhibits to this Agreement:

- Exhibit “A”: Map and Legal Description of the Developer’s Property
- Exhibit “B”: Existing Development Approvals
- Exhibit “C”: Estoppel Certificate
- Exhibit “D”: Development Impact Fees
- Exhibit “E”: Additional Agreements Concerning Development
- Exhibit “F”: Proposed Project Facilities
- Exhibit “G”: Rancho San Gorgonio Project Financing Plan
- Exhibit “H”: Form of Assignment and Assumption Agreement
- Exhibit "I": Summary of Prevailing Wage Requirements
- Exhibit "J": Form of TUMF Credit Agreement
- Exhibit "K": Public Improvement Schedule

3. **TERM.**

3.1 **Term.** The term of this Development Agreement (the “**Term**”) shall commence on the Effective Date and shall continue for a period of thirty (30) years. In addition, Developer shall have two options to extend the Term for periods of five (5) additional years each (the "**Options**"), at Developer's sole discretion. Developer may exercise the first Option at any time prior to expiration of the Term by written notice to the City upon satisfaction of the following conditions: (a) one thousand (1,000) homes within the Project have been completed and have received certificates of occupancy from the City, and (b) Developer is not in default of its obligations under this Agreement at the time of exercise of the Option, and there is no other failure of Developer to perform hereunder at the time of exercise of the first Option which would become a default upon the passage of time. Developer may exercise the second Option at any time prior to expiration of the Term (as extended by the first Option) by written notice to the City upon satisfaction of the following conditions: (a) two thousand (2,000) homes within the Project have been completed and have received certificates of occupancy from the City, and (b) Developer is not in default of its obligations under this Agreement at the time of exercise of the Option, and there is no other failure of Developer to perform hereunder at the time of exercise of the second Option which would become a default upon the passage of time.

3.2 **Termination Upon Completion of Construction.** This Agreement shall terminate with respect to any Lot, and such Lot shall be released and no longer subject to this
Agreement, without the execution or recordation of any further document, when a certificate of occupancy has been issued for the last building on the Lot or, if no certificate is issued, when the final inspection for the last building on the Lot has taken place. Notwithstanding the foregoing, City shall cooperate in the execution of any further documentation or releases in recordable form that may be reasonably requested by Developer or the title insurer of the purchaser or mortgagee of any Lot so that title to such Lot shall be insured free and clear of this Agreement.

3.3 Termination for Default. This Agreement may be terminated due to the occurrence of any default in accordance with California law and the procedures in Article 13.

3.4 Effective Date. This Agreement shall become effective upon the date thirty (30) days after the adoption of the Authorizing Ordinance if no Claim or Litigation have been filed which would prevent the Authorizing Ordinance from taking effect. If such a Claim or Litigation has been filed, then the Effective Date shall be the date that the Claim or Litigation has been successfully resolved by final judgment or dismissal with prejudice in City’s favor, so that the Authorizing Ordinance shall be effective. The City shall give Developer notice as to the date established as the Effective Date. The Effective Date shall not otherwise be tolled for any other event of Force Majeure as described in Section 19.2.

4. DEVELOPMENT OF THE DEVELOPER’S PROPERTY.

4.1 Right to Develop. During the Term, the Developer shall have a vested right to develop the Developer’s Property (subject to Article 11 below) to the full extent permitted by the Development Plan and this Agreement. Except as provided within this Agreement, the Development Plan shall exclusively control the development of the Developer’s Property (including the uses of the Developer’s Property, the density or intensity of use, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to the Project). The maximum number of residential units authorized to be constructed hereunder and the approximate acreage of commercial development, without regard to any density bonus or incentive or concession for child care pursuant to Government Code §§ 65915 through 65918 or other similar legislation or regulation, is 3,385 units and approximately 9.3 acres of commercial development. In furtherance of the foregoing, the Developer retains the right to apportion the uses, intensities and densities, between itself and any other Owners, upon the sale, transfer, or assignment of any portion of the Developer’s Property, so long as such apportionment is consistent with the Existing Land Use Regulations and this Agreement. In addition, in order to implement the density transfer provisions of the Specific Plan and notwithstanding any other provisions of the Specific Plan to the contrary, the City agrees that in connection with a transfer of units to an area designated as “Low Density Residential” the density of such area may be up to eight (8) dwelling units per acre.

4.2 Right To Future Approvals. Subject to the City’s exercise of its police power authority as specified in Article 11 below, the Developer shall have a vested right: (i) to receive from the City all future Development Approvals for the Developer’s Property that are consistent with, and implement, the Existing Land Use Regulations and this Agreement; (ii) not to have such approvals be conditioned or delayed for reasons which are inconsistent with the Existing Land Use Regulations or this Agreement; and (iii) to Develop the Developer’s Property
in a manner consistent with such approvals in accordance with the Existing Land Use Regulations and this Agreement. All future Development Approvals for the Developer’s Property, including without limitation General Plan amendments, zone changes, or parcel maps or tract maps, shall upon approval by the City, be vested in the same manner as provided in this Agreement for the Existing Land Use Regulations, for the Term of this Agreement.

4.3 **Existing Development Approvals.** Only those items specifically set forth on Exhibit “B” hereto are deemed Existing Development Approvals for purposes of this Agreement. Any approvals not included within Exhibit “B” shall not apply to the Project with the exception of those reservations set forth in Article 11 below.

4.4 **Specific Plan.** Land use and Development of the Property shall be governed by the Specific Plan and this Agreement. Notwithstanding any other provision of this Agreement, the Developer shall have the right, but not the obligation, to Develop the Developer’s Property for the uses specified in the Specific Plan at the locations specified in the Specific Plan.

4.5 **Priority Of Specific Plan.** The City has determined that the Specific Plan is consistent with the General Plan and the Zoning Code. As such, the Specific Plan shall be the primary document governing the use and Development of the Developer’s Property and, in the event of a conflict, shall prevail over any other of the Existing Land Use Regulations except for this Agreement, which prevails over the Specific Plan.

4.6 **Later Enacted Measures.** This Agreement is a legally binding contract which will supersede any initiative, measure, moratorium, statute, ordinance, or other limitation enacted after the Effective Date, except as provided in Article 11. Any such enactment which affects, restricts, impairs, delays, conditions, or otherwise impacts the implementation of the Development Plan (including the issuance of all necessary Future Project Approvals or permits for the Project) in any way contrary to the terms and intent of this Agreement shall not apply to the Project unless otherwise mandated by State law.

5. **FINANCING AND THE CITY’S OBLIGATIONS.**

5.1 **Adoption of Goals and Policies.** Within ninety (90) days following the Effective Date and in accordance with Government Code Section 53312.7, the City shall adopt goals and policies governing the use of the Mello-Roos Community Facilities Act of 1982, and such goals and policies shall thereafter be the Goals and Policies. The Goals and Policies shall be consistent with the Financing Plan or, if inconsistent, the inconsistent provisions in the Financing Plan shall be controlling with respect to the Project. The City may amend the Goals and Policies from time to time, but such amendments shall not be applicable to the Project unless they are consented to by the Developer.

5.2 **Formation of CFD(s).** Subject to the provisions of this Article 5, the Parties intend that some or all of the Eligible Facilities shall be funded through the City’s formation of one or more CFDs and the levy of a special tax of the CFD(s) (the “Facilities Special Tax”) and issuance of bonds secured by the Facilities Special Tax (the “Bonds”) in accordance with the Financing Plan set forth in Exhibit “G”. Such CFD(s) shall, pursuant to
Section 5.3, also be authorized to finance park maintenance and other eligible services through the levy of a special tax (the “Services Special Tax”).

5.2.1 Procedures for Formation. The City and the Developer shall cooperate in good faith to form one or more CFDs and/or designate improvement areas therein (the “Improvement Areas”), which are consistent with the Financing Plan and which in the aggregate will encompass and encumber the Developer’s Property. Final terms and conditions regarding the formation of the CFDs, their boundaries, Improvement Area boundaries, the rate and method of apportionment of the Services Special Taxes and Facilities Special Taxes to be levied in any CFD, and/or Improvement Area (including any tax zones therein), any acquisition or construction agreements related thereto, and the terms of one or more series of Bonds to be issued in conjunction therewith shall be determined jointly by City and the Developer in accordance with the Financing Plan and the City’s Goals and Policies for Financing. In conjunction with the formation of any CFD, the Developer and the City shall cooperate in good faith to negotiate and finalize any acquisition and funding agreement prior to the formation of the first CFD addressing the terms of construction, acquisition and financing of any of the Eligible Facilities to be funded by the CFD (such agreement to be referred to herein as the “Acquisition Agreement”).

5.2.2 Timing of Formation. Developer shall prepare all studies and submit all documents necessary to form each CFD not less than approximately one hundred and eighty (180) days prior to the issuance of the first Building Permit within the portion of the Developer’s Property to be included in the CFD. Developer shall execute and deliver to the City a petition as described in Government Code Section 53318(c), and after the delivery of such petition the City shall conduct the required proceedings as set forth in Government Code Section 53311, et seq., including without limitation the City's consideration of the adoption of a resolution of intention to establish the CFD, and holding a public hearing on the establishment of the CFD. The City shall undertake the procedures for formation of the CFD consistent with this Agreement, the Goals and Policies for Financing and State Law. City shall complete formation proceedings within 180 days after Developer makes all required submissions. While the Parties acknowledge that this Agreement cannot require the City or the City Council to form a CFD, the City agrees that it shall not refuse Developer's requests to form a CFD except for good and reasonable cause. The Developer shall cooperate with the City and take all reasonable actions necessary to accomplish the formation of the CFD, the designation of improvement areas, the imposition of special taxes within each improvement area, and the authorization of bonded indebtedness within each improvement area. The Developer shall indemnify the City and its officers, employees, consultants, attorneys and agents, and hold the City and such parties harmless against Claims or Litigation brought in connection with the formation of the CFD.

5.2.1 Failure to Form CFDs. If the CFD(s) requested by Developer pursuant to Section 5.2 are not formed, or are formed in a manner that does not comply with all terms and provisions set forth in Section 5.2 and the other applicable terms of this Agreement, the Developer shall have the right, but not the obligation, to terminate this Agreement upon providing 30 days written notice to the City prior to the actual termination date. City acknowledges that the obligations of the Developer and conditions imposed upon the Project pursuant to Sections 5.3, 5.4 (?), 7.4.1.1 (?), 8.5 (?), and ___ of this Agreement are subject to the
condition precedent that all CFD(s) requested by Developer shall be formed in accordance with Section 5.2 hereof.

5.3 Services Special Tax. The City shall take, and Developer shall support, all steps necessary to include a Services Special Tax in the CFD to fund the actual reasonable cost of annual maintenance of the City parks located in Planning Areas 10, 11, 12 and 13 (the "Eligible Services").

5.4 Planning Areas 15A and 15B Drainage Facilities. The flood control improvements within Planning Areas 15A and 15B shall be considered Proposed Project Facilities and, upon request of Developer, construction thereof shall be funded through the CFD(s) to be formed pursuant to Section 5.2. Upon funding and completion of the flood control improvements within Planning areas 15A and 15B, the portion of the land within Planning Areas 15A and 15B dedicated to flood control improvements will be transferred to the City (or the Riverside County Flood Control and Water Conservation District or other district upon district consent) and shall be improved by Developer to the Master Plan Standards of the Flood Control District. The remaining land within Planning Areas 15A and 15B will be retained by Developer and reserved for use as public open space. City shall be responsible for maintenance of such public open space. Plans for developing the necessary flood control improvements shall be developed as a part of the Phasing Plans pursuant to Section 6.4, but said improvements may not be required until the City Engineer determines that development will (i) intrude into the flood plain or (ii) cause the alteration of Smith Creek. The City Engineer may approve temporary improvements until such time as the scale of that portion of the Project completed requires permanent flood control structures.

5.5 Reimbursement Agreements. If, and to the extent that, the Developer constructs or installs any infrastructure and/or facilities that have a capacity or size in excess of that required to serve the Project or to mitigate its impacts, and one or more undeveloped properties will be benefitted by such infrastructure and facilities, the City shall enter into a reimbursement agreement with the Developer which provides for the reimbursement of some or all excess costs and expenses incurred by the Developer in constructing such improvements in accordance with Government Code § 66485 et seq. The City further shall adopt ordinances, including but not limited to those authorized by Government Code § 66485, et seq., as may be required in order to impose a payment obligation on other properties which may be served or benefited by such oversized infrastructure or facilities. The terms of the Reimbursement Agreements shall otherwise be consistent with the City’s forms generally used with other development projects. Such reimbursement shall be paid to the Developer at the earliest opportunity out of, and upon collection of, available fees from benefited property.

5.6 Obligations of Developer Respecting Financing. Except as specifically provided herein, it is expressly understood that the Developer is fully responsible for the cost of the Project and obtaining any necessary construction or long term financing therefore. The Developer’s Property shall be used solely to support the development of the Project and may not be pledged as security to support financing for any other purpose, in accordance with Article 18.

6. TIME FOR CONSTRUCTION AND COMPLETION OF PROJECT.
6.1 **Timing of Development.** The Parties acknowledge that the substantial public benefits to be provided by the Developer to the City pursuant to this Agreement are in consideration for, and in reliance upon, assurances that the City will permit Development of the Developer’s Property in accordance with the terms of this Agreement. Accordingly, the City shall not attempt to restrict or limit the Development of the Developer’s Property in any manner that would conflict with the provisions of this Agreement. The City acknowledges that the Developer cannot at this time predict the timing or rate at which the Developer’s Property will be Developed. The timing and rate of Development depend on numerous factors such as market demand, interest rates, absorption, completion schedules and other factors, which may not be within the control of the Developer or the City. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city’s growth control ordinance notwithstanding that the construction company and the city had entered into a consent judgment (tantamount to a contract under California law) establishing the company’s vested rights to develop its property in accordance with the zoning. The California Supreme Court reached this result on the basis that the consent judgment failed to address the timing of development. It is the intent of the Parties to avoid the result of the Pardee case by acknowledging and providing in this Agreement that the Developer shall have the vested right, but not the obligation, to Develop the Developer’s Property in such order and at such rate and at such time as the Developer deems appropriate, but in accordance with the Development Goals and the Phasing Plans developed in accordance with Section 6.4, and in accordance with other terms hereof or in the Development Approvals related to project phasing and timing. In addition to, and not in limitation of, the foregoing, but except as set forth in the following sentence, it is the intent of the Parties that no City moratorium or other similar limitation relating to the rate or timing of the Development of the Developer’s Property or any portion thereof, whether adopted by initiative, referendum or otherwise, shall apply to the Developer’s Property to the extent that such moratorium, referendum or other similar limitation is in conflict with this Agreement. Notwithstanding the foregoing, the Developer acknowledges that nothing herein is intended or shall be construed as (i) overriding any provision of the Existing Land Use Regulations to the phasing of Development of the Project; or (ii) restricting the City from exercising the powers described in Section 11 of this Agreement to regulate Development of the Property. Nothing in this Section 6.1 is intended to excuse or release the Developer from any obligation set forth in this Agreement which is required to be performed on or before a specified calendar date or event without regard to whether or not Development of any portion of the Project is proceeding. The City acknowledges that none of the provisions relating to Project phasing set forth in the Specific Plan require that the Development of the Project occur in any specific order but, instead, are only illustrative of how such Development may occur. The phasing of the Project is instead controlled by this Agreement.

6.2 **Development of Detailed Phasing Plans.** Detailed Phasing Plans for each subdivision phase may be developed in accordance with Section 6.4, shall be subject to the City’s review and approval as conditions of approval of the applicable Subdivision Map and, as approved, shall become a part of the Existing Approvals.

6.3 **Public Improvements.** The Parties understand and agree that the Specific Plan identifies the public infrastructure and although it contains phasing concepts, it does not specify precisely the phasing of the construction of public infrastructure. Such phasing will be consistent with the Specific Plan and this Agreement and in accordance with the guidelines...
specified below. City shall retain the right to condition any Future Approvals to require Developer to dedicate necessary land, pay the development fees specified in this Agreement, and/or to construct the required public infrastructure ("Exactions"), at such time as City shall determine in accordance with the limitations set forth in this Agreement and the process in Section 6.4 and provided:

A. The dedication, payment or construction must be reasonably related to an impact caused by the Project or be of benefit to the Project; and

B. The timing of the Exaction should be reasonably related to the phasing of the Development of the Project and said public improvements shall be phased to be commensurate with the logical progression of the Project Development as well as the reasonable needs of the public, and the improvements shall be completed based upon the needs of the general public existing from time to time.

When the Developer is required by this Agreement and/or the Development Plan to construct any public improvements which will be dedicated to the City or any other public agency, upon completion, and if required by applicable laws to do so, the Developer shall perform such work in accordance with all applicable codes and construction standards.

6.4 Development of Phasing Plans During Subdivision Map Approvals. The phasing and timing requirements for the construction of all public improvements shall generally be in accordance with the Development Approvals, Specific Plan, and applicable provisions of this Agreement (for example, Sections 6.2, 6.3, etc.). Although the overall timing of Project Development remains subject to the Developer’s discretion based on market conditions in accordance with Section 6.1, there is a logical sequence to the Development and certain improvements are required to be complete before phases of the Project can be considered complete and ready for occupancy. Phasing Plans may be prepared over time in accordance with the following process.

6.4.1 Subdivision Maps. The Master Tract Map creates separate parcels corresponding to the Planning Areas. It is expected that one or more Subdivision Maps shall also be approved for each Planning Area which shall show all infrastructure necessary for the development of the subdivision. Each subdivision will have a written Phasing Plan approved by the Director and the City Engineer prior to commencement of Development of the subdivision specifying when the Lots within the subdivision will be developed and when all public infrastructure within the subdivision will be constructed.. All conditions which require the provision of Proposed Project Facilities and subdivision improvements for the area covered by each tentative Subdivision Map must be satisfied, either through performance or through the provisions of a subdivision improvement agreement, prior to the approval and recordation of the applicable phase of the Subdivision Map.

6.4.2 Proposed Project Facilities. Attached as Exhibit “F” are diagrams showing Proposed Project Facilities and depicting the major public infrastructure of the Project. The detailed phasing of construction will be provided through the applicable Phasing Plans and subject to Section 6.3.
6.4.3 **Time for Map Submission.** All tentative maps and vesting tentative maps for the Project or any part or portion thereof shall have a term equal to the remaining Term of this Agreement.

6.5 **Major Reviews.**

6.5.1 **Generally.** On or about the sixth (6\textsuperscript{th}), fourteenth (14\textsuperscript{th}), twenty-second (22\textsuperscript{nd}), thirtieth (30\textsuperscript{th}), thirty-fifth (35\textsuperscript{th}) (if the first Option has been exercised) and fortieth (40\textsuperscript{th}) (if the second Option has been exercised) anniversaries of the Effective Date, the City shall conduct a Major Review in which the City and the Developer shall review the performance of the Parties of their obligations to have been performed pursuant to this Agreement and the development of the Project. The Major Review shall include the annual review for that year to be conducted pursuant to Section 12.1. The reasonable cost of each Major Review shall be borne by the Developer and the Developer shall pay a deposit in an amount requested by City to reimburse the City for its staff time for such review, in accordance with then-applicable charges applicable to planning personnel of the City.

As part of each Major Review, sixty (60) days before each applicable anniversary of this Agreement, the Parties shall mutually meet and outline the review process, including (i) the information needed and formats, (ii) the schedule for performing the review, (iii) efficiency and timeliness of the processing, comment, and approval procedures of City and other governmental permitting agencies, (iv) identifying any needed consultants and studies, (v) the adequacy of DIFs applicable to the Project under Section 7.2.2 and any anticipated need for changes, (vi) any adjustments to needed public infrastructure, (vii) the estimated deposit needed to pay the City’s costs of performing the review, and (viii) other matters necessary for the review.

The Developer shall deliver to the City all information reasonably requested by City (i) regarding the Developer’s performance under this Agreement demonstrating that the Developer has complied in good faith with the terms of this Agreement and (ii) as required by this Agreement or the Existing Land Use Regulations.

The Developer shall submit its report on or within a reasonable time of the applicable anniversary. Thereafter, the Director shall prepare and submit to City Council a written report on the performance of the Project. The Developer’s written response shall be included in the Director’s report. The report and recommendations to City Council shall be made within 45 days of the anniversary, and staff shall submit same to the City Council for its review and consideration. Nothing in this section shall require a public hearing for a Major Review. City Council will receive and file the report, as approval of the report is not required.

6.5.2 **Adjustment to DIFs.** As provided in Section 7.2.2, certain Development Impact Fees applicable to the Project that have not otherwise been fully satisfied in accordance with this Agreement are subject to periodic adjustment, provided (i) the adjustment is based on the preparation of a suitable analysis by an independent professional consultant experienced in performing such studies demonstrating the basis for the increase, (ii) the study is performed on a City-wide basis and applies to all development projects of 200 or more residential units, (iii) all infrastructure financed is included within the City’s General Plan and
capital projects master plan, (iv) the study demonstrates a reasonable nexus to the Project and the fees are proportionate to the benefit received in accordance with applicable legal standards. City is currently in the process of adjusting existing DIFs and adopting new DIFs, and anticipates that the first such adjustment will occur within one year after the Effective Date. Such new fees may include, without limitation, a new traffic control impact fee and an electrical service fee related to the costs of providing services from the transformer to the electrical meter of a dwelling unit. Such initial adjustment and adoption of DIFs shall be applicable to the Project immediately upon adoption by the City. Thereafter, the timing of City’s adjustment of existing DIFs and adoption of new DIFs shall be in the City’s sole discretion; provided, however, that such changes shall only become applicable to the Project upon each five year anniversary of the Effective Date.

6.5.3 No Other Changes to Development Plan. Other than the Development Impact Fee adjustments provided in Section 6.5.2, no other changes to the Development Approvals may be made by City without the consent of Developer. Nothing herein shall restrict the City’s reservations of rights under Section 11 hereof.

The termination of this Agreement shall not alter the provisions of the Specific Plan concerning the zoning, density of development or any other regulatory provisions concerning the development of the Project, though the limitations provided in Article 4 on enactment of Future Land Use Regulations would be null and void.

6.6 Prevailing Wages. With respect to the construction of the Project, Developer and its contractors and subcontractors shall comply with Labor Code Section 1720, et seq., and its implementing regulations, regarding the payment of prevailing wages, employment of apprentices in compliance with Labor Code Section 1770, et seq., keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto (the “Prevailing Wage Law”), to the extent such sections are applicable by law to the construction of the Project and the development of the Property. Developer shall be solely responsible for determining the applicability of the Prevailing Wage Law, and City makes no representation as to the applicability or non-applicability of the Prevailing Wage Law to the construction of the Project and the development of the Property, or any part thereof. The Developer shall, upon request of the City, certify to the City that it is in compliance with the requirements of this paragraph. A current summary of the Prevailing Wage Law requirements is set forth in greater detail in Exhibit I attached hereto, which is incorporated herein.

Developer shall indemnify, protect, defend and hold harmless the City and its officers, employees, consultants, attorneys, contractors and agents, with counsel reasonably acceptable to the City, from and against any and all loss, liability, damage, claim, cost, expense and/or “increased costs” (including reasonable attorney’s fees, court and litigation costs, and fees of expert witnesses) which, in connection with the construction and development of the Project and the Property, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (a) the noncompliance by Developer with any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the
requirement to pay state prevailing wages); (b) compliance with Labor Code Section 1781, as the same may be amended from time to time, or any other similar law; and/or (c) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the Parties that, in connection with the construction of the Project, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or the requirements of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. “Increased costs,” as used in this Section, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction of the Project by the Developer.

6.7 City Obligations. The City shall provide the Developer with each of the items set forth in Exhibit “E”.

7. FEES, TAXES AND ASSESSMENTS.

7.1 Processing Fees. During the Term of this Agreement, the City may require the Developer to pay all Processing Fees applicable to the Development of the Project at the rates in effect on the applicable application date or as described in this Agreement unless a specific amount is stated herein.

7.2 Development Impact Fees.

7.2.1 Limit on Exactions, Mitigation Measures, Conditions and Development Fees. Developer will be constructing and installing improvements relating to water connections, treatment and transmission and reclaimed water; parks; and wastewater treatment (if an onsite wastewater treatment facility is required to be constructed by Developer as provided in Section 7.3.2 hereof). Provided that all required facilities are constructed and installed in accordance with the Specific Plan and this Agreement, no DIF fees shall be payable with respect to such matters upon application for building permits. City DIFs relating to those items shall be imposed at the amounts permitted pursuant to Section 7.2.1 hereof, and shall be deemed paid in the amounts of the fair market value of the applicable facilities, as determined by an Appraisal of Land Value at the time of transfer. In addition, fire fees shall be determined as provided in Section 8.4. Subject to applicable credits, and the provisions of Section 6.6 and Article 8 hereof, the Developer shall be subject to payment of the stated amount of the DIFs for all other DIFs, which shall be subject to subsequent adjustment in accordance with Section 6.5.2.

7.2.2 Periodic Adjustment. The Developer shall pay increases to the DIFs not excluded or subject to a credit under Section 7.2.1 if those DIFs are increased on a Citywide basis after the preparation of, and are justified by, a suitable analysis demonstrating the basis for the increase in accordance with Section 6.5.2. The Project shall be subject to the first changes adopted by the City to DIF after the Effective Date. Thereafter, the City shall be entitled to repeat the process of increasing the DIFs upon the same terms in accordance with Section 6.5.2 throughout the Term of this Agreement, which provides, however, that such changes shall only become applicable to the Project upon each five year anniversary of the
Effective Date. City anticipates the adoption of new or revised DIFs during the term of this Agreement in accordance with Section 6.5.2, and Developer shall likewise be obligated to pay those DIFs in connection with the Project.

7.2.3 Payment of Development Impact Fees. Except as otherwise provided in this Agreement, the Developer shall pay all Development Impact Fees with respect to Development commenced on the portion of the Developer’s Property owned by the Developer. The Development Impact Fees set forth on Exhibit “D” attached hereto shall be paid at the time such fees are due in accordance with the Municipal Code. Unless otherwise specified herein, all other fees, including Processing Fees shall be paid at issuance of building permits or otherwise when required by the Municipal Code.

7.3 Wastewater, Domestic and Reclaimed Water Facilities Development Impact Fees.

7.3.1 Wastewater Fees and Facilities. The City levies two DIFs related to wastewater: (i) a sewer collection fee; and (ii) a sewer frontage fee (collectively such fees are referred to herein as “sewer collection fees”). In the event that Developer is required to construct a wastewater treatment plant in accordance with Section 7.3.2 hereof, Developer shall receive a credit against the sewer collection fees and after the date such requirement becomes applicable to Developer, and thereafter no sewer collection fees shall be applicable to the Project for the full Term.

7.3.2 Construction of Wastewater Collection Infrastructure in Lieu of Fees. The Development Approvals provide that if City fails to timely construct improvements to the existing City wastewater treatment plant, the Developer will be required to construct a stand-alone wastewater treatment and collection system to serve the Project at its sole cost and expense, in lieu of Developer's payment of the sewer collection fees. The City shall develop the project specifications and shall undertake a design process to develop project plans and drawings for the system meeting the City’s specifications. The City may require the Developer to develop the plans and drawings if City determines that the design costs are competitive and Developer has retained competent design professionals who can timely perform the services. The Developer shall include the construction of the onsite wastewater treatment plant within the Phasing Plan developed pursuant to Section 6.4.

7.3.3 Domestic and Reclaimed Water Facilities. The Development Approvals require various additions, improvements and/or upgrades to the City’s water system, both domestic and/or reclaimed, in connection with the Development of the Project. Without limiting the generality of the foregoing, this includes the water tanks, pipelines and appurtenant facilities described in Section 8.5. The City shall determine in its sole discretion the size of water storage facilities which are required, and may elect to size such facilities larger than required by the Project alone. The City shall conduct such studies as are necessary to determine the Project's fair share of the cost of such facilities, and fees and DIFs imposed upon the Project shall be based upon such fair share calculation.
7.4 Park Fees.

7.4.1 Construction of Facilities. The Developer shall construct, install and improve the park and recreation facilities listed below, which are deemed to be park, recreation and/or open space for the purpose of complying with the Municipal Code’s park fee requirements. All parkland and open space shall be maintained by the City or such other governmental entity as may be approved by the City. Provided that all required parks and recreation facilities are constructed and installed in accordance with the Specific Plan and this Agreement, no park and general facilities DIF fees shall be payable upon application for building permits. Upon dedication of such parks and facilities, Developer shall be granted a credit against park and general facilities DIFs for the Project, as applicable, in the amount of the fair market value of the parks and facilities, as determined by an Appraisal of Land Value at the time of transfer. In the event that the fair market value of the parks and facilities is greater than the park and general facilities DIF fees applicable to the Project, Developer shall not be entitled to any credit for the excess amount. In the event that the fair market value of the parks and facilities is less than the park and general facilities DIF fees applicable to the Project, City shall give notice thereof to Developer and Developer shall be obligated to pay City the shortfall amount. The Developer shall construct and install within the Project’s boundaries the following park and recreation facilities:

7.4.1.1 Four publicly accessible parks (each ranging in size from approximately less than 1 acre to over 25 acres), equipped by Developer with typical park facilities, which may include picnic facilities, shade structures, playgrounds, turf areas, and related facilities as further defined in the Specific Plan and in accordance with the plans developed in Section 8.1; and

7.4.1.2 Approximately 160 acres of additional open space as described in the Specific Plan.

7.5 Traffic Impact Mitigation.

7.5.1 Traffic Control Facility Fee. The City has established its Traffic Control Facility Fee for the purpose of collecting funds to pay for the cost of constructing localized transportation improvements. The Traffic Control Facility Fee includes signal costs and minor roadway improvements. Such fees shall be applicable to the Project and payable in connection with the issuance of building permits. City shall use the Traffic Control Facility fees paid in connection with the Project for improvements located at intersections in which the impact of the Project is determined to be less than 50%. Nothing in this Agreement shall restrict the City from adopting an additional DIF related to traffic impacts as provided in Section 6.5.2, which DIF shall be applicable to the Project as provided therein.

7.5.2 TUMF. Some of the roadway improvements that are required to be constructed by the Developer to serve the Project are included in the TUMF program. The City agrees that the Developer shall be entitled to credit against the TUMF fees otherwise applicable to the Project as a result of Developer’s funding or construction of such improvements and shall fully cooperate with the Developer in obtaining and using such credit. Upon City’s election in its sole discretion, City may obligate Developer to enter into an agreement with City
substantially in the form attached hereto as Exhibit J which provides for the Developer to construct certain improvements as identified by City which are included in the TUMF program, and for the application of such credits for the specified projects. Developer shall not be obligated pursuant to such agreement to expend more than Ten Million Dollars ($10,000,000) of its own funds. Developer's obligation to enter into such agreement shall be conditioned upon the formation of a CFD in accordance with Section 5.2 hereof, and City’s right-of-way acquisition. Developer shall be responsible for funding of engineering, right-of-way acquisition and CEQA approvals for the specified improvement project. Upon execution of such an agreement, TUMF fees in the amount of the project costs shall be deemed paid.

8. DEDICATIONS AND CONVEYANCES OF PROPERTY INTERESTS.

8.1 Park Improvements.

8.1.1 Neighborhood/Community Parks. Prior to the construction of any parks, the Developer shall meet with both the Director and the Director of Parks and Recreation to review the provisions set forth in the Specific Plan outlining the facilities to be provided at each park and discuss the Developer’s plans for near term construction of the parks. Prior to development of each park, a detailed site plan consistent with the Specific Plan shall be prepared by the Developer and approved by the Director and the Parks and Recreation Commission. The Developer shall complete the construction of neighborhood parks, Planning Areas 10-13, and the paseos in the SCE easement, Planning Areas 14A, 14B, 14C and 14D, within the times set forth in the Public Improvements Schedule, and no later than the issuance of the final Certificate of Occupancy for residential units within the phase that includes the park. Upon completion of each neighborhood park, the City shall, within 10 working days after the ninety (90) day maintenance period has expired, develop final punch lists of items to be corrected prior to acceptance by the City. Upon correction of final punch list items by the Developer, the City shall accept the park within 30 days of the date of the final inspection.

8.2 Drainage Facilities. Planning Areas 15A and 15B are required areas of detention, recharge and conveyance of Project created and natural storm flows through the Project as set forth in Section 5.4 above. Planning Area 11 will include water quality basins and flood conveyance facilities. A portion of each applicable Planning Area may be ultimately transferred to the City (or the Riverside County Flood Control and Water Conservation District or other district upon district consent) for acceptance and maintenance, but the Developer shall have the right to utilize it until such time as Development has fully or partially occurred for erosion control purposes.

8.3 Satellite Water Treatment Plant. The Director of Public Works Director shall determine the location of a two to five acre portion of Planning Area 16-A for the onsite treatment of Project-related and other localized wastewater flows.

8.4 Fire Station. Developer shall be required to pay currently applicable City fire DIFs for each home constructed within the Project. Prior to the issuance of the 1,350th building permit for the Project, Developer shall dedicate an approximately 1.0 acre site for a fire station at the location on the easterly portion of PA-10 designated by Developer ("Fire Station Site"). The Fire Station Site shall be in a "super pad" state with wet utilities stubbed to the site at
the time of dedication. The Parties agree that upon dedication of said 1.0 acre site, Developer shall be granted a credit against fire DIFs for the Project in the amount of the fair market value of the Fire Station Site, as determined by an Appraisal of Land Value at the time of transfer. The City shall forthwith construct and equip a fire station on the Fire Station Site ("Fire Station"), which the City anticipates will be between 7,000 and 8,000 square feet in size and will contain two or three apparatus bays, five bedrooms sufficient to accommodate a staff of ten personnel, and four restrooms. The design of the Fire Station shall be in accordance with County Fire Department design guidelines. The City shall have the right, at its option, to transfer approximately one (1) acre of the park adjacent to the Fire Station Site to the Fire Station Site for Fire Station use. The Parties shall jointly agree upon the portion of the adjacent park site which will be reserved for future fire station expansion, and the design of such park shall

8.5 **Water Storage.** The City’s water facilities and improvements described in Section 7.3.4 include certain water tanks, pipelines, access roads and appurtenant facilities which largely serve the Development. All of the water tanks are located outside of the Project.

The Developer shall construct the on-site domestic water improvements in accordance with Section 7.3.2 and shall contribute its fair share of the costs of the off-site water tanks as and when required by the Development Approvals and applicable Phasing Plans.

8.6 **Water Recycling Facilities.** [To be inserted]

8.7 **Electric Substation.** Developer shall dedicate to City an approximately 0.25 acre site for an electrical substation to be constructed by City. The site shall be at the following location: ________________.

8.8 **Schedule of Public Improvements.** Developer's construction of public improvements and conveyance of completed improvements and property shall be in accordance with the Public Improvements Schedule attached hereto as Exhibit K.

9. **PROCESSING OF REQUESTS AND APPLICATIONS: OTHER GOVERNMENT PERMITS.**

9.1 **Processing.** In reviewing Future Development Approvals which are discretionary, the City may impose only those conditions, Exactions, and restrictions which are allowed by the Development Plan and this Agreement. Upon satisfactory completion by the Developer of all required preliminary actions, meetings, submittal of required information and payment of appropriate processing fees, if any, the City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by the Developer of the Project in accordance with the Existing Development Approvals. In this regard, the Developer, in a timely manner, will provide the City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and will cause the Developer’s planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor. It is the express intent of this Agreement that the parties cooperate and diligently work to implement any zoning or other land use, site plan, subdivision, grading, building or other approvals for
development of the Project in accordance with the Existing Development Approvals and those items set forth in Exhibit “E”.

9.2 Developer to Pay for Expedited Processing. If Developer elects, in its sole and absolute discretion, to request the City to incur overtime or third party consulting services to receive expedited processing by the City, the Developer shall pay all such overtime or third party consulting service costs, charges or fees incurred by City for such expedited processing.

9.3 General Time Periods for Processing.

9.3.1 Plan Review and Approval. The City shall provide comments for all plan checks for required infrastructure, building, grading, both mass and finished, architectural, erosion control or any other required plan submittal within reasonable and customary times, and will not unduly extend the number of plan checks. In the event that consensus between the City and the Developer regarding the content of the plans after the third submittal cannot be made, a meeting will be scheduled at the request of Developer to discuss how to reconcile the differences.

9.3.2 Architectural Plan Submittal Process. The Developer shall submit architectural plans to the Planning Department for review of the entire plan set for each submittal to ensure that they conform to the guidelines set forth in Specific Plan. In the event that consensus cannot be made after the third plan check, a meeting will be coordinated with the plan checker, Planning Department and the Developer or the Developer’s representative. The Planning Department, upon determining compliance with the guidelines set forth in the Specific Plan, shall approve the plans. Additional architectural enhancements that are above and beyond the design guidelines will be implemented at the Developer’s sole and absolute discretion but are subject to review by City if proposed.

9.4 Precise Grading/Plot Plan Revisions. In the event that the Developer wishes to revise house plan type or elevation on an approved plot plan or revised grading plan, City Engineering and Planning staff review and approval shall be done over the counter.

9.5 Additional Inspectors and Plan Checkers. In the event that the Developer requests it, the City shall permit overtime, including both additional days and hours, for inspections and plan checking at the Developer’s expense. In the event that the City is unable to provide inspectors or plan checkers capable of meeting the demand for inspections or plan checks required for the Development of the Project in a timely fashion, the City shall, if requested to do so by the Developer and at the Developer’s expense, employ additional private entities or persons to perform such services.

9.6 Tentative Subdivision Maps. The City shall extend through the Term hereof (pursuant to Government Code § 66452.6) all Master Tract Maps and all tentative and vesting tentative Subdivision Maps applied for by the Developer during the term of this Agreement and approved by the City in the future.

9.7 Multiple Final Subdivision Maps. The Developer may file as many final maps over a tentative Subdivision Map as it deems appropriate in its sole and absolute discretion.
9.8 **A Maps.** The Developer may have an A Map approved for the purpose of conveying portions of the Developer’s Property to others and/or for the purpose of creating legal lots which may be used as security for loans to develop the Developer’s Property. Any such map shall not authorize any Development and shall not be subject to any conditions, Exactions or restrictions, other than monumentation and conditions which do not require the payment of money or the installation or construction of improvements.

9.9 **Water Availability.** Any final Subdivision Map prepared for the Developer’s Property, or any portion of the Developer’s Property, shall comply with the provisions of Government Code § 66473.7.

9.10 **Other Governmental Permits.** The Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. The City shall cooperate with the Developer in its efforts to obtain such permits and approvals.

9.11 **Public Agency Coordination.** The City and Developer shall cooperate and use reasonable efforts in coordinating the implementation of the Development Plan with other public agencies, if any, having jurisdiction over the Property or the Project.

9.12 **Annexation.** This Agreement’s effectiveness over land within the Developer’s Property that is currently not within the City is subject to the annexation of that land into the City. If the land is annexed into the City, the terms of this Agreement shall automatically apply to all portions of that land upon its annexation. In the event that annexation of portions of the Developer’s Property not currently within the City is not approved by LAFCO, or for any other reason is not annexed to the City, then any such portions shall be excluded from this Agreement. The City shall, subject to the negotiation of a tax allocation agreement with the County of Riverside acceptable to City, use its best efforts to expeditiously accomplish the annexation of those portions of the Developer’s Property not within the City, or such portions thereof as may be approved by the Developer, to the City.

10. **AMENDMENT AND MODIFICATION OF DEVELOPMENT AGREEMENT.**

10.1 **Initiation of Amendment.** Either Party may propose an amendment to this Agreement.

10.2 **Procedure.** Except as set forth in Section 10.4 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance, and meet the requirements of the Development Agreement Statute § 65867.

10.3 **Consent.** Except as expressly provided in this Agreement, no amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of each of the Parties hereto and recorded in the Official Records of Riverside County.

10.4 **Minor Modifications.**
10.4.1 Flexibility Necessary. The provisions of this Agreement require a close degree of cooperation between the City and the Developer. Implementation of the Project may require minor modifications of the details of the Development Plan and affect the performance of the Parties under this Agreement. The anticipated refinements to the Project and the Development of the Developer’s Property may demonstrate that clarifications to this Agreement and the Existing Land Use Regulations are appropriate with respect to the details of performance of the City and the Developer. The Parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, non-substantive and procedural modifications of the Development Plan may be made in accordance with the procedures on Section 5.1.5 of the Specific Plan.

10.4.2 Hearing Rights Protected. Notwithstanding the foregoing, City will process any change to this Development Agreement consistent with state law and will hold public hearings thereon if so required by state law and the parties expressly agree nothing herein is intended to deprive any party or person of due process of law.

10.5 Effect of Amendment to Development Agreement. Except as expressly set forth in any such amendment, an amendment to this Agreement will not alter, affect, impair, modify, waive, or otherwise impact any other rights, duties, or obligations of either Party under this Agreement.

11. RESERVATIONS OF AUTHORITY.

11.1 Limitations, Reservations and Exceptions. Notwithstanding anything to the contrary set forth hereinabove, in addition to the Existing Land Use Regulations, only the following Land Use Regulations adopted by City hereafter shall apply to and govern the Development of the Developer’s Property (“Reservation of Authority”):

11.1.1 Future Regulations. Future Land Use Regulations which (i) are not in conflict with the Existing Land Use Regulations, (ii) which would be applicable under the Development Agreement statute (§ 65866); (iii) if in conflict with the Existing Land Use Regulations but the application of which to the Development of the Developer’s Property has been consented to in writing by Developer.

11.1.2 State and Federal Laws and Regulations. As provided in Government Code §65869.5, and notwithstanding any other provisions of this Agreement, this Agreement shall not preclude the application to the Property of changes in City laws, regulations, plans or policies to the extent that such changes in the City laws, regulations, plans or policies are specifically mandated and required to be applied to the Property by changes in state or federal laws or regulations enacted after the Effective Date of this Agreement. Where such state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of the Development Agreement, those provisions shall be modified, through revision or suspension, to the extent necessary to comply with such state or federal laws or regulations.

11.1.3 Public Health and Safety/Uniform Codes.
11.1.3.1 Adoption Automatic Regarding Uniform Codes. This Agreement shall not prevent the City from adopting Future Land Use Regulations or amending Existing Regulations which are Uniform Building, Electrical, Plumbing, Mechanical, or Fire Codes applicable throughout the City.

11.1.3.2 Adoption Regarding Public Health and Safety/Uniform Codes. This Development Agreement shall not prevent the City from adopting Future Land Use Regulations respecting public health and safety to be applicable throughout the City which directly result from findings by the City that failure to adopt such Future Land Use Regulations would result in a condition injurious or detrimental to the public health and safety and that such Future General Regulations are necessary to correct or avoid such injurious or detrimental condition.

11.1.4 Amendments to Codes for Local Conditions. Notwithstanding the foregoing, no construction within the Project shall be subject to any provision in any of the subsequent Uniform Construction Codes, adopted by the State of California, but modified by the City to make it more restrictive than the provisions of previous Uniform Construction Codes of the City, notwithstanding the fact that the City has the authority to adopt such more restrictive provision pursuant to the California Building Standards Law, including, but not limited to, Health and Safety Code § 18941.5, unless such amendment applies City-wide. The City shall give Developer prior written notice of the proposed adoption of such amendment and Developer shall have the right to present its objections to the amendment.

11.2 Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of the City possess authority to regulate aspects of the Development of the Developer’s Property separately from, or jointly with, the City and this Agreement does not limit the reasonable authority of such other public agencies.

11.3 Fees, Taxes and Assessments. Notwithstanding any other provision herein to the contrary, the City retains the right (i) to impose or modify Processing Fees and Development Impact Fees as provided in Article 7, (ii) to impose or modify business licensing or other fees pertaining to the operation of businesses, (iii) to impose or modify taxes and assessments which apply City-wide such as utility taxes, sales taxes and transient occupancy taxes, (iv) to impose or modify fees and charges for City services such as electrical utility charges, water rates, and sewer rates, (v) to impose or modify a community-wide or area-wide assessment district which does not predominately apply to the Developer’s Property, and (vi) to impose or modify any fees, taxes or assessments similar to the foregoing.

11.4 Police Power. In all respects not provided for in this Agreement, the City shall retain full rights to exercise its police power to regulate the development of the Property, and any uses or developments requiring a site plan, tentative tract map, or other discretionary permit or approval as required pursuant to the Existing Land Use Regulations shall require a permit or approval pursuant to this Agreement; provided, however, that the City's discretion with respect to such actions shall be executed consistent with Developer's vested rights under this Agreement. Nothing in this Agreement shall preclude the City from attaching usual and customary conditions to such discretionary approvals provided such conditions (i) are applied in the same or substantially equivalent form to other similar approvals throughout the City, (ii) do
not affect the use, density, or intensity of development previously approved for the Project, and (iii) are not materially inconsistent with this Agreement.

12. **ANNUAL REVIEW.**

12.1 **Annual Monitoring Review.** Following Commencement of Construction, the City and the Developer shall review the performance of this Agreement, and the Development of the Project, on or about each anniversary of the Effective Date (the “**Annual Review**”). The reasonable cost of the Annual Review shall be borne by Developer and Developer shall pay a deposit in an amount requested by City to pay for such review. As part of each Annual Review, within ten (10) days after each anniversary of this Agreement, the Developer shall deliver to the City all information reasonably requested by City (i) regarding the Developer’s performance under this Agreement demonstrating that the Developer has complied in good faith with the terms of this Agreement and (ii) as required by the Existing Land Use Regulations.

The Director shall prepare and submit to Developer and thereafter to City Council a written report on the performance of the Project, and identify any deficiencies. If any deficiencies are noted, or if requested by a Councilmember a public hearing shall be held before the City Council on the report to Council. The Developer’s written response shall be included in the Director’s report. The report to Council shall be made within 45 days of the anniversary date.

If the City determines that the Developer has substantially complied with the terms and conditions of this Agreement, the Annual Review shall be concluded. If the City finds and determines that the Developer has not substantially complied with the terms and conditions of this Agreement for the period under review, the City may declare a default by the Developer in accordance with Section 13.1.

12.2 **Estoppel Certificate.** If, at the conclusion of an Annual Review, the City finds that the Developer is in substantial compliance with this Agreement, the City shall, upon request by the Developer, issue an Estoppel Certificate to the Developer substantially in the form shown on Exhibit “C”.

12.3 **Failure to Conduct Annual Review.** The failure of the City to conduct the Annual Review shall not be a Developer Default unless Developer fails to cooperate in providing necessary information.

13. **DEFAULT, REMEDIES AND TERMINATION.**

13.1 **Rights of Non-Defaulting Party after Default.** The Parties acknowledge that both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a Default or to enforce any covenant or agreement herein except as provided in Section 13.2 below. Before this Agreement may be terminated or action may be taken to obtain judicial relief, the Party seeking relief (“**Non-Defaulting Party**”) shall comply with the notice and cure provisions of this Article 13.

13.2 **No Recovery for Monetary Damages.** The nature of a development agreement under the Development Agreement Statute is a very unusual contract involving
promoting a very large development project facing many complex issues including geologic, environmental, finance, market, regulatory and other constantly evolving factors over an extremely long time frame. The high level of uncertainty and risk involved justify the extraordinary commitments made to the Developer. However, the original persons representing the parties and approving the transaction are only likely to be involved with the Project for a limited time in comparison to the overall life of the Project.

It is highly likely that misunderstandings will develop over time. Moreover, municipal budgets are extremely constrained, and a threat of recovery of damages against a municipal entity may pressure a municipality with limited resources to settle in a manner adverse to its interests and those of its citizens. Finally, the municipal entity represents the public welfare of the entire community, a community who cannot directly represent themselves. The City Council has come to believe that entering into a development agreement with the Developer vesting the Developer with the extraordinary rights provided herein is in the best interests of the community through the Developer’s active engagement with the community and open communications over several years. It is critical to the success of this Project that as inevitable obstacles are met, and the persons implementing the Project change over the long time span of the Project, that close working relationships be maintained. Accordingly, in this Agreement, the rights of enforcement are limited as follows (i) the remedy of monetary damages is not available to either Party, and (ii) there is no shortcut to a mediation or arbitration procedure where a nonelected representative can arbitrarily determine land use development issues.

For purposes of enforcement, stated positively, the Parties shall have the equitable remedies of specific performance, injunctive and declaratory relief, or a mandate or other action determining that a Party has exceeded its authority, and similar remedies, other than recovery of monetary damages, to enforce their rights under this Agreement. The City shall have all administrative rights and remedies available to it upon a default of Developer, including without limitation any right it may have to withhold building permits and certificates of occupancy and to engage in code enforcement procedures. The Parties shall have the right to recover their attorney fees and costs pursuant to Section 19.9 in such action. Moreover, the Developer shall have the right to a public hearing before the City Council before any default can be established under this Agreement, as provided in Section 13.6.

13.3 Recovery of Monies Other Than Damages.

13.3.1 Restitution of Improper Exactions. In the event any Exactions, whether monetary or through the provision of land, good or services, are imposed by City on the Development of the Developer’s Property other than those authorized pursuant to this Agreement, the Developer shall be entitled to recover from City restitution of all such improperly assessed Exactions, either in kind or the value in lieu of the Exaction, together with interest thereon at the rate of the maximum rate provided by law per year from the date such Exactions were provided to City to the date of restitution.

13.3.2 Monetary Default. In the event the Developer fails to perform any monetary obligation under this Agreement, City may sue for the payment of such sums to the extent due and payable. The Developer shall pay interest thereon at the lesser of: (i) ten percent
(10%) per annum, or (ii) the maximum rate permitted by law, from and after the due date of the monetary obligation until payment is actually received by the City.

13.4 Compliance with the Claims Act. Compliance with this Article 13 shall constitute full compliance with the requirements of the Claims Act, Government Code § 900 et seq., pursuant to Government Code § 930.2 in any action brought by the Developer.

13.5 Notice and Opportunity to Cure. A Non-Defaulting Party in its discretion may elect to declare a Default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party (“Defaulting Party”) to perform any material duty or obligation of the Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and specifying the actions required to cure such breach or failure. The Defaulting Party shall be deemed in Default under this Agreement, if the breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such default within thirty (30) days after the date of such notice. However, if such non-monetary Default cannot reasonably be cured within such thirty (30) day period, or if such Default could reasonably be cured but governmental approvals or permits are required that cannot be obtained with commercially reasonable efforts within such thirty (30) day period, the Defaulting Party shall not be deemed in breach of this Agreement provided the Defaulting Party:

1. Notifies the Non-Defaulting Party of the Defaulting Party’s proposed action to cure the default;

2. Commences commercially reasonable efforts to cure the default within the thirty (30) day period;

3. Makes reasonable periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and

4. Diligently prosecutes such cure to completion.

13.6 Dispute Resolution.

13.6.1 Meet & Confer. Prior to any Party issuing a Default Notice hereunder, the Non-Defaulting Party shall inform the Defaulting Party either orally or in writing of the Default and request a meeting to meet and confer over the alleged default and how it might be corrected. The Parties through their designated representatives shall meet within ten (10) days of the request therefore. The Parties shall meet as often as may be necessary to correct the conditions of default, but after the initial meeting either Party may also terminate the meet and confer process and proceed with the formal Default Notice.

13.6.2 Termination Notice. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Non-Defaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement and other Agreements (“Termination Notice”). The Termination Notice shall state that the Non-Defaulting Party will elect to terminate the Agreement and such other Agreements as the Non-Defaulting Party elects to
terminate within thirty (30) days and state the reasons therefor (including a copy of any specific charges of default) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Non-Defaulting Party’s election to terminate Agreements will only be waived if (i) the Defaulting Party fully and completely cures all defaults prior to the date of termination, or (ii) pursuant to Section 13.6.3 below.

13.6.3 Hearing Opportunity Prior to Termination. Prior to any termination, a termination hearing shall be conducted as provided herein ("Termination Hearing"). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. At said Termination Hearing, the Defaulting Party shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the City Council may, by adopted resolution, act as follows:

A. Decide to terminate this Agreement,

B. Determine that the alleged Defaulting Party is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or

C. Impose conditions on a finding of default and a time for cure, such that Defaulting Party’s fulfillment of said conditions will waive or cure any default.

Findings of a default or a condition of default must be based upon substantial evidence supporting the following three findings: (i) that a default in fact occurred and has continued to exist without timely cure, (ii) that the Non-Defaulting Party’s performance has not excused the default; and (iii) that such default has, or will, cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, or the financial terms established in the Agreement, or such other interests arising from the Project. Notwithstanding the foregoing, nothing herein shall vest authority in the City Council to unilaterally change any material provision of this Agreement.

Following the decision of the City Council, any Party dissatisfied with the decision may seek judicial relief consistent with this Article 13.

13.7 Waiver of Breach. By not challenging any Development Approval within 90 days of the action of City enacting the same, Developer shall be deemed to have waived any claim that any condition of approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement. By recordation of a final map on all or any portion of the Developer’s Property, the Developer shall be deemed to have waived any claim that any condition of approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement.

13.8 Limitations on Defaults. Notwithstanding any provision in this Agreement to the contrary, a Default by one Owner shall not constitute a Default by an Owner of a portion of the Developer’s Property, which is not the owner of the portion of the Developer’s Property that is the subject of the Default (an “Innocent Owner”). Likewise, a Default by an
Owner with respect to a Lot (or group of Lots) it owns or leases shall not constitute a Default by an Innocent Owner, nor shall the Default by another Owner of a portion of the Developer’s Property not owned by an Innocent Owner constitute a Default of the Innocent Owner. Therefore, (i) no Innocent Owner shall have any liability to the City for, or with respect to, any Default by another Owner or any Default of any other Owner, (ii) an Innocent Owner shall have no liability to the City for, or with respect to, any Default by any other Owner, and (iii) the City’s election to terminate this Agreement as a result of a Default by an Owner shall not result in a termination of this Agreement with respect to either (x) any portion of the Developer’s Property not owned by such Owner or (y) those Lots owned or leased by an Innocent Owner until such time that this Agreement would otherwise terminate in accordance with its terms.

13.9 **Venue.** In the event of any judicial action, venue shall be in Riverside County.

14. **ASSIGNMENT.**

14.1 **General.** Subject to the City's consent pursuant to Section 14.3 hereof, Developer shall not transfer this Agreement or any of the Developer’s rights hereunder, directly or indirectly, voluntarily or by operation of law, unless and until the successor party and Developer sign and deliver to the City an assignment and assumption agreement, substantially in the form attached hereto as Exhibit “H,” pursuant to which the successor party shall assume such obligations. The transferee’s and Developer’s execution of the assignment and assumption agreement shall be deemed to release the Developer of liability for performance under this Agreement of the obligations specified in such assignment and assumption agreement and the City shall thereafter look solely to that transferee for compliance with this Agreement with respect to such obligations and the portion of the Developer’s Property so transferred, provided that the Developer shall not be released from liability for any defaults on its part existing at the time of execution of the assignment and assumption agreement (or which would become a default after failure to cure after providing required notices and the passage of time), or for defaults related to other portions of the Property or other obligations of Developer which were not the subject of the assignment and assumption agreement.

14.2 **Subject to Terms of Agreement.** Following any such transfer or assignment of any of the rights and interests of the Developer under this Agreement, in accordance with Section 14.1 above, the exercise, use and enjoyment of such rights and interests shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were the Developer.

14.3 **Termination of Agreement With Respect to Individual Lots.** Notwithstanding any provisions of this Agreement to the contrary, this Agreement shall terminate as to any single-family residential Lot which has been finally subdivided and improved with all required public improvements and which is individually (and not in “bulk”) sold or otherwise conveyed to an owner-user and thereupon, and without the execution or recordation of any further document or instrument, such Lot shall be released from and no longer be subject to the provisions of this Agreement. In addition, this Agreement shall terminate as to any Lot or other portion of the Developer’s Property that is sold or otherwise conveyed to a Local Agency, public utility or POA.
14.4 **Declaration of Covenants, Conditions and Restrictions.** Prior to the transfer of any portion of the Project to a third party, the Developer shall submit a proposed form of Declaration of Covenants, Conditions and Restrictions to be recorded against the applicable subdivision to the City for its review and approval (“CC&Rs”). The CC&Rs must be recorded prior to issuance of Certificates of Occupancy, and Developer shall pay City’s review costs. It is anticipated that the CC&Rs will contain, among other things, protective covenants to protect and preserve the integrity and value in the subdivision, including but not limited to use restrictions, maintenance covenants, EIR mitigation measures, restrictions under this Agreement which will continue to apply to the subdivision, covenants for construction and completion of the improvements and a provision giving the City the right to enforce the CC&Rs, including the right to recover its enforcement costs if there is noncompliance following notice and the opportunity to cure.

15. **RELEASES AND INDEMNITIES.**

15.1 **The City’s Release As To Actions Prior To Effective Date.** The City forever discharges, releases and expressly waives as against the Developer and its attorneys and employees any and all claims, liens, demands, causes of action, excuses for nonperformance (including but not limited to claims and/or defenses of unenforceability, lack of consideration, and/or violation of public policy), losses, damages, and liabilities, known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, based in contract, tort, or other theories of direct and/or of agency liability (including but not limited to principles of respondent superior) that it has now or has had in the past, arising out of or relating to the currently existing land use plans for the Developer’s Property or any portion thereof.

15.2 **The Developer’s Release As To Actions Prior To Effective Date.** The Developer forever discharges, releases and expressly waives as against the City and its respective councils, boards, commissions, officers, attorneys and employees any and all claims, liens, demands, causes of action, excuses for nonperformance (including but not limited to claims and/or defenses of unenforceability, lack of consideration, and/or violation of public policy), losses, damages, and liabilities, known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, based in contract, tort or other theories of direct and/or of agency liability (including but not limited to principles of respondent superior) that they have now or have had in the past, arising out of or relating to the currently existing land use plans for the Developer’s Property or any portion thereof.

15.3 **Third-Party Litigation.**

15.3.1 **Non-liability of City.** As set forth above, the City has determined that this Agreement is consistent with the General Plan and that the Development Approvals meet all of the legal requirements of State law. The Parties acknowledge that:

A. In the future there may be challenges to legality, validity and adequacy of the General Plan, Land Use Regulations, Development Approvals and/or this Agreement; and

B. If successful, such challenges could delay or prevent the
performance of this Agreement and the development of the Developer’s Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Section 15, the City shall have no liability under this Agreement for any failure of the City to perform under this Agreement or the inability of the Developer to develop the Developer’s Property as contemplated by the Development Plan or this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, the Land Use Regulations, the Development Approvals, this Agreement, or portions thereof, are invalid or inadequate or not in compliance with law.

15.3.2 Revision of Land Use Restrictions. If, for any reason, the General Plan, Land Use Regulations, Development Approvals, this Agreement or any part thereof is hereafter judicially determined, as provided above, to not be in compliance with the State or Federal Constitution, laws or regulations and, if such noncompliance can be cured by an appropriate amendment thereof otherwise conforming to the provisions of this Agreement, then this Agreement shall remain in full force and effect to the extent permitted by law. The Development Plan, Development Approvals and this Agreement shall be amended, as necessary, in order to comply with such judicial decision; provided that City shall retain its discretion as to the approval of legislative changes to the General Plan, Land Use Regulations or other Development Approvals.

15.3.3 Participation in Litigation: Indemnity. The Developer shall indemnify the City and its elected boards, commissions, officers, agents and employees and will hold and save them and each of them harmless from any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations and expenses (including but not limited to attorneys’ fees and costs) against the City and/or agent for any such Claims or Litigation (as defined in Section 1.17) and shall be responsible for any judgment arising therefrom. The City shall provide the Developer with notice of the pendency of such action and shall request that the Developer defend such action. The Developer may utilize the City Attorney’s office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City. The Developer shall provide a deposit in the amount of 150% of the City’s estimate, in its sole and absolute discretion, of the cost of litigation, including the cost of any award of attorneys’ fees, and shall make additional deposits as requested by City to keep the deposit at such level. The City may ask for further security in the form of a deed of trust to land of equivalent value. If the Developer fails to provide or maintain the deposit, the City may abandon the action and the Developer shall pay all costs resulting therefrom and City shall have no liability to the Developer. The Developer’s obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. The Developer shall have the right, within the first 30 days of the service of the complaint, in its sole and absolute discretion, to determine that it does not want to defend any litigation attacking this Agreement or the Development Approvals, in which case the City shall allow the Developer to settle the litigation on whatever terms the Developer determines, in its sole and absolute discretion, but Developer shall confer with City before acting and cannot bind City to such settlement. In that event, the Developer shall be liable for any costs incurred by the City up to the date of settlement but shall have no further obligation to the City beyond the payment of those costs. In the event of an appeal, or a settlement offer, the Parties shall confer in good faith as to how to proceed. Notwithstanding the
Developer’s indemnity for claims and litigation, the City retains the right to settle any litigation brought against it in its sole and absolute discretion and the Developer shall remain liable except as follows: (i) the settlement would reduce the scope of the Project by 10% or more, and (ii) the Developer opposes the settlement. In such case the City may still settle the litigation but shall then be responsible for its own litigation expense but shall bear no other liability to the Developer.

15.4 Hold Harmless: Developer’s Construction and Other Activities. The Developer shall defend, save and hold the City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs (including attorneys’ fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from the Developer’s or the Developer’s agents, contractors, subcontractors, agents, or employees’ operations under this Agreement, whether such operations be by the Developer or by any of the Developer’s agents, contractors or subcontractors or by anyone or more persons directly or indirectly employed by or acting as agent for the Developer or any of the Developer’s agents, contractors or subcontractors. Nothing herein is intended to make the Developer liable for the acts of the City’s officers, employees, agents, contractors of subcontractors.

15.5 Survival of Indemnity Obligations. All indemnity provisions set forth in this Agreement shall survive termination of this Agreement for any reason other than the City’s Default.

16. EFFECT OF AGREEMENT ON TITLE.

16.1 Covenant Runs with the Land. Subject to the provisions of Sections 14 and 18 and pursuant to the Development Agreement Statute (§ 65868.5):

A. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Developer’s Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns;

B. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law; and

C. Each covenant to do or refrain from doing some act on the Developer’s Property hereunder (i) is for the benefit of and is a burden upon every portion of the Developer’s Property, (ii) runs with such lands, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and each other person succeeding to an interest in such lands.

17. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION.
17.1 Non-liability of City Officers and Employees. No official, agent, contractor, or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or to its successor, or for breach of any obligation of the terms of this Agreement.

17.2 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which affects the financial interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any state statute or regulation.

17.3 Covenant Against Discrimination. The Developer covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. The Developer shall take affirmative action to insure that employees are treated during employment without regard to their race, color, creed religion, sex, marital status, national origin or ancestry.

18. MORTGAGEE PROTECTION.

18.1 Definitions. As used in this Section, the term “mortgage” shall include any mortgage, whether a leasehold mortgage or otherwise, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term “holder” shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

18.2 No Encumbrances Except Mortgages to Finance the Project. Notwithstanding the restrictions on transfer in Section 14, mortgages required for any reasonable method of financing of the construction of the improvements are permitted but only for the following: (i) for the purpose of securing loans of funds used or to be used for financing the acquisition of a separate lot(s) or parcel(s), (ii) for the construction of improvements thereon, in payment of interest and other financing costs, and (iii) for any other expenditures necessary and appropriate to develop the Project under this Agreement, or for restructuring or refinancing any for same. No map permitted herein, even if for financing purposes, shall permit financing for other than purposes of developing the Project solely. The Developer (or any entity permitted to acquire title under this Agreement) shall notify the City in advance of any future mortgage or any extensions or modifications thereof. Any lender which has so notified the City shall not be bound by any amendment, implementation, or modification to this Agreement without such lender giving its prior written consent thereto. In any event, the Developer shall promptly notify the City of any mortgage, encumbrance, or lien that has been created or attached thereto prior to completion of construction, whether by voluntary act of the Developer or otherwise.

18.3 Developer’s Breach Not Defeat Mortgage Lien. This Agreement shall be senior and superior to the lien of any Mortgage. Notwithstanding the foregoing, the Developer’s breach of any of the covenants or restrictions contained in this Agreement shall not defeat or
render void the lien of any mortgage made in good faith and for value but, unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage whose interest is acquired by foreclosure, trustee’s sale, deed in lieu of foreclosure or otherwise.

18.4 Holder Not Obligated to Construct or Complete Improvements. The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Project or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

18.5 Notice of Default to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer hereunder, the City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to the City therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

18.6 Right to Cure. Each holder (insofar as the rights of City are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, and one hundred twenty (120) days after the Developer’s cure rights have expired, whichever is later, to:

A. Obtain possession, if necessary, and to commence and diligently pursue the cure until the same is completed, and

B. Add the cost of said cure to the security interest debt and the lien or obligation on its security interest; provided that, in the case of a default which cannot with diligence be remedied or cured within such cure periods referenced above in this Section 18.6, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed the Developer’s obligations to the City by written agreement satisfactory to City with respect to the Project or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations.

18.7 City’s Rights upon Failure of Holder to Complete Improvements. In any case where one hundred eighty (180) days after default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage creating a lien
or encumbrance upon the Project or portion thereof has not exercised the option to construct afforded in this Section or, if it has exercised such option and has not proceeded diligently with construction, the City may, after ninety (90) days’ notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

A. The unpaid mortgage, debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);

B. All expenses, incurred by the holder with respect to foreclosure, if any;

C. The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the applicable portion of the Project, such as insurance premiums or real estate taxes, if any;

D. The costs of any improvements made by such holder, if any; and

E. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by the City.

If the City has not purchased the mortgage within ninety (90) days of the expiration of the ninety (90) days referred to above, then the right of the City to purchase shall expire.

In the event that the holder does not exercise its option to construct afforded in this Section, and if the City elects not to purchase the mortgage of holder, upon written request by the holder to the City, the City shall use reasonable efforts to assist the holder in selling the holder’s interest to a qualified and responsible party or parties (as determined by City), who shall assume the obligations of making or completing the improvements required to be constructed by the Developer, or such other improvements in their stead as shall be satisfactory to the City. The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs A through E hereinabove and any balance remaining thereafter shall be applied as follows:

(1) First, to reimburse the City for all costs and expenses actually and reasonably incurred by the City, including, but not limited to, payroll expenses, management expenses, legal expenses, and others;

(2) Second, to reimburse the City for all payments made by City to discharge any other encumbrances or liens on the applicable portion of the Project or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees;
Third, to reimburse the City for all costs and expenses actually and reasonably incurred by the City, in connection with its efforts assisting the holder in selling the holder’s interest in accordance with this Section; and

Fourth, any balance remaining thereafter shall be paid to the Developer.

18.8 Right of City to Cure Mortgage Default. In the event of a default or breach by the Developer (or entity permitted to acquire title under this Section) prior to completion of the Project or the applicable portion thereof, and the holder of any such mortgage has not exercised its option to complete the development, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the Developer or other entity of all costs and expenses incurred by the City in curing the default, to the extent permitted by law, as if such holder initiated such claim for reimbursement, including legal costs and attorneys’ fees, which right of reimbursement shall be secured by a lien upon the applicable portion of the Project to the extent of such costs and disbursements. Any such lien shall be subject to:

A. Any Mortgage; and

B. Any rights or interests provided in this Agreement for the protection of the holders of such Mortgages; provided that nothing herein shall be deemed to impose upon the City any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Project in the event of its enforcement of its lien.

18.9 Right of the City to Satisfy Other Liens on the Developer’s Property After Conveyance of Title. After the conveyance of title and prior to completion of construction and development, and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Project, the City shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Project or any portion thereof to forfeiture or sale.

19. MISCELLANEOUS.

19.1 Estoppel Certificates. Either Party (or a Mortgagee under Section 18) may at any time deliver written notice to the other Party requesting an Estoppel Certificate stating:

A. The Agreement is in full force and effect and is a binding obligation of the Parties;

B. The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments; and

C. There are no existing defaults under the Agreement to the actual knowledge of the party signing the Estoppel Certificate.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the
requesting Party within thirty (30) days after receipt of the request. The Planning Director may sign Estoppel Certificates on behalf of the City. An Estoppel Certificate may be relied on by assignees and Mortgagees. The Estoppel Certificate shall be substantially in the same form as Exhibit “C”.

19.2 Force Majeure. The time within which the Developer or the City shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, natural disasters, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions on priority, initiative or referendum, moratoria, processing with governmental agencies other than the City, unusually severe weather, third party litigation as described in Section 15.3 above, or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if written notice by the party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. Any act or failure to act on the part of a Party shall not excuse performance by that Party.

19.3 Interpretation.

19.3.1 Construction of Development Agreement. The language of this Agreement shall be construed as a whole and given its fair meaning. The captions of the sections and subsections are for convenience only and shall not influence construction. This Agreement shall be governed by the laws of the State of California. This Agreement shall not be deemed to constitute the surrender or abrogation of the City’s governmental powers over the Developer’s Property.

19.3.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and this Agreement supersedes all previous negotiations, discussions, and agreements between the Parties. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

19.3.3 Recitals. The recitals in this Agreement constitute part of this Agreement and each Party shall be entitled to rely on the truth and accuracy of each recital as an inducement to enter into this Agreement.

19.3.4 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefitted thereby of the covenants to be performed hereunder by such benefitted Party.

19.4 Severability. If any provision of this Agreement is adjudged invalid, void or unenforceable, that provision shall not affect, impair, or invalidate any other provision, unless such judgment affects a material part of this Agreement in which case the parties shall comply with the procedures set forth in Section 15.3.3 above.
19.5 Joint and Several Obligations. All obligations and liabilities of the Developer hereunder shall be joint and several among the obligees.

19.6 No Third Party Beneficiaries. The only Parties to this Agreement are the Developer and the City and their successors and assigns. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

19.7 Notice.

19.7.1 To Developer. Any notice required or permitted to be given by the City to the Developer under this Development Agreement shall be in writing and delivered personally to the Developer or mailed, with postage fully prepaid, registered or certified mail, return receipt requested, or sent by reliable overnight delivery service such as Fed Ex, addressed as follows:

Rancho San Gorgonio, LLC
10621 Civic Center Drive
Rancho Cucamonga, CA  91730
Attention:  Peter J. Pitassi, Senior Vice President

With a copy to:

Rancho San Gorgonio, LLC
10621 Civic Center Drive
Rancho Cucamonga, CA  91730
Attention:  Matt Jordan

or such other address as the Developer may designate in writing to the City.

19.7.2 To the City. Any notice required or permitted to be given by the Developer to the City under this Development Agreement shall be in writing and delivered personally to the City Clerk or mailed with postage fully prepaid, registered or certified mail, return receipt requested, or sent by reliable overnight delivery service such as Fed Ex, addressed as follows:

City of Banning
99 E. Ramsey Street
Banning, California  92220
Attention: City Manager

With a copy to:

City of Banning
99 E. Ramsey Street
Banning, California  92220
Attention:  City Attorney

or such other address as the City may designate in writing to the Developer.
Notices provided pursuant to this Section shall be deemed received at the date of delivery as shown on the affidavit of personal service or the Postal Service or overnight delivery receipt.

19.8 **Relationship of Parties.** It is specifically understood and acknowledged by the Parties that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. The only relationship between the City and the Developer is that of a government entity regulating the development of private property and the owner of such private property.

19.9 **Attorney’s Fees.** If either Party to this Agreement is required to initiate or defend litigation against the other Party, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney’s fees. Attorney’s fees shall include attorney’s fees on any appeal, and, in addition, a Party entitled to attorney’s fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to a final judgment.

19.10 **Further Actions and Instruments.** Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

19.11 **Time of Essence.** Time is of the essence in:

A. The performance of the provisions of this Agreement as to which time is an element; and

B. The resolution of any dispute which may arise concerning the obligations of the Developer and the City as set forth in this Agreement.

19.12 **Non-Liability of Officials and Employees of City.** No officer, employee, agent or representative of City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by City or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

19.13 **Amendments to Agreement.** In the event that Developer or its lender requests any amendments to this Agreement, or any of the documents to be executed pursuant to this Agreement, the City shall reasonably consider such request. Any alteration, change, or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party. Any costs incurred by the City in connection with such amendments requested by Developer or its lender, including without limitation attorneys’ fees for the review of the request and preparation of an amendment, and the cost of the
City’s consultants for undertaking analysis of the proposed amendment, shall be borne by the Developer.

19.14 Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

19.15 Time of the Essence. Time is expressly made of the essence with respect to the performance by the Parties of each and every obligation and condition of this Agreement.

19.16 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party’s right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

19.17 Execution.

19.17.1 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

19.17.2 Recording. The City Clerk shall cause a copy of this Agreement to be executed by the City and recorded in the Official Records of Riverside County no later than ten (10) days after the Effective Date (Gov’t Code § 65868.5). The recordation of this Agreement is deemed a ministerial act and the failure of the City to record the Agreement as required by this Section and the Development Agreement Statute does not make this Agreement void or ineffective.

19.17.3 Authority to Execute. The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to sign and deliver this Agreement on behalf of the Party he or she represents. The Parties each represent that (i) such Party is duly organized and existing, (ii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, (iii) the entering into of this Agreement does not violate any provision of any other Agreement to which such Party is bound and (iv) there is no litigation or legal proceeding which would prevent such Party from entering into this Agreement.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the City and the Developer have executed this Agreement on the date first above written.

“CITY”:

THE CITY OF BANNING, a municipal corporation

By: __________________________
Name: __________________________
Title: __________________________

ATTEST:

By: __________________________
City Clerk

APPROVED AS TO FORM:

By: __________________________
City Attorney

“DEVELOPER”:

RANCHO SAN GORGONIO, LLC,
a Delaware limited liability company

By: Diversified Pacific Opportunity Fund, I,
LLC, a Delaware limited liability company, Its Member

By: Diversified Pacific Development Group, LLC, a California limited liability company, Its Managing Member

By: __________________________
Matthew A. Jordan,
Managing Member
EXHIBIT “A”

MAP AND LEGAL DESCRIPTION OF DEVELOPER’S PROPERTY
EXHIBIT “B”

EXISTING DEVELOPMENT APPROVALS

1. City of Banning General Plan (as of Effective Date).

2. City of Banning Subdivision Ordinance, Municipal Code Title 16 (as of Effective Date).

3. City of Banning Zoning Code, Municipal Code Title 17 (as of Effective Date).

4. City of Banning Grading, Erosion, and Sediment Control Ordinance, Municipal Code Title 18 (as of Effective Date).

5. All other ordinances, resolutions, rules and regulations, and written adopted policies of the City of Banning governing the development and use of the Property (as of Effective Date).

6. ____________________________________________________________.

7. ____________________________________________________________.

8. ____________________________________________________________.
EXHIBIT “C”

ESTOPPEL CERTIFICATE

Date Requested: ________________________________
Date of Certificate: ________________________________
To: ___________________________________________ ("Recipient")

The City of Banning ("City") and Rancho San Gorgonio, LLC, a Delaware limited liability company ("Developer") have entered into a certain Development Agreement dated as of ____________________________ [Developer's interest in the Development Agreement has been assigned to _____________________]

This Estoppel Certificate certifies that, as of the Date of Certificate set forth above:

1. The Development Agreement remains in full force and effect and binding on City and Developer.

2. The Development Agreement has not been amended [except for the following: ________________________________].

3. To the best of City's knowledge, Developer is not in default under the Development Agreement [except for the following: ________________________________].

This Estoppel Certificate is provided solely for the benefit of Recipient and may not be relied upon or used by any other party.

City of Banning

By: __________________
Its: __________________
EXHIBIT “D”

DEVELOPMENT IMPACT FEES
EXHIBIT “E”

ADDITIONAL AGREEMENTS CONCERNING DEVELOPMENT
EXHIBIT “F”

PROPOSED PROJECT FACILITIES
EXHIBIT “G”

FINANCING PLAN

This Financing Plan sets forth the basic terms and conditions pursuant to which City and Developer will cooperate to establish one or more CFD(s) and designate Improvement Areas therein pursuant to the CFD Act to finance the Eligible Facilities and Eligible Services in connection with the Project. Capitalized terms not otherwise defined in this Financing Plan shall be defined as provided in the Agreement.

1. Goals and Policies for Financing. The principal objectives of this Financing Plan are to:
   
a. Provide City and Developer reasonable certainty that each CFD will be established in accordance with the Goals and Policies and this Financing Plan.
   
b. Provide basic parameters for the levy of special taxes within each CFD or Improvement Area to pay directly for Eligible Facilities (the “Facilities Special Taxes”) and Eligible Services (the “Services Special Taxes”) and to secure the issuance of bonds of each CFD or Improvement Area secured by and payable from the Facilities Special Taxes in order to finance the Eligible Facilities (“Bonds”).
   
c. Provide basic parameters for the issuance of Bonds by or for the CFD(s) and any Improvement Areas therein.

2. Formation. Subject to City Council approval, City shall initiate proceedings to establish a CFD upon Developer’s petition request pursuant to the CFD Act and submittal of City’s standard application form and receipt of an advance from Developer in an amount determined by City to pay for City’s estimated costs to be incurred in undertaking the proceedings to establish the CFD (“Formation Proceedings Costs”). City agrees that all such advances for Formation Proceedings Costs shall be eligible for reimbursement out of the first available proceeds of Surplus Special Taxes (defined below) and Bonds of the CFD and/or Facilities Special Taxes to the extent approved by the City’s Bond Counsel (“CFD Proceeds”). The exact terms and conditions for the advance of funds by Developer and the reimbursement of such advances shall be memorialized in a separate agreement between City and Developer. City agrees to use its best efforts to complete the proceedings to form each CFD and record the notice of special tax lien for the CFD and each Improvement Area therein within 210 days after City’s receipt of Developer’s complete application and deposit. While the Parties acknowledge that this Agreement cannot require the City or the City Council to form a CFD or issue Bonds, the City agrees that it shall not refuse Developer’s requests to form a CFD or issue Bonds except for good and reasonable cause.
3. **Boundaries.** The CFD boundary, or the boundaries of all CFDs if more than one is formed, shall encompass the Project. Each CFD may contain multiple Improvement Areas based on phasing of the Project within the CFD.

4. **Eligible Public Facilities and Discrete Components.** Subject to the Goals and Policies for Financing, and the conditions set forth in the following paragraphs, City shall authorize the CFDs to finance the acquisition or construction of the Eligible Facilities, which may include the following:

   a. Public streets and other related improvements within the public right-of-way
   b. Water facilities
   c. Storm drain facilities
   d. Sewer facilities
   e. Public parks, open space and landscaping
   f. Electrical facilities to the extent reasonable and to the extent authorized by the Act
   g. Any public facility to be constructed by City for which Developer is required to make a cash contribution pursuant to the Project’s conditions of approval or this Agreement or which is included in any City capital improvement fee program and which public facility is to be owned by the City, subject to credit against the corresponding fee.

The costs of any Eligible Facility to be constructed by Developer that are eligible to be financed with CFD Proceeds (“**Actual Costs**”) shall include the following, if permissible under the CFD Act:

   (i) The actual hard costs for the construction or the value of the Proposed Eligible Facility, including labor, materials and equipment costs;
   (ii) The costs of grading related to the Eligible Facility;
   (iii) The costs incurred in designing, engineering and preparing the plans and specifications for the Eligible Facility;
   (iv) The costs of environmental evaluation and mitigation of or relating to the Eligible Facility;
   (v) Fees paid to governmental agencies for, and costs incurred in connection with, obtaining permits, licenses or other governmental approvals for the Eligible Facility;
   (vi) Costs of construction administration and supervision;
(vii) Professional costs associated with the Eligible Facility, such as engineering, legal, accounting, inspection, construction staking, materials and testing and similar professional services; and

(viii) Costs of payment, performance and/or maintenance bonds and insurance costs directly related to the construction of the Eligible Facility.

(ix) Any other costs permitted by law.

The Eligible Facilities constructed by Developer, and for which Developer elects to submit payment requests, shall be bid, contracted for and constructed in accordance with the Acquisition Agreement to be entered into between City and Developer at the time of formation of the first CFD. The Acquisition Agreement shall provide additional detail, consistent with the provisions of the Goals and Polices for Financing and this Agreement, with respect to the acquisition and construction of the Eligible Facilities, including a more detailed description of the specific Eligible Facilities that will be eligible to be financed through the CFD and discrete components of each Eligible Facility that may be reimbursed prior to the completion of the entire Eligible Facility. The Acquisition Agreement will also provide additional detail with respect to the financing of the City’s construction of Eligible Facilities in satisfaction of corresponding City capital improvement fees, as elected by Developer. The CFD financing of the acquisition of an Eligible Facility constructed by Developer that is included in a City Capital improvement fee program or required by the Project conditions of approval, shall not preclude the Developer’s receipt of corresponding fee credits.

5. Eligible Services. The Eligible Services consist of the maintenance of City parks in Planning Areas 10, 11, 12 and 13.

6. Financing Parameters. Each CFD shall be authorized to levy Special Taxes of each Improvement Area and issue Bonds of each CFD or Improvement Area in one or more series to finance the Eligible Facilities in accordance with the basic parameters set forth below:

a. A precondition to the issuance of Bonds shall be that the value of the real property subject to Special Taxes required to repay the Bonds shall be at least three times the amount of the Bonds based on an appraisal and in accordance with Government Code Section 53345.8.

b. Each series of Bonds shall have a term of at least thirty (30) years and include escalating annual debt service commensurate with any annual escalation in the Facilities Special Taxes. Each series of Bonds shall be sized based upon 110% aggregate or individual debt service coverage from Facilities Special Taxes.

c. The total effective tax rate within each Improvement Area applicable to any residential parcel on which a residential dwelling has or is to be constructed, taking into account all ad valorem property taxes, voter-approved ad valorem property taxes in excess of one percent (1%) of assessed value, the annual special taxes of existing community facilities
districts and community facilities districts under consideration and reasonably expected to be established, the annual assessments (including any administrative surcharge) of existing assessment districts and assessment districts under consideration and reasonably expected to be established, and the Facilities Special Taxes, shall equal two percent (2.00%) of the projected initial sales price of the residential dwelling unit and such parcel, as estimated at the time of formation of the applicable CFD, or such lesser amount requested by Developer. The Facilities Special Taxes and Services Special Taxes may escalate by up to 2% per year beginning the fiscal year following the base year.

d. Each CFD shall levy Facilities Special Taxes on parcels for which a Building Permit for residential construction has been issued (“Developed Property”) prior to the issuance of Bonds. The Facilities Special Taxes collected by each CFD from Developed Property prior to the issuance of Bonds that are not required to pay reasonable administrative expenses of the CFD shall be deemed “Surplus Special Taxes.” Surplus Special Taxes shall be disbursed to pay for Eligible Facilities pursuant to the Acquisition Agreement.

e. The amount of the Services Special Taxes shall not exceed the amount required to pay the reasonably projected actual costs of providing the Eligible Services.

f. The City shall not oppose any efforts by the Developer and shall reasonably cooperate with the Developer in its efforts to freeze or reduce the ad valorem real property tax rate applicable to the Property that is attributable to other public agencies.

g. In no event shall City general funds be used for any shortfall or lack of funds to pay any obligation of the CFD.
EXHIBIT “H”

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

Pursuant to the Development Agreement between the CITY OF BANNING (“City”) and RANCHO SAN GORGONIO, LLC, a Delaware limited liability company (“Assignor”), dated __________, 2016 (the “Agreement”), which Agreement is hereby incorporated herein by this reference, and for good and valuable consideration, receipt of which is hereby acknowledged, the undersigned hereby agree as follows:

1. The assignment and assumption provided for under this Assignment and Assumption Agreement (“Assignment”) is made together with the sale, transfer or assignment of all or a part of the property subject to the Agreement. The property sold, transferred or assigned together with this Assignment is described in Exhibit “1” attached hereto and incorporated herein by this reference (the “Subject Property”).

2. Assignor hereby grants, sells, transfers, conveys, assigns and delegates to ___________________ (“Assignee”), all of Assignor’s rights, title, interest, benefits, privileges, duties and obligations arising under or from the Agreement with respect to the Subject Property except for the following:

   (a) Assignor’s right to amend the Agreement as it applies to any real property other than the Subject Property; and

   (b) [INSERT OTHER RETAINED RIGHTS, IF ANY]

3. Assignee hereby accepts the foregoing assignment and, except as otherwise provided herein, unconditionally assumes and agrees to perform all of the duties and obligations of Assignor arising under or from the Agreement as owner of the Subject Property and this Assignment and Assignor is hereby released from all such duties and obligations.

4. The sale, transfer or assignment of the Subject Property and the assignment and assumption provided for under this Assignment are the subject of additional agreements between Assignor and Assignee. Notwithstanding any term, condition or provision of such additional agreements, the rights of the City arising under or from the Agreement and this Assignment shall not be affected, diminished or defeated in any way, except upon the express written agreement of the City.

5. Assignor and Assignee execute this Assignment pursuant to Section 14 of the Agreement. This Assignment may be executed by the parties hereto in counterparts, each of which shall be deemed an original.

[Signature page follows]
IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Assignment as of the dates set forth below.

Dated: ______________

ASSIGNOR:

______________

By: _________________________
Name: _________________________
Title: _________________________

Dated: ______________

ASSIGNEE:

______________

By: _________________________
Name: _________________________
Title: _________________________

By: _________________________
Name: _________________________
Title: _________________________

Approved by City of Banning:

By: _________________________
Name: _________________________
Title: _________________________
EXHIBIT “1” TO EXHIBIT “H”

DESCRIPTION OF SUBJECT PROPERTY

[ATTACH LEGAL DESCRIPTION]
EXHIBIT I

PREVAILING WAGE AND PUBLIC WORKS REQUIREMENTS

I. Developer’s Requirements:

(1) Obtain the prevailing wage rate from the Director of Industrial Relations in accordance with Labor Code Sections 1771 and 1773.

(2) Specify the appropriate prevailing wage rates, in accordance with Labor Code Sections 1773.2 and 1777.5.

(A) The posting requirement is applicable for each job site.

EXCEPTION: If more than one worksite exists on any project, then the applicable rates may be posted at a single location which is readily available to all workers.

(B) If a wage rate for a craft, classification or type of worker is not published in the Director's general prevailing wage determinations, a request for a special determination should be made by the awarding body to Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142, at least 45 days prior to the project bid advertisement date.

(3) Notify the Division of Apprenticeship Standards, Department of Industrial Relations. See Labor Code Section 1773.3.

(4) Inform prime contractors, to the extent feasible, of relevant public work requirements:

NOTE: Requirement information may be disseminated at a preacceptance of bid conference or in a call for bids or at an award of bid conference.

The public works requirements are:

(A) the appropriate number of apprentices are on the job site, as set forth in Labor Code Section 1777.5.

(B) workers’ compensation coverage, as set forth in Labor Code Sections 1860 and 1861.

(C) keep accurate records of the work performed on public works projects, as set forth in Labor Code Section 1812.

(D) inspection of payroll records pursuant to Labor Code Section 1776, and as set forth in Section 16400 (e) of Title 8 of the California Code of Regulations.
(E) and other requirements imposed by law.


(6) Ensure that public works projects are not split or separated into smaller work orders or projects for the purpose of evading the applicable provisions of Labor Code Section 1771.

(7) Deny the right to bid on public work contracts to contractors or subcontractors who have been debarred from bidding on public works contracts, as set forth in Labor Code Section 1777.7.

(8) Not permit workers on public works to work more than eight hours a day or 40 hours in any one calendar week, unless compensated at not less than time and a half as set forth in Labor Code Section 1815.

EXCEPTION: If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher overtime rate must be paid, as specified in subsection 16200(a)(3)(F) of Title 8 of the California Code of Regulations.

(9) Not take or receive any portion of the workers' wages or accept a fee in connection with a public works project, as set forth in Labor Code Sections 1778 and 1779.

(10) Comply with those requirements as specified in Labor Code Sections 1776(g), 1777.5, 1810, 1813, and 1860.

II. Contractor and Subcontractor Requirements.

The contractor and subcontractors shall:

(1) Pay not less than the prevailing wage to all workers, as defined in Section 16000 of Title 8 of the California Code of Regulations, and as set forth in Labor Code Sections 1771 and 1774;

(2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works jobsites;

(3) Provide workers' compensation coverage as set forth in Labor Code Section 1861;

(4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance of a fee;

(5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776;
(6) Pay workers overtime pay, as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the Director of Industrial Relations as set forth in Section 16200 (a) (3) of Title 8 of the California Code of Regulations;

(7) Comply with Section 16101 of Title 8 of the California Code of Regulations regarding discrimination;

(8) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5;

(9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813; and

(10) Comply with other requirements imposed by law.
This IMPROVEMENT AND CREDIT AGREEMENT (“Agreement”) is entered into this ___ day of ___________________, 2016, by and between the CITY OF BANNING, a California municipal corporation (“AGENCY”), and RANCHO SAN GORGONIO, LLC, a Delaware limited liability company (“Developer”). AGENCY and Developer are sometimes hereinafter referred to individually as “Party” and collectively as “Parties”.

100. RECITALS

WHEREAS, Developer owns or has an equitable interest in ____ acres of real property located within the City of Banning, California, which is more specifically described in the legal description set forth in Exhibit “A”, attached hereto and incorporated herein by this reference (“Property”);

WHEREAS, Developer has requested from AGENCY certain entitlements and/or permits for the construction of improvements on the Property, which are more particularly described as

______________________________________________________________________________

______________________________________________________________________________

____________________________________

WHEREAS, the AGENCY is a member agency of the Western Riverside Council of Governments (“WRCOG”), a joint powers agency comprised of the County of Riverside and 17 cities located in Western Riverside County. WRCOG is the administrator for the Transportation Uniform Mitigation Fee (“TUMF”) Program;

WHEREAS, as part of the TUMF Program, the AGENCY has adopted “Transportation Uniform Mitigation Fee Nexus Study: 2009 Update” (“2009 Nexus Study”);

WHEREAS, as a condition to AGENCY’s approval of the Project, AGENCY has required Developer to construct certain street and transportation system improvement(s) of regional importance (“TUMF Improvements”);

WHEREAS, pursuant to the TUMF Program, the AGENCY requires Developer to pay the TUMF which covers the Developer’s fair share of the costs to deliver those TUMF Improvements that help mitigate the Project’s traffic impacts and burdens on the Regional System of Highways and Arterials (also known as the “TUMF Network”), generated by the Project and that are necessary to protect the safety, health and welfare of persons that travel to and from the Project using the TUMF Network;
WHEREAS, the TUMF Improvements have been designated as having Regional or Zonal Significance as further described in the 2009 Nexus Study and the 5 year Transportation Improvement Program as may be amended;

WHEREAS, AGENCY and Developer now desire to enter into this Agreement for the following purposes: (1) to provide for the timely delivery of the TUMF Improvements, (2) to ensure that delivery of the TUMF Improvements is undertaken as if the TUMF Improvements were constructed under the direction and authority of the AGENCY, (3) to provide a means by which the Developer’s costs for project delivery of the TUMF Improvements and related right-of-ways is offset against Developer’s obligation to pay the applicable TUMF for the Project in accordance with the TUMF Administrative Plan adopted by WRCOG, and (4) to provide a means, subject to the separate approval of WRCOG, for Developer to be reimbursed to the extent the actual and authorized costs for the delivery of the TUMF Improvements exceeds Developer's TUMF obligation.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, Developer and AGENCY hereby agree as follows:

TERMS

1.0 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Construction of TUMF Improvements. Developer shall construct or have constructed at its own cost, expense, and liability certain street and transportation system improvements generally described as [INSERT TUMF IMPROVEMENTS] , and as shown more specifically on the plans, profiles, and specifications which have been or will be prepared by or on behalf of Developer and approved by AGENCY, and which are incorporated herein by this reference (“TUMF Improvements”). Construction of the TUMF Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer shall be responsible for the replacement, relocation, or removal of any component of any existing public or private improvement in conflict with the construction or installation of the TUMF Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of AGENCY and the owner of such improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary to fully and adequately complete the TUMF Improvements.
2.1 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any portion of the TUMF Improvements until all plans and specifications for the TUMF Improvements have been submitted to and approved by AGENCY. Approval by AGENCY shall not relieve Developer from ensuring that all TUMF Improvements conform with all other requirements and standards set forth in this Agreement.

2.2 Permits and Notices. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the TUMF Improvements and performance of Developer’s obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer.

2.3 Public Works Requirements. In order to insure that the TUMF Improvements will be constructed as if they had been constructed under the direction and supervision, or under the authority of, AGENCY, Developer shall comply with all of the following requirements with respect to the construction of the TUMF Improvements:

(a) Developer shall obtain bids for the construction of the TUMF Improvements, in conformance with the standard procedures and requirements of AGENCY with respect to its public works projects, or in a manner which is approved by the Public Works Department.

(b) The contract or contracts for the construction of the TUMF Improvements shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the TUMF Improvements.

(c) Developer shall require, and the specifications and bid and contract documents shall require, all such contractors to pay prevailing wages (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and to otherwise comply with applicable provisions of the Labor Code, the Government Code and the Public Contract Code relating to public works projects of cities/counties and as required by the procedures and standards of AGENCY with respect to the construction of its public works projects or as otherwise directed by the Public Works Department.

(d) All such contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the TUMF Improvements which they will construct in conformance with AGENCY’s standard procedures and requirements.

(e) Developer and all such contractors shall comply with such other requirements relating to the construction of the TUMF Improvements which AGENCY may impose by written notification delivered to Developer and each such contractor at any time, either prior to the receipt of bids by Developer for the construction of the TUMF Improvements, or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof.

Developer shall provide proof to AGENCY, at such intervals and in such form as AGENCY may require that the foregoing requirements have been satisfied as to the TUMF Improvements.
2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the TUMF Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The TUMF Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with AGENCY, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required, constructing the TUMF Improvements in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to TUMF Improvements. All work shall be done and the TUMF Improvements completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation it is determined that the public interest requires alterations in the TUMF Improvements, Developer shall undertake such design and construction changes as may be reasonably required by AGENCY. Any and all alterations in the plans and specifications and the TUMF Improvements to be completed may be accomplished without first giving prior notice thereof to Developer’s surety for this Agreement.

3.0 Maintenance of TUMF Improvements. AGENCY shall not be responsible or liable for the maintenance or care of the TUMF Improvements until AGENCY approves and accepts them. AGENCY shall exercise no control over the TUMF Improvements until accepted. Any use by any person of the TUMF Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to AGENCY’s acceptance of the TUMF Improvements. Developer shall maintain all of the TUMF Improvements in a state of good repair until they are completed by Developer and approved and accepted by AGENCY, and until the security for the performance of this Agreement is released. It shall be Developer’s responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by AGENCY. If Developer fails to properly prosecute its maintenance obligation under this section, AGENCY may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. AGENCY shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the TUMF Improvements or their condition prior to acceptance.

4.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of the construction of the TUMF Improvements, including,
but not limited to, all plan check, design review, engineering, inspection, sewer treatment connection fees, and other service or impact fees established by AGENCY.

5.0 AGENCY Inspection of TUMF Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the TUMF Improvements, maintain reasonable and safe facilities and provide safe access for inspection by AGENCY of the TUMF Improvements and areas where construction of the TUMF Improvements is occurring or will occur.

6.0 Liens. Upon the expiration of the time for the recording of claims of liens as prescribed by Sections 8412 and 8414 of the Civil Code with respect to the TUMF Improvements, Developer shall provide to AGENCY such evidence or proof as AGENCY shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the construction of the TUMF Improvements, have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. Rather than await the expiration of the said time for the recording of claims of liens, Developer may elect to provide to AGENCY a title insurance policy or other security acceptable to AGENCY guaranteeing that no such claims of liens will be recorded or become a lien upon any of the Property.

7.0 Acceptance of TUMF Improvements; As-Built or Record Drawings. If the TUMF Improvements are properly completed by Developer and approved by AGENCY, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, AGENCY shall be authorized to accept the TUMF Improvements. AGENCY may, in its sole and absolute discretion, accept fully completed portions of the TUMF Improvements prior to such time as all of the TUMF Improvements are complete, which shall not release or modify Developer’s obligation to complete the remainder of the TUMF Improvements. Upon the total or partial acceptance of the TUMF Improvements by AGENCY, Developer shall file with the Recorder’s Office of the County of Riverside a notice of completion for the accepted TUMF Improvements in accordance with California Civil Code sections 8182, 8184, 9204, and 9208 (“Notice of Completion”), at which time the accepted TUMF Improvements shall become the sole and exclusive property of AGENCY without any payment therefore. Notwithstanding the foregoing, AGENCY may not accept any TUMF Improvements unless and until Developer provides one (1) set of “as-built” or record drawings or plans to the AGENCY for all such TUMF Improvements. The drawings shall be certified and shall reflect the condition of the TUMF Improvements as constructed, with all changes incorporated therein.

8.0 Warranty and Guarantee. Developer hereby warrants and guarantees all the TUMF Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of the TUMF Improvements, for a period of one (1) year following completion of the work and acceptance by AGENCY (“Warranty”). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the TUMF Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of AGENCY, and to the approval of AGENCY. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any TUMF
Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following AGENCY’s acceptance of the repaired, replaced, or reconstructed TUMF Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any TUMF Improvement following expiration of the Warranty or any extension thereof. Developer’s warranty obligation under this section shall survive the expiration or termination of this Agreement.

9.0 Administrative Costs. If Developer fails to construct and install all or any part of the TUMF Improvements, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to AGENCY for all administrative expenses, fees, and costs, including reasonable attorney’s fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

10.0 Default; Notice; Remedies.

10.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if AGENCY determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, AGENCY may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation (“Notice”). Developer shall substantially commence the work required to remedy the default or violation within five (5) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, AGENCY may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon AGENCY’s issuance of the Notice, Developer and its surety shall be liable to AGENCY for all costs of construction and installation of the TUMF Improvements and all other administrative costs or expenses as provided for in this Section 10.0 of this Agreement.

10.2 Failure to Remedy; AGENCY Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to AGENCY within the time frame contained in the Notice, AGENCY may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. AGENCY’s right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any of the TUMF Improvements at the time of AGENCY’s demand for performance. In the event AGENCY elects to complete or arrange for completion of the remaining work and the TUMF Improvements, AGENCY may require all work by Developer or its surety to cease in order to allow adequate coordination by AGENCY.

10.3 Other Remedies. No action by AGENCY pursuant to this Section 10.0 et seq. of this Agreement shall prohibit AGENCY from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law.
AGENCY may exercise its rights and remedies independently or cumulatively, and AGENCY may pursue inconsistent remedies. AGENCY may institute an action for damages, injunctive relief, or specific performance.

11.0 Security; Surety Bonds. Prior to the commencement of any work on the TUMF Improvements, Developer or its contractor shall provide AGENCY with surety bonds in the amounts and under the terms set forth below (“Security”). The amount of the Security shall be based on the estimated actual costs to construct the TUMF Improvements, as determined by AGENCY after Developer has awarded a contract for construction of the TUMF Improvements to the lowest responsive and responsible bidder in accordance with this Agreement (“Estimated Costs”). If AGENCY determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer or its contractor shall adjust the Security in the amount requested by AGENCY. Developer’s compliance with this Section 11.0 et seq. of this Agreement shall in no way limit or modify Developer’s indemnification obligation provided in Section 12.0 of this Agreement.

11.1 Performance Bond. To guarantee the faithful performance of the TUMF Improvements and all the provisions of this Agreement, to protect AGENCY if Developer is in default as set forth in Section 10.0 et seq. of this Agreement, and to secure the one-year guarantee and warranty of the TUMF Improvements, Developer or its contractor shall provide AGENCY a faithful performance bond in an amount which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The AGENCY may, in its sole and absolute discretion, partially release a portion or portions of the security provided under this section as the TUMF Improvements are accepted by AGENCY, provided that Developer is not in default on any provision of this Agreement and the total remaining security is not less than ______________ (__%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 11.0 of this Agreement, provided that Developer is not in default on any provision of this Agreement.

11.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, materialmen, and other persons furnishing labor, materials, or equipment for performance of the TUMF Improvements and this Agreement, Developer or its contractor shall provide AGENCY a labor and materials bond in an amount which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section shall be released by written authorization of AGENCY after six (6) months from the date AGENCY accepts the TUMF Improvements. The amount of such security shall be reduced by the total of all stop notice or mechanic’s lien claims of which AGENCY is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of AGENCY’s anticipated administrative and legal expenses arising out of such claims.

11.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of at least “A” and FSC-VIII, shall be licensed to do business in California, and shall be satisfactory to AGENCY. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer, its contractor or the surety shall secure the costs and reasonable expenses and fees, including reasonable attorney’s fees and costs, incurred by AGENCY in enforcing the obligations of this
Agreement. Developer, its contractor and the surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the TUMF Improvements, or the plans and specifications for the TUMF Improvements shall in any way affect its obligation on the Security.

11.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit “B”, unless other forms are deemed acceptable by the AGENCY, and when such forms are completed to the satisfaction of AGENCY, the forms and evidence of the Security shall be attached hereto as Exhibit “B” and incorporated herein by this reference.

12.0 Indemnification. Developer shall defend, indemnify, and hold harmless AGENCY, its elected officials, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its employees, contractors, or agents in connection with the performance of this Agreement, or arising out of or in any way related to or caused by the TUMF Improvements or their condition prior to AGENCY’s approval and acceptance of the TUMF Improvements (“Claims”). This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorney's fees, and related costs or expenses, and the reimbursement of AGENCY, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any Claim which is caused solely and exclusively by the negligence or willful misconduct of AGENCY as determined by a court or administrative body of competent jurisdiction. Developer’s obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by AGENCY, its elected officials, employees, or agents.

13.0 Insurance.

13.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during performance of this Agreement, insurance of the types and in the amounts described below (“Required Insurance”). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

13.1.1 General Liability. Occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than Two Million Dollars ($2,000,000) per occurrence for bodily injury, personal injury, and property damage.

13.1.2 Business Automobile Liability. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired, or borrowed by the insured or for which the insured is responsible.
13.1.3 **Workers’ Compensation.** Workers’ compensation insurance with limits as required by the Labor Code of the State of California and employers’ liability insurance with limits of not less than One Million Dollars ($1,000,000) per occurrence, at all times during which insured retains employees.

13.1.4 **Professional Liability.** For any consultant or other professional who will engineer or design the TUMF Improvements, liability insurance for errors and omissions with limits not less than Two Million Dollars ($2,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the TUMF Improvements. Such insurance shall be endorsed to include contractual liability.

13.2 **Deductibles.** Any deductibles or self-insured retentions must be declared to and approved by AGENCY. At the option of AGENCY, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects AGENCY, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to AGENCY guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

13.3 **Additional Insured; Separation of Insureds.** The Required Insurance, except for the professional liability and workers’ compensation insurance, shall name AGENCY, its elected officials, officers, employees, and agents as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including any materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to AGENCY, its elected officials, officers, employees, or agents.

13.4 **Primary Insurance; Waiver of Subrogation.** The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering AGENCY, its elected officials, officers, employees, or agents. The policy required for workers’ compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against AGENCY in connection with any damage or harm covered by such policy.

13.5 **Certificates; Verification.** Developer and its contractors shall furnish AGENCY with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by AGENCY before work pursuant to this Agreement can begin. AGENCY reserves the right to require complete, certified copies of all required insurance policies, at any time.

13.6 **Term; Cancellation Notice.** Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days’ prior written notice to AGENCY.
13.7 **Insurer Rating.** Unless approved in writing by AGENCY, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least “A” and FSC-VIII.

14.0 **TUMF Credit.**

14.1 **Developer’s TUMF Obligation.** Developer hereby agrees and accepts that as of the date of this Agreement, the amount Developer is obligated to pay to AGENCY pursuant to (insert appropriate reference for city or county) as part of the TUMF Program is [INSERT DOLLAR VALUE OF TUMF REQUIREMENT] ($________________) (“TUMF Obligation”). This TUMF Obligation shall be initially determined under the nexus study and fee schedule in effect for the AGENCY at the time the Developer submits a building permit application for the TUMF Improvement. Notwithstanding, this TUMF Obligation does not have to be paid until the Certificate of Occupancy is obtained.

14.2 **Fee Adjustments.** Notwithstanding the foregoing, Developer agrees that this Agreement shall not estop AGENCY from adjusting the TUMF in accordance with the provisions of (insert appropriate reference for city or county).

14.3 **Credit Offset Against TUMF Obligation.** Pursuant to (insert appropriate reference for city or county) and in consideration for Developer’s obligation under this Agreement for the delivery of TUMF Improvements, credit shall be applied by AGENCY to offset the TUMF Obligation (“Credit”) subject to adjustment and reconciliation under Section 14.5 of this agreement. Developer hereby agrees that the amount of the Credit shall be applied after Developer has initiated the process of project delivery of TUMF Improvements to the lowest responsible bidder in accordance with this Agreement. Developer further agrees that the dollar amount of the Credit shall be equal to the lesser of: (A) the bid amount set forth in the contract awarded to the lowest responsible bidder, or (B) the unit cost assumptions for the TUMF Improvement in effect at the time of the contract award, as such assumptions are identified and determined in the 2009 Nexus Study and the TUMF Administrative Plan adopted by WRCOG (“Unit Cost Assumptions”).

The bid amount and the Unit Cost Assumptions shall hereafter be collectively referred to as “Estimated Credit”. At no time will the Credit exceed the Developer’s TUMF Obligation. If the dollar amount of the Estimated Credit exceeds the dollar amount of the TUMF Obligation, Developer will be deemed to have completely satisfied its TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.6 of this Agreement. If the dollar amount of the Estimated Credit is less than the dollar amount of the TUMF Obligation, the Developer agrees the Credit shall be applied to offset the TUMF Obligation as follows:

1. For residential units in the Project, the Credit shall be applied to all residential units to offset and/or satisfy the TUMF Obligation. The residential units for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to each unit, shall be identified in the notice provided to the Developer by AGENCY pursuant to this section.
(2) For commercial and industrial structures in the Project, the Credit shall be applied to all commercial and industrial development to offset and/or satisfy the TUMF Obligation. The commercial or industrial structure(s) for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to such structure(s), shall be identified in the notice provided to the Developer by AGENCY pursuant to this section.

AGENCY shall provide Developer written notice of the determinations that AGENCY makes pursuant to this section, including how the Credit is applied to offset the TUMF Obligation as described above.

14.4 Verified Cost of the TUMF Improvements. Upon recordation of the Notice of Completion for the TUMF Improvements and acceptance of the TUMF Improvements by AGENCY, Developer shall submit to the AGENCY Public Works Director the information set forth in the attached Exhibit “C”. The AGENCY Public Works Director, or his or her designee, shall use the information provided by Developer to calculate the total actual costs incurred by Developer in delivering the TUMF Improvements covered under this Agreement (“Verified Costs”). The AGENCY Public Works Director will use his or her best efforts to determine the amount of the Verified Costs and provide Developer written notice thereof within thirty (30) calendar days of receipt of all the required information from Developer.

14.5 Reconciliation; Final Credit Offset Against TUMF Obligation. The Developer is aware of and accepts the fact that Credits are speculative and conceptual in nature. The actual amount of Credit that shall be applied by AGENCY to offset the TUMF Obligation shall be equal to the lesser of: (A) the Verified Costs or (B) Unit Cost Assumptions for the TUMF Improvements as determined in accordance with Section 14.3 of this Agreement (“Actual Credit”). No Actual Credit will be awarded until the Verified Costs are determined through the reconciliation process. Please be advised that while a Developer may use an engineer’s estimates in order to estimate Credits for project planning purposes, the Actual Credit awarded will only be determined by the reconciliation process.

(a) TUMF Balance. If the dollar amount of the Actual Credit is less than the dollar amount of the TUMF Obligation, the AGENCY Public Works Director shall provide written notice to Developer of the amount of the difference owed (“TUMF Balance”) and Developer shall pay the TUMF Balance in accordance with (insert appropriate reference for city or county) to fully satisfy the TUMF Obligation (see Exhibit “F” - Example “A”).

(b) TUMF Reimbursement. If the dollar amount of the Actual Credit exceeds the TUMF Obligation, Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.6 of this Agreement. AGENCY shall provide Developer written notice of the determinations that AGENCY makes pursuant to this section (see Exhibit “F” - Example “B”).

(c) TUMF Overpayment. If the dollar amount of the Actual Credit exceeds the Estimated Credit, but is less than the TUMF Obligation, but the Actual Credit plus additional monies collected by AGENCY from Developer for the TUMF Obligation exceed the TUMF
Obligation ("TUMF Overpayment"), Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and may be entitled to a refund. The AGENCY’s Public Works Director shall provide written notice to WRCOG and the Developer of the amount of the TUMF Overpayment and AGENCY shall direct WRCOG to refund the Developer in accordance with (insert appropriate reference for city or county) (see Exhibit “F” - Example C).

14.6 Reimbursement Agreement. If authorized under either Section 14.3 or Section 14.5 Developer may apply to AGENCY and WRCOG for a reimbursement agreement for the amount by which the Actual Credit exceeds the TUMF Obligation, as determined pursuant to Section 14.3 of this Agreement, (insert appropriate reference for city or county), and the TUMF Administrative Plan adopted by WRCOG (“Reimbursement Agreement”). If AGENCY and WRCOG agree to a Reimbursement Agreement with Developer, the Reimbursement Agreement shall be executed on the form set forth in Exhibit “D,” and shall contain the terms and conditions set forth therein. The Parties agree that the Reimbursement Agreement shall be subject to all terms and conditions of this Agreement, and that upon execution, an executed copy of the Reimbursement Agreement shall be attached hereto and shall be incorporated herein as a material part of this Agreement as though fully set forth herein.

15.0 Miscellaneous.

15.1 Assignment. Developer may assign all or a portion of its rights pursuant to this Agreement to a purchaser of a portion or portions of the Property ("Assignment"). Developer and such purchaser and assignee ("Assignee") shall provide to AGENCY such reasonable proof as it may require that Assignee is the purchaser of such portions of the Property. Any assignment pursuant to this section shall not be effective unless and until Developer and Assignee have executed an assignment agreement with AGENCY in a form reasonably acceptable to AGENCY, whereby Developer and Assignee agree, except as may be otherwise specifically provided therein, to the following: (1) that Assignee shall receive all or a portion of Developer's rights pursuant to this Agreement, including such credit as is determined to be applicable to the portion of the Property purchased by Assignee pursuant to Section 14.0 et seq. of this Agreement, and (2) that Assignee shall be bound by all applicable provisions of this Agreement.

15.2 Relationship Between the Parties. The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between AGENCY and Developer. Developer’s contractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of AGENCY.

15.3 Warranty as to Property Ownership; Authority to Enter Agreement. Developer hereby warrants that it owns fee title to the Property and that it has the legal capacity to enter into this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

15.4 Prohibited Interests. Developer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Developer,
to solicit or secure this Agreement. Developer also warrants that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Developer, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon the making of this Agreement. For breach of this warranty, AGENCY shall have the right to rescind this Agreement without liability.

15.5 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To AGENCY: City of Banning
99 E. Ramsey Street
Banning, CA 92220
Attention: ______________
Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

15.6 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

15.7 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and contractors of Developer, except as otherwise specified in this Agreement. All references to AGENCY include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

15.8 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

15.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

15.10 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

15.11 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

15.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

15.13 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties’ activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the
appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

15.14 Time is of the Essence. Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

15.15 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

15.16 Entire Agreement. This Agreement contains the entire agreement between AGENCY and Developer and supersedes any prior oral or written statements or agreements between AGENCY and Developer.

[SIGNATURES OF PARTIES ON NEXT PAGE]
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

DEVELOPER:

RANCHO SAN GORGONIO, LLC, a Delaware limited liability company

By: ______________________________
Its: ______________________________

ATTEST:

By: ______________________________
Its: ______________________________

CITY OF BANNING, a California municipal corporation:

By: ______________________________
Its: ______________________________

ATTEST:

By: ______________________________
Its: ______________________________
EXHIBIT “A” TO TUMF AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

[ATTACH BEHIND THIS PAGE]
EXHIBIT “B” TO TUMF AGREEMENT

FORMS FOR SECURITY

[ATTACHED BEHIND THIS PAGE]
PERFORMANCE BOND

WHEREAS, the [INSERT “City” OR “County“] of ___________ (“AGENCY”) has executed an agreement with ________________________________________________ (hereinafter “Developer”), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter the “Work”);

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain TUMF Improvement and Credit/Reimbursement Agreement dated ________________, (hereinafter the “Agreement”); and

WHEREAS, the Agreement is hereby referred to and incorporated herein by this reference; and

WHEREAS, Developer or its contractor is required by the Agreement to provide a good and sufficient bond for performance of the Agreement, and to guarantee and warranty the Work constructed thereunder.

NOW, THEREFORE, we the undersigned, ________________________________, as Principal and __________________________________, a corporation organized and existing under the laws of the State of _________________________ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the AGENCY in the sum of _________________________________________________ ($______________), said sum being not less than one hundred percent (100%) of the total cost of the Work as set forth in the Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Developer and its contractors, or their heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless AGENCY, its officers, employees, and agents, as stipulated in the Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney’s fees, incurred by AGENCY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.
The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Agreement or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day on _____________________, 20__. 

________________________________
Principal

By: ___________________________
    President

________________________________
Surety

By: ___________________________
    Attorney-in-Fact
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF ____________________________ )

On ________________________, before me, ____________________________
Date Here Insert Name and Title of the Officer
personally appeared ____________________________
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws
of the State of California that the foregoing paragraph is
true and correct.

WITNESS my hand and official seal.

Signature ____________________________
Signature of Notary Public

Optional

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment
of this form to an unintended document.

Description of Attached Document
Title of Type of Document: ____________________________ Document Date: ______________
Number of Pages: ______________ Signer(s) Other Than Named Above: ____________________________

Capacity(ies) Claimed by Signer(s)

Signer’s Name: ____________________________

☐ Corporate Officer – Title(s):
☐ Partner - ☐ Limited ☐ General
☐ Individual
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: ____________________________

☐ Corporate Officer – Title(s):
☐ Partner - ☐ Limited ☐ General
☐ Individual
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: ____________________________

1472293.4 8/26/2016
CERTIFICATE AS TO CORPORATE PRINCIPAL

I, ____________________________, certify that I am the __________________________ Secretary of the corporation named as principal in the attached bond, that __________________________ who signed the said bond on behalf of the principal was then __________________________ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

_______________________________
Signature

______________________________
Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.
BOND NO. ___________________
INITIAL PREMIUM: ___________________
SUBJECT TO RENEWAL

LABOR & MATERIAL BOND

WHEREAS, the [INSERT “City” OR “County”] of ___________ (“AGENCY”) has executed an agreement with _____________________________________ (hereinafter “Developer”), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter “Work”);

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain Improvement and Credit / Reimbursement Agreement dated ___________________________, (hereinafter the “Agreement”); and

WHEREAS, Developer or its contractor is required to furnish a bond in connection with the Agreement providing that if Developer or any of his or its contractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the provisions of 3248 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney’s fee in case suit is brought on the bond.

NOW, THEREFORE, we the undersigned, ______________________________, as Principal and ____________________________________, a corporation organized and existing under the laws of the State of _______________________, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the AGENCY and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the said Work, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said Work to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid, the sum of ____________________ ($_______________), said sum being not less than 100% of the total amount payable by Developer under the terms of the Agreement, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Developer or its contractors, or their heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Work contracted to be done, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the
Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

In case legal action is required to enforce the provisions of this bond, the prevailing party shall be entitled to recover reasonable attorneys’ fees in addition to court costs, necessary disbursements and other consequential damages. In addition to the provisions hereinabove, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to make claims under Sections 8024, 8400, 8402, 8404, 8430, 9100 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the Agreement or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ___ day on _____________________, 20__.

__________________________________
Principal

By: ______________________________
    President

__________________________________
Surety

By: ______________________________
    Attorney-in-Fact
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF ____________________________ )

On ____________________________, before me, ____________________________
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________________________________

Signature of Notary Public ____________________________________________

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title of Type of Document: ____________________________________________ Document Date: ______________
Number of Pages: __________ Signer(s) Other Than Named Above: ____________________________________________

Capacity(ies) Claimed by Signer(s)

☐ Corporate Officer – Title(s): ____________________________________________
☐ Partner - ☐ Limited ☐ General
☐ Individual
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: ____________________________________________

☐ Corporate Officer – Title(s): ____________________________________________
☐ Partner - ☐ Limited ☐ General
☐ Individual
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: ____________________________________________

1472293.4 8/26/2016
CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____________________________, certify that I am the ________________ Secretary of the corporation named as principal in the attached bond, that _______________________________________ who signed the said bond on behalf of the principal was then ____________________________________ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal) 

______________________________
Signature

______________________________
Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.
EXHIBIT “C” TO TUMF AGREEMENT

DOCUMENTATION TO BE PROVIDED TO AGENCY BY DEVELOPER FOR DETERMINATION OF CONSTRUCTION COSTS

To assist AGENCY in determining the Construction Costs for a completed TUMF Improvement, Developer shall provide the following documents to AGENCY:

1. Plans, specifications and Developer’s civil engineer’s cost estimate;
2. List of bidders from whom bids were requested;
3. Construction schedules and progress reports;
4. Contracts, insurance certificates and change orders with each contractor or vendor;
5. Invoices received from all vendors;
6. Canceled checks for payments made to contractors and vendors (copy both front and back of canceled checks);
7. Spreadsheet showing total costs incurred in and related to the construction of each TUMF Improvement and the check number for each item of cost and invoice;
8. Final lien releases from each contractor and vendor; and
9. Such further documentation as may be reasonably required by AGENCY to evidence the completion of construction and the payment of each item of cost and invoice.
EXHIBIT “D” TO TUMF AGREEMENT

REIMBURSEMENT AGREEMENT
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM

THIS REIMBURSEMENT AGREEMENT (“Agreement”) is entered into this ___ day of ___________________, 20___, by and between the [INSERT “City” OR “County”] of __________, [**INSERT “a California municipal corporation” FOR CITY OR “a subdivision of the State of California” FOR COUNTY**] (“AGENCY”), and ________________, a California [**INSERT TYPE OF ENTITY - corporation, partnership, sole proprietorship or other legal entity**], with its principal place of business at [**ENTER ADDRESS**] (“Developer”). AGENCY and Developer are sometimes hereinafter referred to individually as “Party” and collectively as “Parties”.

RECITALS

WHEREAS, AGENCY and Developer are parties to an agreement dated _______________, 20___, entitled “Improvement and Credit Agreement - Transportation Uniform Mitigation Fee Program” (hereinafter “Credit Agreement”);

WHEREAS, Sections 14.1 through 14.3 of the Credit Agreement provide that Developer is obligated to pay AGENCY the TUMF Obligation, as defined therein, but shall receive credit to offset the TUMF Obligation if Developer constructs and AGENCY accepts the TUMF Improvements in accordance with the Credit Agreement;

WHEREAS, Section 14.5 of the Credit Agreement provides that if the dollar amount of the credit to which Developer is entitled under the Credit Agreement exceeds the dollar amount of the TUMF Obligation, Developer may apply to AGENCY and WRCOG for a reimbursement agreement for the amount by which the credit exceeds the TUMF Obligation;

WHEREAS, Section 14.5 additionally provides that a reimbursement agreement executed pursuant to the Credit Agreement (i) shall be executed on the form attached to the Credit Agreement, (ii) shall contain the terms and conditions set forth therein, (iii) shall be subject to all terms and conditions of the Credit Agreement, and (iv) shall be attached upon execution to the Credit Agreement and incorporated therein as a material part of the Credit Agreement as though fully set forth therein; and

WHEREAS, AGENCY and WRCOG have consented to execute a reimbursement agreement with Developer pursuant to the Credit Agreement, (insert appropriate reference for city or county), and the TUMF Administrative Plan adopted by WRCOG.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:
TERMS

1.0 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Effectiveness. This Agreement shall not be effective unless and until the Credit Agreement is effective and in full force in accordance with its terms.

3.0 Definitions. Terms not otherwise expressly defined in this Agreement, shall have the meaning and intent set forth in the Credit Agreement.

4.0 Amount of Reimbursement. Subject to the terms, conditions, and limitations set forth in this Agreement, the Parties hereby agree that Developer is entitled to receive the dollar amount by which the Actual Credit exceeds the dollar amount of the TUMF Obligation as determined pursuant to the Credit Agreement, (insert appropriate reference for city or county), and the TUMF Administrative Plan adopted by WRCOG (“Reimbursement”). The Reimbursement shall be subject to verification by WRCOG. AGENCY and Developer shall provide any and all documentation reasonably necessary for WRCOG to verify the amount of the Reimbursement. The Reimbursement shall be in an amount not exceeding [INSERT DOLLAR AMOUNT] (“Reimbursement Amount”). AGENCY shall be responsible for obtaining the Reimbursement Amount from WRCOG and transmitting the Reimbursement Amount to the Developer. In no event shall the dollar amount of the Reimbursement exceed the difference between the dollar amount of all credit applied to offset the TUMF Obligation pursuant to Section 14.3, 14.4, and 14.5 of the Credit Agreement, and one hundred (100%) of the approved unit awarded, as such assumptions are identified and determined in the Nexus Study and the TUMF Administrative Plan adopted by WRCOG.

5.0 Payment of Reimbursement; Funding Contingency. The payment of the Reimbursement Amount shall be subject to the following conditions:

5.1 Developer shall have no right to receive payment of the Reimbursement unless and until (i) the TUMF Improvements are completed and accepted by AGENCY in accordance with the Credit Agreement, (ii) the TUMF Improvements are scheduled for funding pursuant to the five-year Transportation Improvement Program adopted annually by WRCOG, (iii) WRCOG has funds available and appropriated for payment of the Reimbursement amount.

5.2 Developer shall not be entitled to any interest or other cost adjustment for any delay between the time when the dollar amount of the Reimbursement is determined and the time when payment of the Reimbursement is made to Developer by WRCOG through AGENCY.

6.0 Affirmation of Credit Agreement. AGENCY and Developer represent and warrant to each other that there have been no written or oral modifications or amendments of the Credit Agreement, except by this Agreement. AGENCY and Developer ratify and reaffirm each
and every one of their respective rights and obligations arising under the Credit Agreement. AGENCY and Developer represent and warrant that the Credit Agreement is currently an effective, valid, and binding obligation.

7.0 Incorporation Into Credit Agreement. Upon execution of this Agreement, an executed original of this Agreement shall be attached as Exhibit “D” to the Credit Agreement and shall be incorporated therein as a material part of the Credit Agreement as though fully set forth therein.

8.0 Terms of Credit Agreement Controlling. Each Party hereby affirms that all provisions of the Credit Agreement are in full force and effect and shall govern the actions of the Parties under this Agreement as though fully set forth herein and made specifically applicable hereto, including without limitation, the following sections of the Credit Agreement: Sections 10.0 through 10.3, Section 12.0, Sections 13.0 through 13.7, Sections 14.0 through 14.6, and Sections 15.0 through 15.17.

[SIGNATURES OF PARTIES ON NEXT PAGE]
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

___________________________________
("Developer")

By: ______________________________

Its: ______________________________

ATTEST:

By: ______________________________

Its: ______________________________

[INSERT "City" OR "County") of __________

By: ______________________________

Its: ______________________________

ATTEST:

By: ______________________________

Its: ______________________________
1. Prior to the construction of any TUMF Improvement, Developer shall follow the steps listed below:
   a. Prepare a separate bid package for the TUMF Improvements.
   c. Bids shall be obtained and processed in accordance with the formal public works bidding requirements of the AGENCY.
   d. The contract(s) for the construction of TUMF Improvements shall be awarded to the lowest responsible bidder(s) for the construction of such facilities in accordance with the AGENCY’s requirements and guidelines.
   e. Contractor(s) shall be required to provide proof of insurance coverage throughout the duration of the construction.

2. Prior to the determination and application of any Credit pursuant to a TUMF Improvement and Credit Agreement executed between AGENCY and Developer ("Agreement"), Developer shall provide the AGENCY and WRCOG with the following:
   a. Copies of all information listed under Item 1 above.
   b. Surety Bond, Letter of Credit, or other form of security permitted under the Agreement and acceptable to the AGENCY and WRCOG, guaranteeing the construction of all applicable TUMF Improvements.

3. Prior to the AGENCY’s acceptance of any completed TUMF Improvement, and in order to initiate the construction cost verification process, the Developer shall comply with the requirements as set forth in Sections 7, 14.2 and 14.3 of the Agreement, and the following conditions shall also be satisfied:
   a. Developer shall have completed the construction of all TUMF Improvements in accordance with the approved Plans and Specifications.
   b. Developer shall have satisfied the AGENCY’s inspection punch list.
c. After final inspection and approval of the completed TUMF Improvements, the AGENCY shall have provided the Developer a final inspection release letter.

d. AGENCY shall have filed a Notice of Completion with respect to the TUMF Improvements pursuant to Section 3093 of the Civil Code with the County Recorder’s Office, and provided a copy of filed Notice of Completion to WRCOG.

e. Developer shall have provided AGENCY a copy of the As-Built plans for the TUMF Improvements.

f. Developer shall have provided AGENCY copies of all permits or agreements that may have been required by various resource/regulatory agencies for construction, operation and maintenance of any TUMF Improvements.

g. Developer shall have submitted a documentation package to the AGENCY to determine the final cost of the TUMF Improvements, which shall include at a minimum, the following documents related to the TUMF Improvements:

i. Plans, specifications, and Developer's Civil Engineer’s cost estimates; or Engineer’s Report showing the cost estimates.

ii. Contracts/agreements, insurance certificates and change orders with each vendor or contractor.

iii. Invoices from all vendors and service providers.

iv. Copies of cancelled checks, front and back, for payments made to contractors, vendors and service providers.

v. Final lien releases from each contractor and vendor (unconditional waiver and release).

vi. Certified contract workers payroll for AGENCY verification of compliance with prevailing wages.

vii. A total cost summary, in spreadsheet format (MS Excel is preferred) and on disk, showing a breakdown of the total costs incurred. The summary should include for each item claimed the check number, cost, invoice numbers, and name of payee. See attached sample for details. [ATTACH SAMPLE, IF APPLICABLE; OTHERWISE DELETE REFERENCE TO ATTACHED SAMPLE]
EXHIBIT “F” TO TUMF AGREEMENT

RECONCILIATION EXAMPLES

All examples are based on a single family residential development project of 200 dwelling units: 200 SF dwelling units @ $6,650 / dwelling unit = $1,330,000 in fees (TUMF Obligation)

Example A: “TUMF BALANCE”

<table>
<thead>
<tr>
<th>CREDIT</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>TUMF Obligation:</td>
<td>$1,330,000</td>
</tr>
<tr>
<td>Estimated Credit: Bid ($1,500,000) or unit Cost Assumption ($1,600,000) whichever is less</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Potential Reimbursement:</td>
<td>($170,000)</td>
</tr>
</tbody>
</table>

**RECONCILIATION**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>TUMF Obligation:</td>
<td>$1,330,000</td>
</tr>
<tr>
<td>Actual Credit:</td>
<td>$1,200,000</td>
</tr>
<tr>
<td>TUMF Balance (Payment to TUMF):</td>
<td>$130,000</td>
</tr>
</tbody>
</table>

Example B: “REIMBURSEMENT”

<table>
<thead>
<tr>
<th>CREDIT</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>TUMF Obligation:</td>
<td>$1,330,000</td>
</tr>
<tr>
<td>Estimated Credit: Bid ($1,500,000) or unit Cost Assumption ($1,600,000) whichever is less</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Potential Reimbursement:</td>
<td>($170,000)</td>
</tr>
</tbody>
</table>

**RECONCILIATION**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>TUMF Obligation:</td>
<td>$1,330,000</td>
</tr>
<tr>
<td>Actual Credit:</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Reimbursement Agreement with Developer (Based on Priority Ranking):</td>
<td>($170,000)</td>
</tr>
</tbody>
</table>

Example C: “TUMF OVERPAYMENT”

<table>
<thead>
<tr>
<th>CREDIT</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>TUMF Obligation:</td>
<td>$1,330,000</td>
</tr>
<tr>
<td>Estimated Credit: Bid ($1,200,000) or unit Cost Assumption ($1,500,000) whichever is less</td>
<td>$1,200,000</td>
</tr>
<tr>
<td>Remaining TUMF Obligation:</td>
<td>$130,000</td>
</tr>
<tr>
<td>Prorated Fee: $130,000 / 200 du =</td>
<td>$650 / du</td>
</tr>
</tbody>
</table>

**RECONCILIATION**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual Credit:</td>
<td>$1,300,000</td>
</tr>
<tr>
<td>TUMF payments from Developer ($650 per unit x 200 units)</td>
<td>$130,000</td>
</tr>
<tr>
<td>Actual Credit plus TUMF Payment</td>
<td>$1,430,000</td>
</tr>
<tr>
<td>TUMF Obligation:</td>
<td>$1,330,000</td>
</tr>
<tr>
<td>Actual Credit plus TUMF Payment</td>
<td>$1,430,000</td>
</tr>
</tbody>
</table>

TUMF Overpayment (Refund to Developer):

($100,000)
EXHIBIT “G”

FINANCING PLAN

This Financing Plan sets forth the basic terms and conditions pursuant to which City and Developer will cooperate to establish one or more CFD(s) and designate Improvement Areas therein pursuant to the CFD Act to finance the Eligible Facilities and Eligible Services in connection with the Project. Capitalized terms not otherwise defined in this Financing Plan shall be defined as provided in the Agreement.

1. Goals and Policies for Financing. The principal objectives of this Financing Plan are to:

   a. Provide City and Developer reasonable certainty that each CFD will be established in accordance with the Goals and Policies and this Financing Plan.

   b. Provide basic parameters for the levy of special taxes within each CFD or Improvement Area to pay directly for Eligible Facilities (the “Facilities Special Taxes”) and Eligible Services (the “Services Special Taxes”) and to secure the issuance of bonds of each CFD or Improvement Area secured by and payable from the Facilities Special Taxes in order to finance the Eligible Facilities (“Bonds”).

   c. Provide basic parameters for the issuance of Bonds by or for the CFD(s) and any Improvement Areas therein.

2. Formation. City shall initiate proceedings to establish a CFD upon Developer’s petition request pursuant to the CFD Act and submittal of City’s standard application form and receipt of an advance from Developer in an amount determined by City to pay for City’s estimated costs to be incurred in undertaking the proceedings to establish the CFD (“Formation Proceedings Costs”). City agrees that all such advances for Formation Proceedings Costs shall be eligible for reimbursement out of the first available proceeds of Surplus Special Taxes (defined below) and Bonds of the CFD and/or Facilities Special Taxes to the extent approved by the City’s Bond Counsel (“CFD Proceeds”). The exact terms and conditions for the advance of funds by Developer and the reimbursement of such advances shall be memorialized in a separate agreement between City and Developer. City agrees to use its best efforts to complete the proceedings to form each CFD and record the notice of special tax lien for the CFD and each Improvement Area therein within 210 days after City’s receipt of Developer’s complete application and deposit. While the Parties acknowledge that this Agreement cannot require the City or the City Council to form a CFD, the City agrees that it shall not refuse Developer’s requests to form a CFD except for good and reasonable cause.

3. Boundaries. The CFD boundary, or the boundaries of all CFDs if more than one is formed, shall encompass the Project. Each CFD may contain multiple Improvement Areas based on phasing of the Project within the CFD.
4. **Eligible Public Facilities and Discrete Components.** Subject to the Goals and Policies for Financing, and the conditions set forth in the following paragraphs, City shall authorize the CFDs to finance the acquisition or construction of the Eligible Facilities, which may include the following:

   a. public streets and other related improvements within the public right-of-way

   b. water facilities

   c. storm drain facilities

   d. sewer facilities

   e. public parks, open space and landscaping

   f. electrical facilities to the extent reasonable

   g. any public facility to be constructed by City for which Developer is required to make a cash contribution pursuant to the Project’s conditions of approval or this Agreement or which is included in any City capital improvement fee program and which public facility is to be owned by the City, subject to credit against the corresponding fee.

The costs of any Eligible Facility to be constructed by Developer that are eligible to be financed with CFD Proceeds ("**Actual Costs**") shall include the following, if permissible under the CFD Act:

   (i) The actual hard costs for the construction or the value of the Proposed Eligible Facility, including labor, materials and equipment costs;

   (ii) The costs of grading related to the Eligible Facility;

   (iii) The costs incurred in designing, engineering and preparing the plans and specifications for the Eligible Facility;

   (iv) The costs of environmental evaluation and mitigation of or relating to the Eligible Facility;

   (v) Fees paid to governmental agencies for, and costs incurred in connection with, obtaining permits, licenses or other governmental approvals for the Eligible Facility;

   (vi) Costs of construction administration and supervision;

   (vii) Professional costs associated with the Eligible Facility, such as engineering, legal, accounting, inspection, construction staking, materials and testing and similar professional services; and
(viii) Costs of payment, performance and/or maintenance bonds and insurance costs directly related to the construction of the Eligible Facility.

(ix) Any other costs permitted by law.

The Eligible Facilities constructed by Developer, and for which Developer elects to submit payment requests, shall be bid, contracted for and constructed in accordance with the Acquisition Agreement to be entered into between City and Developer at the time of formation of the first CFD. The Acquisition Agreement shall provide additional detail, consistent with the provisions of the Goals and Policies for Financing and this Agreement, with respect to the acquisition and construction of the Eligible Facilities, including a more detailed description of the specific Eligible Facilities that will be eligible to be financed through the CFD and discrete components of each Eligible Facility that may be reimbursed prior to the completion of the entire Eligible Facility. The Acquisition Agreement will also provide additional detail with respect to the financing of the City’s construction of Eligible Facilities in satisfaction of corresponding City capital improvement fees, as elected by Developer. The CFD financing of the acquisition of an Eligible Facility constructed by Developer that is included in a City Capital improvement fee program or required by the Project conditions of approval, shall not preclude the Developer’s receipt of corresponding fee credits.

5. Eligible Services. The Eligible Services consist of the maintenance of City parks in Planning Areas 10, 11, 12 and 13, the flood control improvements described in Section 5.4 of the Agreement and the maintenance of any other areas agreed upon by the City and Developer.

6. Financing Parameters. Each CFD shall be authorized to levy Special Taxes of each Improvement Area and issue Bonds of each CFD or Improvement Area in one or more series to finance the Eligible Facilities in accordance with the basic parameters set forth below:

a. A precondition to the issuance of Bonds shall be that the value of the real property subject to Special Taxes required to repay the Bonds shall be at least three times the amount of the Bonds.

b. Each series of Bonds shall have a term of at least thirty (30) years and include escalating annual debt service commensurate with any annual escalation in the Facilities Special Taxes. Each series of Bonds shall be sized based upon 110% debt service coverage from Facilities Special Taxes.

c. The total effective tax rate within each Improvement Area applicable to any residential parcel on which a residential dwelling has or is to be constructed, taking into account all ad valorem property taxes, voter-approved ad valorem property taxes in excess of one percent (1%) of assessed value, the annual special taxes of existing community facilities districts and community facilities districts under consideration and reasonably expected to be established, the annual assessments (including any administrative surcharge) of existing assessment districts and assessment districts under consideration and reasonably expected to be established, and the Facilities Special Taxes, shall equal two percent (2.00%) of the projected initial sales price of the residential dwelling unit and such parcel, as estimated at the time of formation of the applicable
CFD, or such lesser amount requested by Developer. The Facilities Special Taxes and Services Special Taxes may escalate by up to 2% per year.

d. Each CFD shall levy Facilities Special Taxes on parcels for which a Building Permit for residential construction has been issued (“Developed Property”) prior to the issuance of Bonds. The Facilities Special Taxes collected by each CFD from Developed Property prior to the issuance of Bonds that are not required to pay reasonable administrative expenses of the CFD shall be deemed “Surplus Special Taxes.” Surplus Special Taxes shall be disbursed to pay for Eligible Facilities pursuant to the Acquisition Agreement.

e. The amount of the Services Special Taxes shall not exceed the amount required to pay the reasonably projected actual costs of providing the Eligible Services.

f. The City shall not oppose any efforts by the Developer and shall reasonably cooperate with the Developer in its efforts to freeze or reduce the ad valorem real property tax rate applicable to the Property that is attributable to other public agencies.
EXHIBIT K
PUBLIC IMPROVEMENTS SCHEDULE
[To Be Inserted]
Attachment 8
City Council Resolution No. 2016-87
RESOLUTION NO. 2016-87

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
APPROVING THE ANNEXATION OF 161 ACRES TO THE CITY OF BANNING LOCATED WITHIN THE CITY’S SPHERE OF INFLUENCE

WHEREAS, the City Council is considering the annexation of 161 acres of real property hereafter referred to as the ‘territory’, which includes APNs 537-200-031, 537-200-032, 537-200-033, 537-200-034, 537-200-035, 537-200-036, 537-200-038, and 537-200-038, all contiguous to the City of Banning and described in Exhibit “A” (legal description) and “B” (plat map) attached hereto.

WHEREAS, the City prepared an environmental impact report to assess the development and environmental impacts of the Rancho San Gorgonio Specific Plan consisting of 831 acres of which 161 acres are proposed to be annexed. The City has provided the public review period for the Draft Environmental Impact Report for the 45 day duration required under CEQA Guidelines Sections 15087 and 15105. The draft Environmental Impact Report, Final Environmental Impact Report, Mitigation Monitoring Reporting Program, Statement of Overriding Considerations and Findings of Fact were prepared, processed, and noticed in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), the CEQA Guidelines (14 California Code of Regulations Section 15000 et seq.) and the local CEQA Guidelines and Thresholds of Significance adopted by the City of Banning. Moreover, in light of the significant and unavoidable impacts resulting from the project, the City Council of the City of Banning finds that it has seriously considered the significant unavoidable adverse environmental impacts, but the significant and unavoidable adverse impacts are outweighed by the economic, social and other benefits of the Project as set forth in the Statement of Overriding Considerations and Findings of Fact.

WHEREAS, as provided in Government Code Section 56757, the City Council of the City of Banning is the conducting authoring for the annexation.

WHEREAS, the territory to be annexed is located in the City of Banning’s Sphere of Influence, has a pre-zoned General Plan designation of Ranch/Agriculture.

WHEREAS, in accordance with the noticing requirements and public hearing conducted by the City of Banning Planning Commission on September 7, 2016 and City Council hearing on __________, 2016, based on an absence of objections from local agencies providing public services to the territory being annexed, the full owner consent and the findings made by the City Council are listed below.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Banning hereby makes the following findings:

SECTION 1. ANNEXATION FINDINGS
A. That the annexation has been evaluated and analyzed in accordance with the preparation of the Draft Environmental Impact Report, Final Environmental Impact Report and Statement of Overriding Considerations and Findings of Fact concerning the development of the Rancho San Gorgonio Specific Plan master plan development. Moreover, that the draft Environmental Impact Report, Final Environmental Impact Report, Mitigation Monitoring Reporting Program, Statement of Overriding Considerations and Findings of Fact was prepared, processed, and noticed in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), the CEQA Guidelines (14 California Code of Regulations Section 15000 et seq.) and the local CEQA Guidelines and Thresholds of Significance adopted by the City of Banning. That in view of the significant and unavoidable impacts resulting from the project, the City Council of the City of Banning finds that it has seriously considered the significant unavoidable adverse environmental impacts, but the significant and unavoidable adverse impacts are outweighed by the economic, social and other benefits of the Project as set forth in the Statement of Overriding Considerations and Findings of Fact.

B. That the unincorporated territory to be annexed is within the Sphere of Influence of the City as adopted by the County of Riverside Local Agency Formation Commission.

C. That the Riverside County Surveyor has made a final determination that the boundaries of the area proposed to be annexed are definite and certain, and in compliance with LAFCO’s road annexation policies.

D. That the proposal does not split lines of assessment or ownership and that this fact has been confirmed by the County of Riverside Assessor’s Office.

E. That the proposal does not create islands or areas in which it would be difficult to provide municipal services.

F. That the proposal is consistent with the General Plan and Zoning of the City of Banning in that the territory proposed for annexation will incorporate multiple zoning districts associated with the Rancho San Gorgonio Specific Plan designations of Very Low Density Residential, Low Density Residential and Open Space.

G. That the territory is contiguous to the existing City limits.

H. That the City has complied with all conditions imposed by LAFCO for inclusion of the territory in the Urban Service Area of the City.

I. That all property owners within the annexation area have been informed of these Proceedings and no opposition has been received.
J. That under Government Code § 56375.3 the City is authorized to waive protest proceedings entirely pursuant to Part 4 (commencing with Section 57000), based on the following findings hereby made by the Banning City Council.

1. The annexation is initiated on or after January 1, 2017 and before January 1, 2031.
2. The annexation is proposed by resolution adopted by the City of Banning, the affected City.
3. The territory contained in the annexation proposal meets all of the requirements set forth in finding J.4 below.
4. The territory to be annexed meets all of the following requirements:
   a) The territory constitutes an entire unincorporated area located within the limits of the City of Banning.
   b) The territory is surrounded in either of the following ways:
      (1) Surrounded, or substantially surrounded by the city to which annexation is proposed or by the city and a county boundary.
      (2) Surrounded by the city to which annexation is proposed.
   c) The territory is substantially developed or developing, based upon one or more factors, including, but not limited to, any of the following factors:
      (1) The availability of public utility services,
      (2) The presence of public improvements.
      (3) The presence of physical improvements upon the parcel or parcels within the area.
   d) The territory is not prime agricultural land, as defined by Section 56064 and as found by LAFCO.
   e) The territory will benefit from the change of organization or reorganization or is receiving benefits from the annexing city.

SECTION 2. CITY COUNCIL ACTION

The City council hereby takes the following action:

1. Approve the annexation of approximately 161 acres of real property described in Exhibit “A” (legal description) and “B” (plat map) attached hereto which includes APNs 537-200-031, 537-200-032, 537-200-033, 537-200-034, 537-200-035, 537-200-036, 537-200-038, and 537-200-038

PASSED, APPROVED AND ADOPTED this _____ day of ______________, 2016.
CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2016-87, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the _____ day of __________, 2016 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie Calderon, City Clerk
City of Banning, California
Annexation Legal Description

ALL OF THE SE ¼ OF SECTION 17, T3S, R1E, S.B.M, AS SHOWN ON PARCEL MAP NO. 28972, PARCEL MAP BOOK NO. 204, PAGES 31, THROUGH 32, INCLUSIVE, IN THE UNINCORPORATED TERRITORY OF RIVERSIDE COUNTY, STATE OF CALIFORNIA
Annexation Map

LOCATION MAP
NOT TO SCALE
Appendix A

Rancho San Gorgonio Specific Plan
dated January 26, 2015 (under separate cover)
Appendix B
Draft Environmental Impact Report (DEIR)
dated June 2016 (under separate cover)
NOTICE OF PUBLIC HEARING


NOTICE IS HEREBY GIVEN that the City of Banning (City), as a Lead Agency under the California Environmental Quality Act (CEQA), will hold a Public Hearing before the Planning Commission at the date, time, and location listed below for consideration of the project; the purpose of this hearing is to provide a recommendation to the City Council on the project. The Environmental Impact Report (EIR) for the project has been prepared pursuant to CEQA and the CEQA Guidelines. Copies of available materials may be reviewed or obtained from the City’s office at the address below. Any person may appear at the public hearing in person or by agent and be heard.

Planning Commission Hearing Date = Wednesday, September 7, 2016
Hearing Time = 6:30 p.m.
Hearing Location = City of Banning Council Chambers
99 E. Ramsey Street, Banning, CA 92220

Project Location: The Rancho San Gorgonio Specific Plan project is located within the City of Banning and the City’s Sphere of Influence and is bounded by Westward Avenue on the north, Sunset Avenue and Turtle Dove Lane on the west, San Gorgonio Avenue (State Route 243) on the east, and Coyote Trail and Old Idyllwild Road on the south. A portion of the site (approximately 161 acres) is in the City’s sphere of influence (SOI) and is anticipated to be annexed as part of the development process. Access to the site from Interstate 10 is provided via ramps at Sunset Avenue, 22nd Street, and 8th Street, from west to east.

The Rancho San Gorgonio SP project includes the following Assessor’s Parcel Numbers: 537-150-005, 537-150-006, 537-150-007, 537-170-002, 537-170-003, 537-170-004, 537-190-001, 537-190-002, 537-190-003, 537-190-004, 537-190-005, 537-190-018, 537-190-019, 537-190-020, 537-190-021, 537-190-022, 537-200-031, 537-200-032, 537-200-033, 537-200-034, 537-200-035, 537-200-036, 537-200-037, 537-200-
Project Description: The Project proposes an 831-acre master-planned community organized into forty-four planning areas (PAs) that include a mixture of residential, commercial, school, open space, and recreational uses and up to 3,133 residential units; or 3,385 residential units if the commercial site and school site are not developed.

The project requires concurrent consideration of a proposed General Plan Amendment No. 13-2503 and Zone Change No. 13-3501 to reflect the proposed zoning ordinance text and overlay map amendments for the Rancho San Gorgonio Specific Plan; a Water Supply Assessment for the project; proposed Specific Plan No. 13-2001 for the Rancho San Gorgonio Specific Plan to create an 831 acre master planned community composed of 44 planning areas that include a variety of residential densities, common open spaces, an elementary school site and commercial area within the City of Banning; a proposed Master Tentative Tract Map No. 36586 establishing road right-of-ways, 43 numbered lots and 2 lettered lots, a proposed Development Agreement No.13-1502 containing provisions for financing acquisition and infrastructure construction and land use development parameters, and proposed Annexation No. 13-1001 for the annexation of 161 acres of property located in the County of Riverside and within the City’s adopted Sphere of Influence General Planning Area and the Rancho San Gorgonio Specific Plan.

Environmental Impact Report (EIR) Certification: A Draft Environmental Impact Report (DEIR) was made available for public review and comment pursuant to the provisions of CEQA. The purpose of the DEIR was to identify and describe potential environmental impacts that could result from the Project. The 45-day public review period for the DEIR began on June 20, 2016 and ended on August 3, 2016. The City also held a public scoping meeting on April 29, 2015 to discuss the project, answer questions pertaining to the analyses presented in the DEIR, and receive public comments on the document. The Final Environmental Impact Report (FEIR) proposes text revisions to the DEIR and responses to comments submitted on the DEIR. The City Planning Commission will make a recommendation to the City Council to either certify or deny the EIR for the proposed Project, including adoption of a Statement of Overriding Considerations and CEQA Findings of Fact, certification of the Final Environmental Impact Report, and adoption of the Mitigation Monitoring and Reporting Program for the Rancho San Gorgonio Specific Plan project.

A copy of the Specific Plan proposal along with the Environmental Impact Report is available at the City of Banning City Clerk’s office, 99 E. Ramsey Street, Banning, CA 92220, as well as at the City Community Development Department’s website at http://www.ci.banning.ca.us.

If you challenge this project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing.

A Planning Commission Study Session for the project will be held on August 31, 2016 at 6:30pm at the City of Banning Council Chambers.

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA.

Brian Guillot             Dated: August 23, 2016
Community Development Director                  Date Published: August 26, 2016
NOTICE OF PUBLIC HEARING


NOTICE IS HEREBY GIVEN that the City of Banning (City), as a Lead Agency under the California Environmental Quality Act (CEQA), will hold a Public Hearing before the Planning Commission at the date, time, and location listed below for consideration of the project; the purpose of this hearing is to provide a recommendation to the City Council on the project. The Environmental Impact Report (EIR) for the project has been prepared pursuant to CEQA and the CEQA Guidelines. Copies of available materials may be reviewed or obtained from the City’s office at the address below. Any person may appear at the public hearing in person or by agent and be heard.

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The project requires concurrent consideration of a proposed General Plan Amendment No. 13-2503 and Zone Change No. 13-3501 to reflect the proposed zoning ordinance text and overlay map amendments for the Rancho San Gorgonio Specific Plan; a Water Supply Assessment for the project; the proposed Specific Plan No. 13-2001 for the Rancho San Gorgonio Specific Plan to create an 831-acre master planned community composed of 44 planning areas that include a variety of residential densities, common open spaces, and an elementary school on the site. The project site is located within the City of Banning; a proposed Master Tentative Tract Map No. 36586 establishing road right-of-ways, 43 numbered lots and 2 lettered lots, a proposed Development Agreement No. 13-1902 containing provisions for financing acquisition and infrastructure construction and land use development parameters, and a proposed Resolution No. 13-1001 for the annexation of 161 acres of property located in the County of Riverside and within the City’s adopted Sphere of Influence General Planning Area and the Rancho San Gorgonio Specific Plan.

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BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA.

Signed: Brian Guillot
Community Development Director
Date: August 23, 2016

Record Gazette
218 N. Murray St.
Proof of Publication
(2015.5 C.C.P.)
135022 PUBLIC HEARING NOTICE

State of California
County of Riverside

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer and publisher of Record Gazette, a newspaper published in the English language in the City of Banning, County of Riverside, and adjudicated a newspaper of general circulation as defined by the laws of the state of California by the Superior Court of the County of Riverside, under the date October 14, 1966, Case No. 54737. That the notice, of which the annexed is a copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

August 26, 2016

Executed on: 08/26/2016
At Banning, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Signature

709
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BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA.

Brian Guillot
Community Development Director

Dated: August 23, 2016

Date Published: August 26, 2016
Appendix D

Notice of Preparation
STATE OF CALIFORNIA
GOVERNOR'S OFFICE OF PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT

Notice of Preparation

April 20, 2015

To: Reviewing Agencies

Re: Rancho San Gorgonio Specific Plan
   SCH# 2015041064

Attached for your review and comment is the Notice of Preparation (NOP) for the Rancho San Gorgonio Specific Plan draft Environmental Impact Report (EIR).

Responsible agencies must transmit their comments on the scope and content of the NOP, focusing on specific information related to their own statutory responsibility, within 30 days of receipt of the NOP from the Lead Agency. This is a courtesy notice provided by the State Clearinghouse with a reminder for you to comment in a timely manner. We encourage other agencies to also respond to this notice and express their concerns early in the environmental review process.

Please direct your comments to:

   Brian Guillot
   City of Banning
   99 East Ramsey Street
   Banning, CA 92220

with a copy to the State Clearinghouse in the Office of Planning and Research. Please refer to the SCH number noted above in all correspondence concerning this project.

If you have any questions about the environmental document review process, please call the State Clearinghouse at (916) 445-0613.

Sincerely,

[Signature]

Scott Morgan
Director, State Clearinghouse

Attachments
cc: Lead Agency

1400 10th Street  P.O. Box 3044  Sacramento, California 95812-3044
(916) 445-0613  FAX (916) 323-3018  www.opr.ca.gov
**Document Details Report**  
**State Clearinghouse Data Base**

**SCH#** 2015041064  
**Project Title** Rancho San Gorgonio Specific Plan  
**Lead Agency** Banning, City of

<table>
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<tr>
<th>Type</th>
<th>NOP Notice of Preparation</th>
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**Description**  
The proposed project is a master-planned community on an 931 acre site, and is organized into 44 planning areas (PAs) that include a mixture of residential, commercial, open space, and recreational uses and a maximum of 3,385 residential units. Parks and paseos are incorporated to buffer the natural creeks onsite and to provide nonmotorized access throughout the planned community. The Specific Plan would designate about 517 acres for residential development; 185 acres for parks and paseos, including creek-edge linear parks; 26 acres for natural open space; and 104 acres for other uses including neighborhood commercial, public facilities, a school, roadway rights of way, and storm drain easements.

**Lead Agency Contact**  
**Name** Brian Guillet  
**Agency** City of Banning  
**Phone** 951-922-3131  
**Address** 99 East Ramsey Street  
**City** Banning  
**State** CA  
**Zip** 92220

**Project Location**  
**County** Riverside  
**City** Banning  
**Region**  
**Cross Streets** South of Westward Ave. between Sunset Ave (W) and San Gorgonio Ave/Old Idyllwild  
**Lat / Long**  
**Parcel No.** 34 Parcels  
**Township** 3S  
**Range** 1E  
**Section** 16,17  
**Base** SB

**Proximity to:**  
**Highways** I-10, 243  
**Airports** Banning  
**Railways** UPRR  
**Waterways** Smith Creek, Pershing Creek, Montgomery Creek, Gilman Home Channel  
**Schools** Various  
**Land Use** Grazing land: zoning and General Plan designations each consist of Very Low Density Residential, Medium Density Residential, Rural Residential, Open Space-Parks, and Open Space Resources.

**Project Issues**  
Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Drainage/Absorption; Flood Plain/Flooding; Forest Land/Fire Hazard; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife; Growth Inducing; Landuse; Cumulative Effects

**Reviewing Agencies**  
Resources Agency; Department of Conservation; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; Department of Fish and Wildlife, Region 6; Department of Housing and Community Development; Office of Emergency Services, California; Native American Heritage Commission; Cal Fire; Caltrans, District 8; Air Resources Board; Regional Water Quality Control Board, Region 8

**Date Received** 04/20/2015  
**Start of Review** 04/20/2015  
**End of Review** 05/19/2015

Note: Blanks in data fields result from insufficient information provided by lead agency.
Notice of Completion and Environmental Document Transmittal

For U.S. Mail: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044
For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

Project Title: Rancho San Gorgonio Specific Plan

Lead Agency: City of Banning
Contact Person: Brian Guillot, Acting Comm. Devt. Director
Street Address: 99 East Ramsey Street
Telephone: 951.922.3131
City: Banning
Zip Code: 92220
County: Riverside

Project Location: County: Riverside
City/Nearest Community: Banning
Cross Streets: South of Westward Avenue between Sunset Avenue (west) and San Gorgonio Avenue/Old Idyllwild Zip Code: 92220 Road (east)

Lat. / Long.: Total Acres: 831
Assessor’s Parcel No. 34 parcels
Section: 16, 17
Twp: 3S
Range: 1E
Base: San Bernardino

Within 2 Miles: State Hwy #: I-10, 243
Waterways: Smith Creek, Pershing Creek, Montgomery Creek, Gilman Home Channel
Airports: Banni
Railways: UPRR
Schools: Banning High School, Central Elementary School, Noble Middle School, 

Document Type:
CEQA: ☒ NO
☐ Draft EIR
☐ Early Cons
☐ Supplement/Subsequent EIR
☐ Neg Dec
☐ Mit Neg Dec
( Prior SCH No.

NEPA: ☐ NO
☒ Other:
☐ Joint Document
☐ EA
☐ Draft EIS
☐ Final Document
☐ FONSI

Local Action Type:
☐ General Plan Update
☒ General Plan Amendment
☐ General Plan Element
☐ Community Plan
☐ Specific Plan
☐ Master Plan
☐ Planned Unit Development
☐ Site Plan
☐ Rezone
☐ Prezone
☐ Use Permit
☐ Land Division (Subdivision, etc.)
☐ Annexation
☐ Redevelopment
☐ Coastal Permit
☐ Other:

Development Type:
☐ Residential:
☐ Office:
☐ Commercial:
☐ Industrial:
☐ Educational:
☐ Recreational:
☐ Water Facilities:
☐ Transportation:
☐ Mining:
☐ Power:
☐ Waste Treatment:
☐ Hazardous Waste:
☐ Other:

Total Acres (approximate): 831

Project Issues Discussed in Document:
☒ Aesthetic/Visual
☒ Agricultural Land
☒ Air Quality
☒ Archeological/Historical
☒ Biological Resources
☒ Coastal Zone
☒ Drainage/Abosorption
☒ Economic/Jobs
☒ Other:
☒ Fiscal
☒ Flood Plain/Flooding
☒ Forest Land/Fire Hazard
☒ Geologic/Seismic
☒ Minerals
☒ Noise
☒ Population/Housing Balance
☒ Public Services/Facilities
☒ Recreation/Parks
☒ Schools/Universities
☒ Septic Systems
☒ Sewer Capacity
☒ Soil Erosion/Compaction/Grading
☒ Solid Waste
☒ Toxic/Hazardous
☒ Traffic/Circulation
☒ Vegetation
☒ Water Quality
☒ Water Supply/Groundwater
☒ Wetland/Riparian
☒ Wildlife
☒ Growth Inducing
☒ Land Use
☒ Cumulative Effects

Present Land Use/Zoning/General Plan Designation:
Land Use: Zoning: General Plan: Grazing land: zoning and General Plan designations each consist of Very Low Density Residential, Medium Density Residential, Rural Residential, Open Space-Parks, and Open Space-Resources.

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RECEIVED
APR 20 2015

STATE CLEARING HOUSE

SCH #
2015041064

715
NOP Distribution List

Resources Agency
- Resources Agency
  - Nadell Gayou

- Dept. of Boating & Waterways
  - Nicole Wong

- California Coastal
  - Commission
  - Elizabeth A. Fuchs

- Colorado River Board
  - Lisa Johansen

- Dept. of Conservation
  - Elizabeth Carpenter

- California Energy
  - Commission
  - Eric Knight

- Cal Fire
  - Dan Foster

- Central Valley Flood Protection Board
  - James Herota

- Office of Historic Preservation
  - Ron Parsons

- Dept of Parks & Recreation
  - Environmental Stewardship Section

- California Department of Resources, Recycling & Recovery
  - Sue O'Leary

- S.F. Bay Conservation & Dev't Comm.
  - Steve McAdam

- Dept. of Water Resources
  - Resources Agency
  - Nadell Gayou

Fish and Game
- Dept. of Fish & Wildlife
  - Scott Flint

- Fish & Wildlife Region 1
  - Donald Koch

- Dept of General Services
  - Public School Construction

- Dept of General Services
  - Anna Garbeff

- Delta Stewardship Council
  - Kevan Samsam

- Housing & Comm. Dev.
  - CEQA Coordinator

Independent Commissions, Boards
- Delta Protection Commission
  - Michael Machado

- OES (Office of Emergency Services)
  - Dennis Castillio

- Native American Heritage Comm.
  - Debbie Treadway

- Public Utilities Commission
  - Leo Wong

- Santa Monica Bay Restoration
  - Guanyu Wang

- State Lands Commission
  - Jennifer Deleong

- Tahoe Regional Planning Agency (TRPA)
  - Cherry Jacques

Cal State Transportation Agency CalSTA
- Caltrans - Division of Aeronautics
  - Philip Crimmins

- Caltrans - Planning
  - HQ LD-IGR
  - Terri Penovcic

- California Highway Patrol
  - Suzann Ikeuchi

Office of Special Projects

Dept. of Transportation
- Caltrans, District 1
  - Rex Jackman

- Caltrans, District 2
  - Marcelino Gonzalez

- Caltrans, District 3
  - Eric Federicks - South
  - Susan Zanchi - North

- Caltrans, District 4
  - Martin Allen

- Caltrans, District 5
  - Larry Newland

- Caltrans, District 6
  - Michael Navarro

- Caltrans, District 7
  - Dianna Watson

Caltrans, District 8
- Mark Roberts

- Caltrans, District 9
  - Gayle Rosaccer

- Caltrans, District 10
  - Tom Dumas

- Caltrans, District 11
  - Jacob Armstrong

- Caltrans, District 12
  - Maureen El Harake

Cal EPA
- Air Resources Board
  - Cathi Slaminski

- Transportation Projects
  - Nesamani Kalandiyur

- Industrial/Energy Projects
  - Mike Tollstrup

- State Water Resources Control Board
  - Regional Programs Unit
  - Division of Financial Assistance

- State Water Resources Control Board
  - Jeffery Werth
  - Division of Drinking Water

- State Water Resources Control Board
  - Student Intern, 401 Water Quality Certification Unit
  - Division of Water Quality

- State Water Resources Control Board
  - Phil Crader
  - Division of Water Rights

- Dept of Toxic Substances Control
  - CECQA Tracking Center

- Department of Pesticide Regulation
  - CECQA Coordinator

Regional Water Quality Control Board (RWQCB)
- RWQCB 1
  - Cathleen Hudson
  - North Coast Region (1)

- RWQCB 2
  - Environmental Document Coordinator
  - San Francisco Bay Region (2)

- RWQCB 3
  - Central Coast Region (3)

- RWQCB 4
  - Teresa Rodgers
  - Los Angeles Region (4)

- RWQCB 5S
  - Central Valley Region (5)

- RWQCB 5F
  - Central Valley Region (6)
  - Fresno Branch Office

- RWQCB 5R
  - Central Valley Region (5)
  - Redding Branch Office

- RWQCB 6
  - Lahontan Region (6)

- RWQCB 6V
  - Lahontan Region (6)
  - Victorville Branch Office

- RWQCB 7
  - Colorado River Basin Region (7)

- RWQCB 8
  - Santa Ana Region (8)

- RWQCB 9
  - San Diego Region (9)

- Other

Conservancy

Last Updated 10/13/2014
RESOLUTION NUMBER NO. 15-16-26

RESOLUTION OF THE BOARD OF TRUSTEES OF THE BANNING UNIFIED SCHOOL DISTRICT SUPPORTING THE APPROVAL OF RANCHO SAN GORGONIO BY THE CITY OF BANNING

WHEREAS, the Banning Unified School District is committed to the success of all its students and schools in the City of Banning; and

WHEREAS, Rancho San Gorgonio is a proposed, master-planned community of high-quality homes, retail, public parks, paseos, trails, and open space which will be built adjacent to Banning High School; and

WHEREAS, the Rancho San Gorgonio's Specific Plan includes a 14 acre elementary school site adjacent to Banning High School as requested by the Banning Unified School District, and

WHEREAS, the Rancho San Gorgonio Specific Plan master developer would provide mass graded pad, fully developed street access, including sidewalks, and utility connection stubs for the school site, and

WHEREAS, Rancho San Gorgonio's Specific Plan honors past Banning educators by naming two of its villages after prominent early schoolteachers Susan B. Coombs and B.O. Barker, and

WHEREAS, Rancho San Gorgonio will make significant improvements to local roads and add new traffic signals, which will help enhance pedestrian and student safety; and

WHEREAS, Rancho San Gorgonio will provide needed additional housing opportunities for Banning Unified School District faculty and staff in the City of Banning; and

WHEREAS, Rancho San Gorgonio will generate a substantial increase in its property values and, as historical data suggests, in the values of surrounding property; and

WHEREAS, Rancho San Gorgonio will provide significant economic benefits for the local economy.

NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE BANNING UNIFIED SCHOOL DISTRICT DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

The Banning Unified School District Board of Trustees confirm its support of Rancho San Gorgonio and encourages the City Council of the City of Banning to approve the project, as it will provide undeniable benefits for the Banning Unified School District and the entire region.

ADOPTED, SIGNED AND APPROVED this 30 day of June, 2016.

BOARD OF TRUSTEES OF THE BANNING
UNIFIED SCHOOL DISTRICT

By ______________
Alfredo Andrade, President of Board of Trustees

ATTEST:

By ______________
Tan Spann, Clerk of the Board of Trustees

RECEIVED
AUG 30 2016
BY: Office of the
City Clerk
RESOLUTION OF THE BOARD OF DIRECTORS SUPPORTING THE APPROVAL OF RANCHO SAN GORGONIO BY THE CITY OF BANNING

WHEREAS, the Banning Chamber of Commerce is dedicated to promoting a vibrant business environment by cooperative interaction among business, government and community; and

WHEREAS, Rancho San Gorgonio is a proposed, master-planned community of high-quality homes, retail, public parks, paseos, trails, and open spaces; and

WHEREAS, over the course of development and construction, Rancho San Gorgonio would create thousands construction related jobs and hundreds of additional offsite jobs in the City of Banning; and

WHEREAS, Rancho San Gorgonio is expected to spend close to $1 billion during construction with the majority of funds to be spent in the City of Banning; and

WHEREAS, Rancho San Gorgonio will generate nearly $43 million in economic output in the City of Banning annually; and

WHEREAS, Rancho San Gorgonio will provide the City of Banning with $400,000 per year in general fund revenue to help provide essential municipal services and improve the quality of life for Banning residents; and

WHEREAS, Rancho San Gorgonio will provide needed additional housing opportunities to attract new residents to Banning and help bring new customers to local businesses; and

WHEREAS, Rancho San Gorgonio will generate a substantial increase in its property values and, as historical data suggests, in the values of surrounding property; and

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE BANNING CHAMBER OF COMMERCE DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

The Banning Chamber of Commerce Board of Directors confirms its support of Rancho San Gorgonio and encourages the City Council of the City of Banning to approve the project, as it will provide undeniable benefits for local businesses and the entire region.

ADOPTED, SIGNED AND APPROVED this 21st day of July, 2016.

RECEIVED AUG 30 2016

BY: [Signature]

BOARD OF DIRECTORS OF THE BANNING CHAMBER OF COMMERCE

By [Signature] Ron Duncan, President
MT. SAN JACINTO COMMUNITY COLLEGE DISTRICT
RESOLUTION NUMBER 2015/16-077

A RESOLUTION OF SUPPORT FOR THE APPROVAL OF RANCHO SAN GORGONIO BY THE CITY OF BANNING

WHEREAS, Mt. San Jacinto College District is committed to the success of all of its campuses, including the San Gorgonio Campus, in the City of Banning; and

WHEREAS, Rancho San Gorgonio is a proposed, master-planned community of high-quality homes, retail, public parks, paseos, trails, and open space which will be built adjacent to the San Gorgonio Campus; and

WHEREAS, Rancho San Gorgonio will provide important infrastructure improvements to roads, water, sewer, and storm drain systems, that will improve the access and infrastructure that will support the San Gorgonio Campus; and

WHEREAS, Rancho San Gorgonio will make significant improvements to local roads including the construction of a bridge on Sunset Avenue, providing all weather access and important flood control improvements along Pershing Creek that will protect the San Gorgonio Campus; and

WHEREAS, the new residents of Rancho San Gorgonio will provide significant new revenue to the Mt. San Jacinto College District through the recently adopted Measure AA; and

WHEREAS, Rancho San Gorgonio will provide needed additional housing opportunities for faculty and students near campus; and

WHEREAS, Rancho San Gorgonio will generate a substantial increase in its property values and, as historical data suggests, in the values of surrounding property; and

WHEREAS, Rancho San Gorgonio will provide significant economic benefits for the local economy.

NOW, THEREFORE BE IT RESOLVED THAT:

The Mt. San Jacinto College District hereby confirms its support of Rancho San Gorgonio and encourages the City Council of the City of Banning to approve the project, as it will provide undeniable benefits for the San Gorgonio Campus and the entire region.

PASSED AND ADOPTED this eighth day of October, 2015.

Secretary to the Governing Board

[Signature]

RECEIVED AUG 30 2016

BY: City Clerk

720
Appendix F

Letters of Support
August 22, 2016

Mayor Art Welch
Mayor Pro Tem George Moyer
Councilmember Edward Miller
Councilmember Debbie Franklin
Councilmember Don Peterson

City of Banning
99 East Ramsey Street
Banning, CA 92220

Subject: Support for Rancho San Gorgonio

Dear Honorable Mayor and City Council members:

Our company, Marinita Development Co., is completing work on the adaptive re-use of the old Kmart building in the Sun Lakes Village Shopping Center. As you know, four new retailers to the City of Banning will be opening soon: Big 5 Sporting Goods, Hobby Lobby, Marshalls and Party City. Having a strong customer base will be important for the future success of these businesses and that is why we are very supportive of Rancho San Gorgonio.

Rancho San Gorgonio is a master-planned community that will provide new home options for current and prospective Banning residents and will help the business community within the City thrive with the addition of new customers. The project will be an economic engine for the City of Banning by generating thousands of new jobs and generating millions of dollars for the local economy. Rancho San Gorgonio will also provide hundreds of thousands of dollars to the City’s general fund each year which can be used to improve and enhance City services.

Rancho San Gorgonio has been designed to fit with the quality of life features Banning residents have come to expect and will utilize the latest energy and water efficient designs and technologies to ensure the most efficient use of resources. The project will also help improve traffic efficiency through the city by adding new roads and traffic signals.
A Planned Community such as Rancho San Gorgonio will provide the City with many great benefits that will positively impact both residents and businesses. Marinita Development Co. is proud to be a part of the local business community and wants to see the City of Banning continue to succeed. We strongly encourage and urge you to support the Rancho San Gorgonio Planned Community.

Sincerely,
MARINITA DEVELOPMENT CO.

J. Scott Fawcett
President
August 2016

Mayor Art Welch, Mayor Pro Tem George Moyer, Councilmember Debbie Franklin, Councilmember Edward Miller and Councilmember Don Peterson
Banning City Hall
99 E Ramsey Street
Banning, CA 92220

Subject: Rancho San Gorgonio Project

Dear Mayor Welch and City Council Members,

As a person who was born in the city of Banning, was raised in the city of Banning, raised my own children in the city of Banning and currently runs a non-profit business which serves approximately 450 kids who live in Banning and also employees nearly 50 people who live in the area, I write to you in support of the Rancho San Gorgonio Specific (RSG) Plan. The city of Banning has been known as “Stagecoach Town, U.S.A” for many years and has embraced its identity as a rural community that was enjoyed by many people who lived on ranches and/or ran vibrant orchards. However, much like other communities, the opportunity for people to maintain these lifestyles and the necessary properties to support them, has begun to diminish over the years. There are still some wonderful people who continue to live on beautiful, large properties both on the south and north sides of Banning and I respect and support that tremendously.

I think is very important that as a city, we continue respect those who enjoy rural lifestyles, but it is also important embrace growth. We all know there are challenges that come along with change and growth. However, more importantly to me, there are advantages. I have attended a couple of the informational meeting that the representatives of the Rancho San Gorgonio Project have offered as well as other developers on other projects. With the Rancho San Gorgonio Project specifically, they have designed a master plan that has includes many different types of traditional residential neighborhoods combined with parks and recreation areas, neighborhood gathering places, local commercial services, and community facilities within an open space setting. However, again as a person who employees many young people who live in the Pass area, nice apartments, near the College are of importance and are scarce. We have employees and families who could take advantage of these type of units.

RSG has considered the neighbors who are close or adjacent to their project. They have considered those who enjoy walking and even those who ride horses, including some walking and horse trails. On the last plans that I saw, the planners had included larger parcels next to the residents who already own large parcels/properties in an effort to maintain the rural feel as much as possible. Then, as you move north, the parcels get smaller to provide homes with properties that more home buyers may be interested in purchasing.
RSG has provided for retail areas, all areas of Banning, except the west end have such great need for retail and especially a grocery store. Hopefully, this development will provide enough rooftops that a grocery chain would be enticed in placing one in this development. Once this project is approved, it will provide countless jobs and opportunities for people in our community to be a part of something great. It will allow residents to have nice places to hold family functions, or offer small scale performances in the outdoor theater areas. People will be able to walk their dogs down beautiful pathways alongside neighbors and other residents of Banning.

The income that will be increased due to the property taxes that will be generated, the property taxes from the sale of the homes, the sales taxes collected from the retail areas will all be revenue that the city of Banning can use to help pay for the necessary services that every community needs: adequate police and fire protection, senior services, work on our parks, roads and community centers.

I encourage you to approve this project for the betterment of our community and to help ensure the future success of the City of Banning.

Sincerely,

Amy Herr

cc: Banning Planning Commissioners
City Manager Michael Rock
Director of Development Brian Guillot
August 2016

City of Banning
Banning City Hall
99 E Ramsey Street
Banning, CA 92220

Mayor Art Welch, Mayor Pro Tem George Moyer, Councilmember Edward Miller,
Councilmember Debbie Franklin, Councilmember Don Peterson;

Subject: Rancho San Gorgonio

Dear Mayor Welch and City Council Members,

It is my pleasure to write to you in support of the Rancho San Gorgonio Specific Plan. As you are certainly aware, this planned community will include many different types of new traditional residential neighborhoods combined with parks and recreation areas, neighborhood gathering places, local commercial services, and community facilities within an open space setting.

Rancho San Gorgonio is in keeping with the quality of life features Banning residents have come to expect and treasure. I look forward to the project and the many benefits it will bring to the City including much needed housing, economic vitality, and community resources and amenities.

Aside from the creation of local jobs, Rancho San Gorgonio will generate millions of dollars in new tax revenue that the city can use to help pay for services such as increased police protection, senior services, and youth sport activities.

I would like to add my name to the list of organizations and individuals who have endorsed this project. As a member of the Banning Community, I stand in support of Rancho San Gorgonio and the positive benefits it will bring to the City of Banning.

I encourage you to approve this project for the betterment of our community and to help ensure the future success of the City of Banning.

Sincerely,

[Signature]

[Address]
August 16, 2016

Mayor Art Welch, Mayor
Pro Tem George Moyer
Councilmember Edward Miller,
Councilmember Debbie Franklin
Councilmember Don Peterson

City of Banning
99 East Ramsey Street
Banning, CA 92220

Subject: Rancho San Gorgonio

Dear Mayor Welch and City Council Members:

We need to promote the economic vitality of the City of Banning and its surrounding areas. I personally, as well as being a member of the Banning Unified Board of Trustee’s, support the planned development known as Rancho San Gorgonio. This new Planned Community will result in increased property values, increased business opportunities, and create beautiful new neighborhoods for the southern part of the city.

It is good for the School District and the students within the Banning District, as it will build growth in the number of young people attending our schools and will be an economic benefit to the District.

You of course are aware that the project provides for development of a new community of traditional residential neighborhoods combined with parks, open space, trails, paseos, neighborhood gathering places, retail commercial opportunities, educational opportunities, and community facilities all within a cohesive and beautifully planned community.

Rancho San Gorgonio enhances the quality of life features Banning residents have come to expect and treasure as well as a significant economic benefit for the City and the School District.

As a person who lives in the Pass and serves on the BUSD Board of Trustee’s, I urge the City Council to act in the best interest of the entire city and approve Rancho San Gorgonio.

Sincerely,

Kerri Mariner

Copy to:
Planning Commissioners
City Manager Michael Rock
Director Community Development Brian Guillot
August 15, 2016

City of Banning
Banning City Hall
99 E Ramsey Street
Banning, CA 92220

TO: Mayor Art Welch, Mayor Pro Tem George Moyer, Council members Edward Miller, Debbie Franklin, and Don Peterson;

SUBJECT: Rancho San Gorgonio

Soon you will have before you the opportunity to do something of significance for the betterment of the city you were elected to serve. It is the Rancho San Gorgonio Specific Plan.

As citizens of the city we are in favor of the Plan knowing it will not only provide additional rooftops to the city but will also draw much needed attention to the city; a city that offers a place for its residents to live, learn, work, shop and play. This long range development will not just make our city bigger, but will make it better. It will be an improvement to the city in countless ways.

We have reviewed the Local Context Map, the Land Use Plan, Community Improvements, the Opportunities and Constraints, the Land Use Plan, the four Parks and the Phasing Plan.

The proximity to the Banning High School and the Mt. San Jacinto College campuses and the allocation of space for an elementary school makes the site perfect to attract families to Banning.

The plan represents forward thinking and we encourage you to approve the project.

Sincerely yours,

David and Sharon Kealy

cc: Michael Rock, City Manager; Brian Guillot, Director of Development ; Banning Planning Commissioners
August 2016

City of Banning  
Banning City Hall  
99 E Ramsey Street  
Banning, CA 92220

Mayor Art Welch, Mayor Pro Tem George Moye, Councilmember Edward Miller, Councilmember Debbie Franklin, Councilmember Don Peterson;

Subject: Rancho San Gorgonio

Dear Mayor Welch and City Council Members,

It is my pleasure to write to you in support of the Rancho San Gorgonio Specific Plan. As you are certainly aware, this planned community will include many different types of new traditional residential neighborhoods combined with parks and recreation areas, neighborhood gathering places, local commercial services, and community facilities within an open space setting.

Rancho San Gorgonio is in keeping with the quality of life features Banning residents have come to expect and treasure. I look forward to the project and the many benefits it will bring to the City including much needed housing, economic vitality, and community resources and amenities.

Aside from the creation of local jobs, Rancho San Gorgonio will generate millions of dollars in new tax revenue that the city can use to help pay for services such as increased police protection, senior services, and youth sport activities.

I would like to add my name to the list of organizations and individuals who have endorsed this project. As a member of the Banning Community, I stand in support of Rancho San Gorgonio and the positive benefits it will bring to the City of Banning.

I encourage you to approve this project for the betterment of our community and to help ensure the future success of the City of Banning. I am so excited to see such a beautiful project to our great City.

Sincerely,

[Signature]

cc: Banning Planning Commissioners
    City Manager Michael Rock
    Director of Development Brian Guillot
August 2016

Mayor Art Welch, Mayor
Pro Tem George Moyer
Councilmember Edward Miller,
Councilmember Debbie Franklin
Councilmember Don Peterson

City of Banning
99 East Ramsey Street
Banning, CA 92220

Subject: Rancho San Gorgonio

Dear Mayor Welch and City Council Members:

The Banning Chamber of Commerce promotes the economic vitality of the City of Banning and its surrounding areas. The Chamber supports the planned development known as Rancho San Gorgonio. This new Planned Community will result in increased property values, increased business opportunities, and create beautiful new neighborhoods for the southern part of the city.

As you are certainly aware, the project provides for development of a new community of traditional residential neighborhoods combined with parks, open space, trails, paseos, neighborhood gathering places, retail commercial opportunities, educational opportunities, and community facilities all within a cohesive and beautifully planned community.

Rancho San Gorgonio enhances the quality of life features Banning residents have come to expect and treasure.

As a business owner, I recognize that Rancho San Gorgonio will strengthen my business investment. As a person who lives and/or works in the city of Banning and the San Gorgonio Pass and as a member of the Banning Chamber of Commerce, I urge the City Council to act in the best interest of the entire city and approve Rancho San Gorgonio.

Sincerely,

[Signature]

Copy to:
Planning Commissioners
City Manager Michael Rock
Director Community Development Brian Guillot
18 August 2016

City of Banning  
Banning City Hall  
99 E Ramsey Street  
Banning, CA 92220

Mayor Art Welch, Mayor Pro Tem George Moyer, Councilmember Edward Miller,  
Councilmember Debbie Franklin, Councilmember Don Peterson;

Subject: Rancho San Gorgonio

Dear Mayor Welch and City Council Members,

It is my pleasure to write to you in support of the Rancho San Gorgonio Specific Plan. As you are certainly aware, this planned community will include many different types of new traditional residential neighborhoods combined with parks and recreation areas, neighborhood gathering places, local commercial services, and community facilities within an open space setting.

Rancho San Gorgonio is in keeping with the quality of life features Banning residents have come to expect and treasure. I look forward to the project and the many benefits it will bring to the City including much needed housing, economic vitality, and community resources and amenities.

Aside from the creation of local jobs, Rancho San Gorgonio will generate millions of dollars in new tax revenue that the city can use to help pay for services such as increased police protection, senior services, and youth sport activities.

I would like to add my name to the list of organizations and individuals who have endorsed this project. As a member of the Banning Community, I stand in support of Rancho San Gorgonio and the positive benefits it will bring to the City of Banning.

I encourage you to approve this project for the betterment of our community and to help ensure the future success of the City of Banning.

Sincerely,

Henri V. De Roule  
3424 W. Nicolet St  
Banning, CA 92220  
951-663-3210

cc: Banning Planning Commissioners  
City Manager Michael Rock  
Director of Development Brian Guillot
August 2016

Mayor Art Welch, Mayor
Pro Tem George Moyer
Councilmember Edward Miller,
Councilmember Debbie Franklin
Councilmember Don Peterson

City of Banning
99 East Ramsey Street
Banning, CA 92220

Subject: Rancho San Gorgonio

Dear Mayor Welch and City Council Members:

The Banning Chamber of Commerce promotes the economic vitality of the City of Banning and its surrounding areas. The Chamber supports the planned development known as Rancho San Gorgonio. This new Planned Community will result in increased property values, increased business opportunities, and create beautiful new neighborhoods for the southern part of the city.

As you are certainly aware, the project provides for development of a new community of traditional residential neighborhoods combined with parks, open space, trails, paseos, neighborhood gathering places, retail commercial opportunities, educational opportunities, and community facilities all within a cohesive and beautifully planned community.

Rancho San Gorgonio enhances the quality of life features Banning residents have come to expect and treasure.

As a business owner, I recognize that Rancho San Gorgonio will strengthen my business investment. As a person who lives and/or works in the city of Banning and the San Gorgonio Pass and as a member of the Banning Chamber of Commerce, I urge the City Council to act in the best interest of the entire city and approve Rancho San Gorgonio.

Sincerely,

[Signature]

Copy to:
Planning Commissioners
City Manager Michael Rock
Director Community Development Brian Guillot
August 2016

Mayor Art Welch, Mayor  
Prc Tem George Moyer  
Councilmember Edward Miller,  
Councilmember Debbie Franklin  
Councilmember Don Peterson  

City of Banning  
99 East Ramsey Street  
Banning, CA 92220  

Subject: Rancho San Gorgonio  

Dear Mayor Welch and City Council Members:  

The Banning Chamber of Commerce promotes the economic vitality of the City of Banning and its surrounding areas. The Chamber supports the planned development known as Rancho San Gorgonio. This new Planned Community will result in increased property values, increased business opportunities, and create beautiful new neighborhoods for the southern part of the city. 

As you are certainly aware, the project provides for development of a new community of traditional residential neighborhoods combined with parks, open space, trails, paseos, neighborhood gathering places, retail commercial opportunities, educational opportunities, and community facilities all within a cohesive and beautifully planned community. 

Rancho San Gorgonio enhances the quality of life features Banning residents have come to expect and treasure. 

As a business owner, I recognize that Rancho San Gorgonio will strengthen my business investment. As a person who lives and/or works in the city of Banning and the San Gorgonio Pass and as a member of the Banning Chamber of Commerce, I urge the City Council to act in the best interest of the entire city and approve Rancho San Gorgonio. 

Sincerely,  

[Signature]  
Diana Benham  

Copy to:  
Planning Commissioners  
City Manager Michael Rock  
Director Community Development Brian Guillot
August 2016

City of Banning
Banning City Hall
99 E Ramsey Street
Banning, CA 92220

Mayor Art Welch, Mayor Pro Tem George Moyer, Councilmember Edward Miller, Councilmember Debbie Franklin, Councilmember Don Peterson;

Subject: Rancho San Gorgonio

Dear Mayor Welch and City Council Members,

It is my pleasure to write to you in support of the Rancho San Gorgonio Specific Plan. As you are certainly aware, this planned community will include many different types of new traditional residential neighborhoods combined with parks and recreation areas, neighborhood gathering places, local commercial services, and community facilities within an open space setting.

Rancho San Gorgonio is in keeping with the quality of life features Banning residents have come to expect and treasure. I look forward to the project and the many benefits it will bring to the City including much needed housing, economic vitality, and community resources and amenities.

Aside from the creation of local jobs, Rancho San Gorgonio will generate millions of dollars in new tax revenue that the city can use to help pay for services such as increased police protection, senior services, and youth sport activities.

I would like to add my name to the list of organizations and individuals who have endorsed this project. As a member of the Banning Community, I stand in support of Rancho San Gorgonio and the positive benefits it will bring to the City of Banning.

I encourage you to approve this project for the betterment of our community and to help ensure the future success of the City of Banning.

Sincerely,

[Signature]

Kathy Santos

cc: Banning Planning Commissioners
City Manager Michael Rock
Director of Development Brian Guillot
August 2016

City of Banning
Banning City Hall
99 E Ramsey Street
Banning, CA 92220

Mayor Art Welch, Mayor Pro Tem George Moyer, Councilmember Edward Miller,
Councilmember Debbie Franklin, Councilmember Don Peterson;

Subject: Rancho San Gorgonio

Dear Mayor Welch and City Council Members,

I am writing to you in support of the Rancho San Gorgonio Specific Plan. As you are certainly aware, this planned community will include many different types of new traditional residential neighborhoods combined with parks and recreation areas, neighborhood gathering places, local commercial services, and community facilities within an open space setting.

Rancho San Gorgonio is in keeping with the quality of life features Banning residents have come to expect and treasure. I look forward to the project and the many benefits it will bring to the City including much needed housing, economic vitality, and community resources and amenities.

Aside from the creation of local jobs, Rancho San Gorgonio will generate new tax revenue that the city can use to help pay for services such as increased police protection, senior services, and youth sport activities.

I would like to add my name to the list of organizations and individuals who have endorsed this project. As a member of the Banning Community, I support of Rancho San Gorgonio and the positive benefits it will bring to the City of Banning.

**I encourage you to approve this project** for the betterment of our community and to help ensure the future success of the City of Banning.

Sincerely,

Charlene Sakurai

cc: Banning Planning Commissioners
   City Manager Michael Rock
   Director of Development Brian Guillot
August 2016

City of Banning
Banning City Hall
99 E Ramsey Street
Banning, CA 92220

Mayor Art Welch, Mayor Pro Tem George Moyer, Councilmember Edward Miller,
Councilmember Debbie Franklin, Councilmember Don Peterson;

Subject: Rancho San Gorgonio

Dear Mayor Welch and City Council Members,

It is my pleasure to write to you in support of the Rancho San Gorgonio Specific Plan. As you are certainly aware, this planned community will include many different types of new traditional residential neighborhoods combined with parks and recreation areas, neighborhood gathering places, local commercial services, and community facilities within an open space setting.

Rancho San Gorgonio is in keeping with the quality of life features Banning residents have come to expect and treasure. I look forward to the project and the many benefits it will bring to the City including much needed housing, economic vitality, and community resources and amenities.

Aside from the creation of local jobs, Rancho San Gorgonio will generate millions of dollars in new tax revenue that the city can use to help pay for services such as increased police protection, senior services, and youth sport activities.

I would like to add my name to the list of organizations and individuals who have endorsed this project. As a member of the Banning Community, I stand in support of Rancho San Gorgonio and the positive benefits it will bring to the City of Banning.

I encourage you to approve this project for the betterment of our community and to help ensure the future success of the City of Banning.

Sincerely,

[Signature]

cc: Banning Planning Commissioners
   City Manager Michael Rock
   Director of Development Brian Guillot
August 2016

Mayor Art Welch, Mayor
Pro Tem George Moyer
Councilmember Edward Miller,
Councilmember Debbie Franklin
Councilmember Don Peterson

City of Banning
99 East Ramsey Street
Banning, CA 92220

Subject: Rancho San Gorgonio

Dear Mayor Welch and City Council Members:

The Banning Chamber of Commerce promotes the economic vitality of the City of Banning and its surrounding areas. The Chamber supports the planned development known as Rancho San Gorgonio. This new Planned Community will result in increased property values, increased business opportunities, and create beautiful new neighborhoods for the southern part of the city.

As you are certainly aware, the project provides for development of a new community of traditional residential neighborhoods combined with parks, open space, trails, paseos, neighborhood gathering places, retail commercial opportunities, educational opportunities, and community facilities all within a cohesive and beautifully planned community.

Rancho San Gorgonio enhances the quality of life features Banning residents have come to expect and treasure.

As a business owner, I recognize that Rancho San Gorgonio will strengthen my business investment. As a person who lives and/or works in the city of Banning and the San Gorgonio Pass and as a member of the Banning Chamber of Commerce, I urge the City Council to act in the best interest of the entire city and approve Rancho San Gorgonio.

Sincerely,

Copy to:
Planning Commissioners
City Manager Michael Rock
Director Community Development Brian Guillot
August 2016

City of Banning
Banning City Hall
99 E Ramsey Street
Banning, CA 92220

Mayor Art Welch, Mayor Pro Tem George Moyer, Councilmember Edward Miller, Councilmember Debbie Franklin, Councilmember Don Peterson;

Subject: Rancho San Gorgonio

Dear Mayor Welch and City Council Members,

It is my pleasure to write to you in support of the Rancho San Gorgonio Specific Plan. As you are certainly aware, this planned community will include many different types of new traditional residential neighborhoods combined with parks and recreation areas, neighborhood gathering places, local commercial services, and community facilities within an open space setting.

Rancho San Gorgonio is in keeping with the quality of life features Banning residents have come to expect and treasure. I look forward to the project and the many benefits it will bring to the City including much needed housing, economic vitality, and community resources and amenities.

Aside from the creation of local jobs, Rancho San Gorgonio will generate millions of dollars in new tax revenue that the city can use to help pay for services such as increased police protection, senior services, and youth sport activities.

I would like to add my name to the list of organizations and individuals who have endorsed this project. As a member of the Banning Community, I stand in support of Rancho San Gorgonio and the positive benefits it will bring to the City of Banning.

I encourage you to approve this project for the betterment of our community and to help ensure the future success of the City of Banning.

Sincerely,

[Signature]

cc: Banning Planning Commissioners
City Manager Michael Rock
Director of Development Brian Guillot
August 2016

Banning City Hall
99 E Ramsey Street
Banning, CA 92220

Subject: Support of Rancho San Gorgonio

Dear Mayor and City Council,

Rancho San Gorgonio brings many wonderful benefits to the City of Banning. Not only will this master-planned community provide new homes that fit with the quality of life features Banning residents have come to expect, but it will also be built with the latest energy and water efficient designs and technologies to ensure the most efficient use of resources. The project will also help improve traffic congestion by adding new roads and traffic signals in our community.

Rancho San Gorgonio will provide the residents of Banning with new parks, community facilities, and new shopping and dining opportunities. The project has also set aside land for the construction of a new school and public safety facility which will ensure that our community is well served now and in the future.

Additionally, Rancho San Gorgonio will be an economic engine for the City of Banning. The project will generate thousands of new jobs in the city and generate millions of dollars for our local economy. Rancho San Gorgonio also will provide hundreds of thousands of dollars to the city’s general fund each year which can be used to improve and enhance city services.

I ask you to approve Rancho San Gorgonio based on the benefits it will bring to the City of Banning and the improved quality of life for the city’s residents.

Sincerely,

[Signature]
Banning Women's Club

(Organization)

Copy to:
Planning Commission Members
Michael Rock, City Manager
Brian Quillot, Director of Development
August 2016

City of Banning
Banning City Hall
99 E Ramsey Street
Banning, CA 92220

Mayor Art Welch, Mayor Pro Tem George Moyer, Councilmember Edward Miller, Councilmember Debbie Franklin, Councilmember Don Peterson;

Subject: Rancho San Gorgonio

Dear Mayor Welch and City Council Members,

It is my pleasure to write to you in support of the Rancho San Gorgonio Specific Plan. As you are certainly aware, this planned community will include many different types of new traditional residential neighborhoods combined with parks and recreation areas, neighborhood gathering places, local commercial services, and community facilities within an open space setting.

Rancho San Gorgonio is in keeping with the quality of life features Banning residents have come to expect and treasure. I look forward to the project and the many benefits it will bring to the City including much needed housing, economic vitality, and community resources and amenities.

Aside from the creation of local jobs, Rancho San Gorgonio will generate millions of dollars in new tax revenue that the city can use to help pay for services such as increased police protection, senior services, and youth sport activities.

I would like to add my name to the list of organizations and individuals who have endorsed this project. As a member of the Banning Community, I stand in support of Rancho San Gorgonio and the positive benefits it will bring to the City of Banning.

I encourage you to approve this project for the betterment of our community and to help ensure the future success of the City of Banning.

Sincerely,

[Signature]

cc: Banning Planning Commissioners
    City Manager Michael Rock
    Director of Development Brian Guillot
August 2016

City of Banning
Banning City Hall
99 E Ramsey Street
Banning, CA 92220

Mayor Art Welch, Mayor Pro Tem George Moyer, Councilmember Edward Miller, Councilmember Debbie Franklin, Councilmember Don Peterson;

Subject: Rancho San Gorgonio

Dear Mayor Welch and City Council Members,

It is my pleasure to write to you in support of the Rancho San Gorgonio Specific Plan. As you are certainly aware, this planned community will include many different types of new traditional residential neighborhoods combined with parks and recreation areas, neighborhood gathering places, local commercial services, and community facilities within an open space setting.

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I would like to add my name to the list of organizations and individuals who have endorsed this project. As a member of the Banning Community, I stand in support of Rancho San Gorgonio and the positive benefits it will bring to the City of Banning.

I encourage you to approve this project for the betterment of our community and to help ensure the future success of the City of Banning.

Sincerely,

[Signature]

cc: Banning Planning Commissioners
   City Manager Michael Rock
   Director of Development Brian Guillot
August 2016

City of Banning
Banning City Hall
99 E Ramsey Street
Banning, CA 92220

Mayor Art Welch, Mayor Pro Tem George Moyer, Councilmember Edward Miller, Councilmember Debbie Franklin, Councilmember Don Peterson

Subject: Rancho San Gorgonio

Dear Mayor Welch and City Council Members,

I am writing in support of the Rancho San Gorgonio Specific Plan. As you are certainly aware, this planned community will include many different types of new traditional residential neighborhoods combined with parks and recreation areas, neighborhood gathering places, local commercial services, and community facilities within an open space setting.

I look forward to the project and the many benefits it will bring to the City including economic vitality, and community resources and amenities.

Aside from the creation of local job opportunities, Rancho San Gorgonio will generate new tax revenue that the city can use to help pay for services.

I would like to add my name to the list of organizations and individuals who have endorsed this project. As a member of the Banning Community, I support Rancho San Gorgonio and the positive benefits it will bring to the City of Banning.

I encourage you to approve this project.

Sincerely,

Fred Sakai Sakurai

cc: Banning Planning Commissioners
City Manager Michael Rock
Director of Development Brian Guillot
August 2016

City of Banning
Banning City Hall
99 E Ramsey Street
Banning, CA 92220

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I encourage you to approve this project for the betterment of our community and to help ensure the future success of the City of Banning.

Sincerely,

[Signature]

cc: Banning Planning Commissioners
City Manager Michael Rock
Director of Development Brian Guillot
August 2016

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I encourage you to approve this project for the betterment of our community and to help ensure the future success of the City of Banning. I am so excited to see such a beautiful project to our great City.

Sincerely,

NELSON RINGGOLD

cc: Banning Planning Commissioners
City Manager Michael Rock
Director of Development Brian Guillot
August 2016

Banning City Hall
99 E Ramsey Street
Banning, CA 92220

Subject: Support of Rancho San Gorgonio

Dear Mayor and City Council,

Rancho San Gorgonio brings many wonderful benefits to the City of Banning. Not only will this master-planned community provide new homes that fit with the quality of life features Banning residents have come to expect, but it will also be built with the latest energy and water efficient designs and technologies to ensure the most efficient use of resources. The project will also help improve traffic congestion by adding new roads and traffic signals in our community.

Rancho San Gorgonio will provide the residents of Banning with new parks, community facilities, and new shopping and dining opportunities. The project has also set aside land for the construction of a new school and public safety facility which will ensure that our community is well served now and in the future.

Additionally, Rancho San Gorgonio will be an economic engine for the City of Banning. The project will generate thousands of new jobs in the city and generate millions of dollars for our local economy. Rancho San Gorgonio also will provide hundreds of thousands of dollars to the city’s general fund each year which can be used to improve and enhance city services.

I ask you to approve Rancho San Gorgonio based on the benefits it will bring to the City of Banning and the improved quality of life for the city’s residents.

Sincerely,

[Signature]
Banning Women's Club

(Organization)

Copy to:
Planning Commission Members
Michael Rock, City Manager
Brian Quillot, Director of Development
August 2016

Banning City Hall
99 E Ramsey Street
Banning, CA 92220

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[Signature]

(Organization)

Copy to:
Planning Commission Members
Michael Rock, City Manager
Brian Quillot, Director of Development
August 2016

Banning City Hall
99 E Ramsey Street
Banning, CA 92220

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Sincerely,

[Signature]

(Commentary)

Copy to:
Planning Commission Members
Michael Rock, City Manager
Brian Quillot, Director of Development
August 2016

City of Banning
Banning City Hall
99 E Ramsey Street
Banning, CA 92220

Mayor Art Welch, Mayor Pro Tem George Moyer, Councilmember Edward Miller, Councilmember Debbie Franklin, Councilmember Don Peterson;

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I encourage you to approve this project for the betterment of our community and to help ensure the future success of the City of Banning.

Sincerely,

Catherine Leopardo
1406 Boga West Ave.
Banning, CA 92220

cc: Banning Planning Commissioners
   City Manager Michael Rock
   Director of Development Brian Guillot
August 2016

City of Banning
Banning City Hall
99 E Ramsey Street
Banning, CA 92220

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Sincerely,

[Signature]

14650 Bonita Way Avenue
Banning, CA 92220

cc: Banning Planning Commissioners
City Manager Michael Rock
Director of Development Brian Guillot
Appendix G
Large print copy of TTM No. 36586
(under separate cover)
Appendix H
Consistency Finding
Riverside County Airport Land Use Commission
January 21, 2014

Ms. Zai Abu Bakar, Community Development Director
City of Banning
99 E. Ramsey Street
Banning CA 92220

RE: AIRPORT LAND USE COMMISSION (ALUC) DEVELOPMENT REVIEW

File No.: ZAP1012BA13
Related File No.: Specific Plan Case No. 13-2001; General Plan Amendment
Case No. 13-2503; Zone Change Case No. 13-3501; Tentative
Tract Map No. 36586 (Case No. 13-4501)
APN (in AIA): 543-020-021; 543-030-004; 543-040-001(pt.)

Dear Ms. Abu Bakar:

On December 12, 2013, the Riverside County Airport Land Use Commission (ALUC) found City of Banning Case Nos. 13-2503 and 13-3501, being proposals to amend the City General Plan land use designation and zoning classification, respectively, of 848.6 gross acres (a portion of which lies within the Banning Municipal Airport Influence Area) from Very Low/Rural/Medium Density Residential to Specific Plan, CONSISTENT with the 2004 Banning Municipal Airport Land Use Compatibility Plan.

On December 12, 2013, the Riverside County Airport Land Use Commission (ALUC) found City of Banning Specific Plan Case No. 13-2001 (Rancho San Gorgonio), a proposal to develop a master planned community with 3,412 dwelling units, 9.3 acres of commercial land, and 214.3 acres of open space within an 848.6 gross acre area generally located southerly of Westward Avenue, easterly of Sunset Avenue, and westerly of San Gorgonio Avenue, and City of Banning Case No. 13-4501 (Tentative Tract Map No. 36586), a proposal to subdivide this area into 38 lots for financing, rough grading, and backbone street dedication purposes, CONDITIONALLY CONSISTENT with the 2004 Banning Municipal Airport Land Use Compatibility Plan, pending Federal Aviation Administration (FAA) review, which has now been completed, subject to the following conditions (as modified to incorporate the provisions of the FAA's Determination of No Hazard to Air Navigation letter issued on January 16, 2014):

CONDITIONS:

1. Any outdoor lighting that is installed shall be hooded or shielded so as to prevent either the spillage of lumens or reflection into the sky.

2. The following uses shall be prohibited:

(a) Any use which would direct a steady light or flashing light of red, white, green, or amber colors associated with airport operations toward an aircraft engaged in an initial straight climb following takeoff or toward an aircraft engaged in a straight final approach toward a landing at an airport, other than an FAA-approved navigational signal light or visual approach slope indicator.
(b) Any use which would cause sunlight to be reflected towards an aircraft engaged in an initial straight climb following takeoff or towards an aircraft engaged in a straight final approach towards a landing at an airport.

(c) Any use which would generate smoke or water vapor or which would attract large concentrations of birds, or which may otherwise affect safe air navigation within the area, including landscaping utilizing water features, trash transfer stations that are open on one or more sides, recycling centers containing putrescible wastes, construction and demolition debris facilities, and incinerators.

(d) Any use which would generate electrical interference that may be detrimental to the operation of aircraft and/or aircraft instrumentation.

3. The attached notice shall be provided to all potential purchasers and/or tenants of properties within the portions of this project in the Airport Influence Area.

4. Any new retention basins on the site shall be designed so as to provide for a maximum 48-hour detention period following the conclusion of the storm event for the design storm (may be less, but not more), and to remain totally dry between rainfalls. Vegetation in and around the retention basin(s) that would provide food or cover for bird species that would be incompatible with airport operations shall not be utilized in project landscaping.

5. Prior to adoption of this Specific Plan by the City Council, the applicant shall have received a determination of “Not a Hazard to Air Navigation” from the Federal Aviation Administration (FAA) Obstruction Evaluation Service. Copies of the FAA determination shall be provided to the City of Banning Planning Department and the Riverside County Airport Land Use Commission. [This condition shall be considered to have been MET as of January 16, 2014.]

The following conditions have been added subsequent to the ALUC hearing pursuant to the terms of the FAA Obstruction Evaluation Service letter issued on January 16, 2014 for Aeronautical Study No. 2013-AWP-6999-OE:

6. The Federal Aviation Administration has conducted an aeronautical study of the proposed tract map (Aeronautical Study No. 2013-AWP-6999-OE) and has determined that neither marking nor lighting of structures will be necessary for aviation safety. However, if marking and/or lighting for aviation safety are accomplished on a voluntary basis, such marking and/or lighting (if any) shall be installed in accordance with FAA Advisory Circular 70/7460-1 K Change 2 and shall be maintained in accordance therewith for the life of the project.

7. The maximum elevation at the top of any proposed structure, including all roof-mounted appurtenances (if any), shall not exceed 2,340 feet above mean sea level; provided, however, that structures located more than 12,100 feet from the westerly terminus of the runway at Banning Municipal Airport may exceed an elevation of 2,340 feet at top point by one foot for every 100 feet that their distance to the runway exceeds 12,100 feet. Thus, a structure located 15,000 feet from the westerly terminus of the runway shall not exceed an elevation of 2,369 feet above mean sea level.

8. The maximum elevation cited above shall not be increased, nor shall any structure be developed at coordinates that are closer to the runway than the coordinates specified in the Federal Aviation Administration letter dated January 16, 2014,
without further review by the Airport Land Use Commission and the Federal Aviation Administration.

9. Temporary construction equipment such as cranes used during actual construction of the structure shall not exceed a height of 77 feet and shall not be stationed at coordinates that are closer to the runway than the coordinates specified in the Federal Aviation Administration letter dated January 16, 2014, unless separate notice is provided to the Federal Aviation Administration through the Form 7460-1 process. The maximum elevation at the top point of such cranes shall not exceed 2,340 feet above mean sea level; provided, however, that, should such crane be situated at a location more than 12,100 feet from the westerly terminus of the runway at Banning Municipal Airport, its elevation at top point may exceed 2,340 feet by one foot for every 100 feet that its distance from the runway exceeds 12,100 feet. Thus, the top point of a crane located 15,000 feet from the westerly terminus of the runway shall not exceed an elevation of 2,369 feet above mean sea level.

10. Within five (5) days after construction of structures reaches its greatest height, FAA Form 7460-2 (Part II), Notice of Actual Construction or Alteration, shall be completed by the project proponent or his/her designee and e-filed with the Federal Aviation Administration. (Go to https://oaaaa.faa.gov for instructions.) This requirement is also applicable in the event the project is abandoned.

If you have any questions, please contact Russell Brady, ALUC Planner, at (951) 955-0549 or John Guerin, ALUC Principal Planner, at (951) 955-0982.

Sincerely,

Edward C. Cooper, Director

RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION

Attachments: Notice of Airport in Vicinity
FAA Aeronautical Study No. 2013-AWP-6999-OE

cc: Rancho San Gorgonio LLC (applicant/payee)
   Peter J. Pitassi, Pitassi Architects
   Duane Burk, City of Banning Director of Public Works
   Arturo Vela, City Engineer
   ALUC Staff

Y:\ALUC\Airport Case Files\Banning\ZAP1012BA13\ZAP1012BA13.LTR
Project:
Rancho San Gorgonio Planned Community
Banning, CA
Rancho San Gorgonio, LLC

Owners Representative:
Pitassi Architects, Inc.
Peter J. Pitassi, AIA
909-980-1361

Existing Parcel Map
755
EXHIBIT 1-3

- Project Boundary
- Parcel Boundary with APN

Westward Ave.
Zone E

Area east and north of this line is in Zone E
Project:
Rancho San Gorgonio Planned Community
Banning, CA.
Rancho San Gorgonio, LLC

Owners Representative:

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