I. CALL TO ORDER: Chairman Shaw
   - Pledge of Allegiance: Commissioner Price
   - Roll Call: Commissioners Krick, Price, Schuler, Chairman Shaw
     ▶ Resignation of Commissioner Ellis

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 for items 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. (Items received under this heading may be 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.

Minutes of February 7, 2018 Regular Planning Commission meeting....................Page 1
Minutes of April 4, 2018 Regular Planning Commission meeting.........................Page 6

IV. PUBLIC HEARINGS:

   I. ZONING TEXT AMENDMENT 18-97501 TO AMEND VARIOUS SECTIONS OF
      THE ZONING ORDINANCE TO ALLOW, REGULATE AND ZONE FOR
      CERTAIN COMMERCIAL CANNABIS USES: INDOOR COMMERCIAL
CULTIVATION, MANUFACTURING LEVEL 1, AND TESTING LABORATORIES IN THE INDUSTRIAL ZONING DISTRICT

Staff Report – Patty Nevins.................................................................Page 15

Recommendation:

That the Planning Commission adopt Resolution 2018-09:

1. Making a determination under CEQA Guidelines Section 15060(c)(3) that the Zoning Text Amendments are not subject to CEQA and further that under CEQA Guidelines Section 15061(b)(1) the project is exempt from CEQA as it is exempt by statute (Business and Professions Code section 26055(h)).

2. Recommending that the City Council approve Zoning Text Amendment 18-97501 to amend various sections of the Zoning Ordinance to allow, regulate and zone for certain commercial cannabis uses: indoor commercial cultivation, manufacturing level 1, and testing laboratories

Order of Procedure:

1. Staff report presentation
2. Planning Commission questions for staff
3. Open public comments
4. Close public comments
5. Planning Commission discussion
6. Motion and Second
7. Planning Commission discussion on motion
8. Call the question (Roll call vote)

II. TENTATIVE TRACT MAP NO. 37298. PROPOSAL TO SUBDIVIDE APPROXIMATELY 199 GROSS ACRES OF VACANT LAND FOR PURPOSES OF CREATING 264 SINGLE FAMILY LOTS, 2 LOTS FOR FUTURE MEDIUM DENSITY RESIDENTIAL DEVELOPMENT, 2 COMMERCIAL LOTS, 2 LOTS FOR PARKS, 15 OPEN SPACE LOTS, 1 SCHOOL LOT, AND PUBLIC STREETS, ALL WITHIN THE BUTTERFIELD SPECIFIC PLAN AREA

Staff Report – Patty Nevins.................................................................Page 61

Recommendation:

That the Planning Commission adopt Resolution 2018-08:

1. Finding that in accordance with CEQA Guidelines Section 15162, Subsequent EIRs and Negative Declarations, a subsequent environmental document is not required.
2. Approving Tentative Tract Map No. 37298 to subdivide approximately 199 gross acres of land for single family, multi-family, commercial, school, parks, and open space uses along with public streets, subject to the conditions of approval.

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III. GENERAL PLAN AMENDMENT 17-2503; ZONE CHANGE 17-3503; DESIGN REVIEW 17-7004; AND ENVIRONMENTAL ASSESSMENT 17-1504 FOR THE PROPOSED DEVELOPMENT OF A 36,171 SQUARE FOOT MEDICAL SUPPORT OFFICE BUILDING WITHIN THE CONGREGATE CARE DISTRICT OF THE SUN LAKES VILLAGE NORTH SPECIFIC PLAN ON SUN LAKES BOULEVARD (APN: 419-140-059)

Staff Report – Sonia Pierce........................................................................................................Page 433

Recommendation:

That the Planning Commission adopt Resolution 2018-07:

1. Recommending that the City Council approve General Plan Amendment 17-2503, Zone Change 17-3503, and Design Review 17-7004, and

2. Recommending that the City Council adopt a Mitigated Negative Declaration (MND) for the project (Environmental Assessment 17-1504).

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VI. PLANNING COMMISSIONER COMMENTS:
VII. COMMUNITY DEVELOPMENT DIRECTOR’S COMMENTS:

1. Planning Commissioner Vacancy
2. Change of meeting date for July

VIII. ADJOURNMENT:

The City of Banning Planning Commission is hereby adjourned to the special Planning Commission meeting of [non-holiday date as determined] 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].
City of Banning

REGULAR PLANNING COMMISSION MEETING MINUTES

February 7, 2018

A regular meeting of the City of Banning Planning Commission was held on Wednesday, February 7, 2018 at 6:30 p.m., in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, CA, 92220.

Commissioners Present:
Chairman Shaw
Vice-Chairman Krick
Commissioner Ellis
Commissioner Price
Commissioner Schuler

Staff Present:
Community Development Director, Patty Nevins
Assistant City Attorney, Serita R. Young
Senior Planner, Sonia Pierce
Recording Secretary, Sandra Calderon

I. CALL TO ORDER:

The meeting was called to order at 6:30 p.m. by Chairman Shaw.

II. PUBLIC COMMENTS:
No Comments

III. CONSENT CALENDAR ITEMS:


ACTION: Motion/Second (KRICK/SCHULER) to approve the January 3, 2018 Planning Commission meeting minutes. (Motion Carried 5-0)

IV. REVIEW AND DISCUSSION ITEMS:

1. CITY OF BANNING GENERAL PLAN ANNUAL PROGRESS REPORT FOR CALENDAR 2017.

Senior Planner Pierce presented the staff report. She said the City of Banning is required by State Law to have a legally adequate General Plan that primarily addresses the physical development of the City. The State further mandates the preparation of a general plan annual progress report to the City Council that must be filed by April 1st of each year with the Governor’s office. She said that as in previous years, budgetary constraints have played a role in implementing some of the General Plan programs.

Pierce mentioned some of the progress that the City made during the calendar year of 2017.
In the Economic Development Element: new restaurants have been opened at the Sun Lakes Shopping Center, a new skydiving business and a microbrewery in the Downtown area.

Air Quality Element: City’s compress natural gas fuel station is currently open.

Energy and Mineral Resources Element: City’s Electric Utility has installed a new public charging station, located behind the McDonald’s restaurant.

Wild Fire Hazard Element: Fire Department has developed a one page hand-out for property owner’s describing safety requirements and building code requirement that will be available in 2018.

Code Enforcement: Two new positions were approved that will help maintain the City’s standards.

City Staff is developing a stakeholder plan to identify those with interest in the Downtown area, and the Downtown AdHoc committee is developing a plan for engaging stakeholders.

Commissioner Krick asked if the charging station at McDonald’s is free to use.

Pierce said the charging station is open to the public, but she’s not sure if it’s free of charge. She will follow-up with the utilities department to find out.

Commissioner Schuler said that on page 57 of the report there is a reference to the HERO program that had been previously discussed at a City Council, where they agreed that it would discontinued and taken off the City’s website. She asked if that reference should be removed from the report.

Director Nevins said that verbiage is part of the General Plan. The next opportunity for that to be removed from the report will be at the next General Plan update. The purpose of the report is simply to provide status updates to the State.

Commissioner Shaw opened public comments.

Rick Pippenger, resident of Banning said the General Plan means nothing, and it can be easily changed before it’s due by the request of a developer.

Commissioner Shaw closed public comments.

Commissioner Shaw opened Planning Commission discussion.

**ACTION: Motion/Second (SCHULER/ELLIS)**

That the Planning Commission adopt Resolution 2018-02, recommending that the City Council approve the General Plan Annual Progress Report for Calendar Year 2017 and direct staff to file the report with the State of California Office of Planning and Research and State Department of Housing and Community Development.

(Motion Carried 5-0)
2. Planning Commissioner Comments, December 6, 2017 and January 3, 2018 meeting.

Director Nevins said this summary memo is for information and discussion only. The first item: Homeless Temporary Shelters information will be provided at the next meeting. The second request was to agendize the I-10 Bypass and the third item is a notation on Standard Conditions of Approval.

Commissioner Schuler said there are several projects in town where a developer came in and was not required to prove there would be secure financing to build and finish the project. She asked to receive a legal opinion on the matter from Assistant City Attorney Serita Young.

Assistant City Attorney, Young said discussion could take place for City staff to receive the appropriate approvals to move forward with extensive legal research. She said discussions have taken place on this topic, discussing the implications of imposing financial conditions on property owners.

She said imposing requirements that an applicant must provide proof of secure financing when they come and seek approval for a project is not within the purview of the Planning Commission. The review is only whether the project is compliant with the City’s Zoning Ordinance.

Commissioner Ellis said an opinion should be requested from the Attorney General. He thinks proving secure financing to build and finish a project from a developer is similar to a letter of intent.

Assistant City Attorney, Young explained that the funding aspect is different from receiving planning approvals.

Assistant City Attorney, Young said an incomplete project could be classified as a nuisance under our code, and then the City would follow the procedures to abate the nuisance.

Director Nevins said they will look into making sure all the tools are being utilized to address this issue.

Commissioner Price asked about the status of the Business Center.

Director Nevins said she doesn’t know the specifics of the status of the receivership.

Commissioner Ellis said he understands they are in negotiations of a sale right now.

Commissioner Krick said he thinks reason the Business Center became a problem was due to the lack of code or due to an error. He said the project started out with three parcels that were built over property lines, later on a tax sale resulted in these parcels being sold off by the County individually.

Commissioner Krick asked if we changed the way we are doing business regarding lot consolidations.
Director Nevins said a lot merger is always a condition of approval, and doesn’t know why a final map wasn’t filed and the underlying lots were not merged. She said the Planning Commission will see this as a conditional of approval for a Design Review application. She said the regulations were a little different ten years ago, during that time the Community Development Director was able to make determinations that now go to Planning Commission and/or City Council.

Commissioner Ellis said twenty-two homeless people were counted on one day period. He feels our City does not have has much problems as the State.

Commissioner Schuler talked about the Vanir project, she said the City lost money with the negotiation with the developer; she feels situations such as this should be avoided. Commissioner Ellis said that was a project that failed because of the lack financing.

Commissioner Krick said developers will not come to Banning if rules are made difficult for them.

Assistant City Attorney, Young said a Commissioner should only be considering the project that is being proposed, and all other aspects that the City would apply in that particular zone with the Planning and Zoning laws without considering who the owner/or developer is.

Development agreements do come before the Planning Commission to review and make suggested recommendations to the City Council.


Director Nevins said a letter was received from a firm representing the school district indicating that they are anticipating acquiring a piece of property near the existing Banning High School. She asked if the Planning Commission wished to provide a response and staff would draft a letter based on their direction.

Commissioner Schuler asked why does the school district trying to acquire such a large parcel that is not connected to the High School.

Commissioner Krick said the Lovell land is unusable and can’t get State’s approval because of the surrounding conditions. The School District is trying to acquire this parcel to have a future Elementary site. Many sites in the City of Banning are not suitable for schools because of existing natural gas pipe lines, earthquake faults, etc. He feels that the Commission should respond with a letter in favor of this acquisition to show cooperation between the two agencies.

ACTION: Motion/Second (KRICK/PRICE)

That the Planning Commission that a letter be sent to the Banning Unified School District supporting the acquisition of the proposed property acquisition of the site.

(Motion Carried 5-0)

V. SELECTION OF CHAIRMAN AND VICE-CHAIRMAN:
Chairman Shaw opened nominations for the office of Chairperson.

Commissioner Shuler made a motion to nominate Commissioner Shaw for Chairperson.

**ACTION:** Motion/Second (SHULER/KRICK)

(Motion Carried 5-0)

Chairman Shaw opened nominations for the office of Vice-chairperson.

Commissioner Ellis made a motion to nominate Commissioner Krick for Vice-Chairperson.

**ACTION:** Motion/Second (ELLIS/SCHULER)

(Motion Carried 5-0)

VI. **PLANNING COMMISSIONER COMMENTS:**

Commissioner Ellis said he had been discussing crosswalks and healthy city, he hopes that a discussion will be brought back in the future.

Director Nevins remembers the topic was discussed a few meetings ago; she said this request is not normally in the purview of the Planning Commission. A request would probably need to be addressed to the City Engineer.

VII. **COMMUNITY DEVELOPMENT DIRECTOR’S COMMENTS:**

Director Nevins mentioned the upcoming Planning Commission Academy in April and there was discussion made to possibly move the regular Planning Commission meeting to April 11th.

VIII. **ADJOURNMENT:**

There being no further business, the meeting was adjourned at 7:31 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 FROM THE CITY CLERK’S OFFICE.
A regular meeting of the City of Banning Planning Commission was held on Wednesday, April 4, 2018 at 6:30 p.m., in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, CA, 92220.

Commissioners Present: Chairman Shaw
Vice-Chairman Krick
Commissioner Ellis
Commissioner Price
Commissioner Schuler

Staff Present: Community Development Director Patty Nevins
Assistant City Attorney Serita R. Young
Public Works Director/City Engineer Art Vela
Economic Development Manager Ted Shove
Senior Planner Sonia Pierce
Recording Secretary Sandra Calderon

I. CALL TO ORDER:

The meeting was called to order at 6:30 p.m. by Chairman Shaw.

II. PUBLIC COMMENTS:

No Comments

III. CONSENT CALENDAR ITEMS:


Commissioner Schuler stated that corrections needed to be made to the minutes. She indicated that a motion and final vote to add a condition of approval was not included and the minutes should also include discussion that Assistant City Attorney would check on the legality of including that particular Condition of approval. (pg. 3 of the minutes)

Motion to continue the item to the next Regular Planning Commission meeting.

ACTION: Motion/Second (SCHULER/KRICK)

(Motion Carried 5-0)

IV. REVIEW AND DISCUSSION ITEMS:
1. FINDINGS OF GENERAL PLAN CONFORMITY FOR REAL PROPERTY ACQUISITION OF APPROXIMATELY 0.17 ACRES OF LAND.

Economic Development Manager Shove presented the staff report. He stated that one of the City Council’s strategic goals is to improve the competitive position of the city, including appropriately using city properties and development on the east side. Two locations were identified by the Economic Development Ad Hoc Committee to provide increased public parking for the downtown area. The first is located at the southeast corner of Ramsey and Third Street and the second is located along San Gorgonio Avenue, between Hays and Williams Street.

He said the 270 W. Ramsey Street acquisition could be combined with vacant City owned property adjacent on both the east and south sides of the property. The Planning Commission is to determine if the acquisition and proposed parking facility is consistent with the General Plan in accordance with Government Code Section 65402.

Commissioner Shaw opened public comments.
No public comments
Commissioner Shaw closed public comments

ACTION: Motion/Second (KRICK/SCHULER)

That the Planning Commission adopt Resolution 2018-05:

Finding that the proposed acquisition of 0.17 acres of real property located on the southeast corner of the intersection of Ramsey Street and Third Street in the City of Banning, California, for a public parking facility conforms with the City of Banning General Plan.
(Motion Carried 5-0)

2. FINDINGS OF GENERAL PLAN CONFORMITY FOR REAL PROPERTY ACQUISITION OF APPROXIMATELY 0.13 ACRES OF LAND.

Economic Development Manager Shove presented the staff report. He stated that as previously mentioned in the last staff report, this is the second location identified by the City Council for a proposed future parking facility for the downtown area. The Planning Commission is to determine if the acquisition and proposed parking facility is consistent with the General Plan in accordance with the Government Code Section 65402.

Commissioner Shaw opened public comments.
No public comments
Commissioner Shaw closed public comments

ACTION: Motion/Second (KRICK/PRICE)

That the Planning Commission adopt Resolution 2018-06:
Finding that the proposed acquisition of 0.13 acres of real property located at the intersection of San Gorgonio Avenue and Williams Street in the City of Banning, California, for a public parking facility conforms with the City of Banning General Plan.
(Motion Carried 5-0)

3. NOTIFICATION OF BANNING UNIFIED SCHOOL DISTRICT OF PROPOSED PURCHASE OF REAL PROPERTY IDENTIFIED BY ASSESSOR’S PARCEL NUMBERS 543-030-003, 543-030-004, 543-030-019

Director Nevins presented the staff report. She stated that a letter was received from the school district indicating intent to acquire three parcels. The Planning Commission previously sent a letter in support for an acquisition of a separate piece of land, but not with any reference to the General Plan. The current letter references a section of the Government Code that indicates the Planning Commission will make a recommendation on the General Plan consistency for this site.

The intent for the acquisition is to add a soccer field, golf facility and parking areas.

Nevins said this property is not in an area designated by the City’s General Plan for school facilities.

Alex Casadas, Banning Board President said they are looking for land that is available for the expansion of the Banning High School for future growth.

Commissioner Schuler named the proposed future master plan improvements. She said that regarding the agricultural program, City of Redlands used to have the largest FAA chapter in Southern California at 15 acres, and they ran out of space. She feels that some of the proposed uses for the 11.14 acres of land and the proposed uses are uncertain and efforts for improvement should be spend on academics instead.

Commissioner Schuler expressed concern that the proposed use of this land is not consistent with the City’s General Plan and would not like to see more of the Very Low Density Residential zone be lost in the south side of town.

Commissioner Ellis noted that some of the proposed uses by the Banning School District are beneficial to students and he would like to see money be used in academics to help the school’s status. He thinks this is a good addition to help retain our students in this school district.

Commissioner Price said he would like to help as much as possible to benefit the students who are Banning’s future.

Commissioner Krick said the school district has already purchased a large parcel at the corner of 8th and Westward Street. He said they need it for 200 parking spots because the high school has in plan check a 670 seat fine arts facility and once the approval is received, bids will be going out for the construction of the facility. He stated that there will be no other facility like it in the area. A building that will go behind the fine arts theater will be used for hands on trade school training, possibly a joint venture with the Carpenter’s Union.

He said land in the Pass Area is not easy to find for public schools and thinks that acquiring adjoining land is ideal and it’s good to see that the school district is has a long term vision and is

Planning Commission Meeting Minutes
April 4, 2018

3
moving forward with the available land. He asked staff what can be done to support approval of the land acquisition.

Assistant City Attorney, Young said the Banning Unified School District letter was sent under a government code that relates to a requirement to determine whether or not the proposed acquisition of the property and the use is consistent with the General Plan. A letter should be prepared stating that notwithstanding inconsistencies with the General Plan, the Planning Commission is still in favor of the proposed expansion.

Director Nevins stated that a General Plan Update will take place soon and a change to the land use designation can be proposed at that time to make it consistent.

Mr. Casadas said the School District would like to break ground as soon as possible, due to the rising cost of construction and materials.

Commissioner Ellis said the Rancho San Gorgonio project is not in compliance with the General Plan.

Director Nevins said the Rancho San Gorgonio project included a general plan amendment processed with the project and said she will provide the resolution for his review.

Director Nevins said a letter can be drafted right-away based on the Planning Commission’s direction.

Don Peterson, resident of Banning asked if the 880-acre land for the Rancho San Gorgonio, when approved, did not conform to the General Plan and if there was a General Plan amendment this land adjoining would have been included.

Director Nevins said the Rancho San Gorgonio Project would have included the General Plan amendment only for their specific project and would have followed the Specific Plan boundaries only.

Commissioner Krick made a motion to write a letter to the Banning School District indicating that the property does not conform with the General Plan and the Planning Commission is supportive of the acquisition of the property.

**ACTION:** Motion/Second (KRICK/ELLIS)

(Motion Carried 5-0)

V. **Public Hearing:**

I. **CONDITIONAL USE PERMIT 17-8003, DETERMINATION OF CATEGORICAL CLASS 1 EXEMPTION, AND RESOLUTION 2018-03 FOR A PROPOSAL TO INSTALL AN UNMANNED VERIZON WIRELESS TELECOMMUNICATIONS FACILITY WITH ANTENNA ARRAY AND EQUIPMENT ENCLOSURE ON AN EXISTING LIGHT POLE LOCATED AT 124 E. WILSON STREET**

Senior Planner Sonia Pierce said the applicant proposes to replace an existing 60-foot tall wooden sports field light pole with a new metal 60-foot tall light pole that is designed to support the existing ball field light array and new wireless telecommunications facility, including six panel antennas and...
one microwave antenna. The pole will be painted brown to match the remaining wooden light poles surrounding the sports field and a new 8 foot by 20-foot equipment shelter is proposed adjacent to the new light pole.

She added that Verizon is requesting revisions to condition of approval #10 and #12. Condition #10 – This condition stipulates that all graffiti shall be removed within 24 hours. The applicant is requesting a change to 72 hours to provide sufficient time for crews to be called to access the problem and remove the graffiti. Condition #12 – Verizon is not proposing any landscape at the project since it is an existing sports field. The last sentence regarding landscaping is requested to be removed.

James Rogers, agent for Verizon Wireless addressed the Commission. He stated that the staff report and the conditions of approval were reviewed and found acceptable, except for the two requested modifications discussed with staff.

Mr. Rogers stated that, regarding condition #12, what is being proposed is wrought iron fence with privacy slats to screen the cabinets. The request tonight is for the removal of landscaping only.

Commissioner Schuler talked about a notification from Homeland Security that several of the transmission towers for the microwave antenna with stingray attachments were compromised in this country. She asked if Verizon is making any provisions to prevent that on this tower.

Mr. Rogers said he’s not aware of that news. He said this not a typical microwave tower; the proposed antenna will be communicating with an existing single tower in the hills above the City of Banning that is above capacity.

Commissioner Ellis expressed uneasiness about increasing the response time to abate any graffiti because this will be installed in a very visible area at the school. He also asked if Verizon will lease out space on the tower to other telecommunication companies.

Mr. Rogers said they would not lease out space because the tower would not be able to handle it structurally.

Commissioner Krick said the City typically does not look at graffiti at school property. He thinks that a change to condition #10 should state “Notice from the City and/or the School District”. He suggested that they might consider making an agreement that the school district have them remove the graffiti and reimburse them for the cost.

Commissioner Price said the City has a graffiti hotline and they usually respond within 12 hours.

Commissioner Ellis said that condition #10 should not change and condition #12 would like to see that screening and pole painted with graffiti resistant type of material.

Commissioner Shaw opened public comment.

No public comments.

Commissioner Shaw closed public comment.
Director Vela stated that he was going through the conditions of approval and noted that on some of the older cell towers installed in the City tend to interfere with the radio equipment used for wells and other stations to communicate with a computer program. He asked the Commission to add a condition that states that the applicant must obtain approval from the Public Works Department to confirm that the proposed facility will not interfere with the City’s existing frequency system.

**ACTION: Motion/Second (KRICK/ELLIS)**

That the Planning Commission adopt Resolution 2018-03:

I. Making a determination that the proposed project is categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15301; and

II. Approving Conditional Use Permit 17-8003, subject to Conditions of Approval with the following amendments:

10. The applicant shall remove all graffiti on the pole and wireless telecommunications facility immediately or within 24 hours of notice from the City and/or the Banning Unified School District.

12. All equipment or utility equipment on the ground shall not be visible from adjacent properties, the public rights-of-way or the sports field. Any architectural screening that is proposed to shield the equipment shall be compatible in terms of colors and materials of the light pole. The screening and support tower shall be painted with a graffiti resistant material for the first 20-feet from the ground.

Condition added by Planning Commission:

22. The applicant shall obtain confirmation from the Public Works Department that the proposed facility does not interfere with the City’s communication equipment.

(Motion Carried 5-0)

II. CONDITIONAL USE PERMIT USE PERMIT 18-8001, DESIGN REVIEW 18-7002 AND A NOTICE OF EXEMPTION FOR THE CONSTRUCTION OF A PROPOSED 24-UNIT AIRPORT INDUSTRIAL LIVE/WORK LOFT DEVELOPMENT ON PROPERTY IDENTIFIED AS APN 541-290-013 AND LOCATED AT 1450 E. LINCOLN STREET

Senior Planner Pierce said that the proposed project tonight has been to the Planning Commission before and after failing to pass on a 2-1 vote with 3 Commissioners in attendance, the project was approved on appeal by the City Council by a unanimous vote.

The site is a vacant 3.7-acre parcel located in the Airport/Industrial Zone. Since the City’s approval, the applicant has worked towards satisfying the Conditions of Approval under previous CUP 13-8005 in order to obtain the project building permits. In 2016, the CUP project was granted a time extension, and the City’s Building Official issued a building permit for the project in 2017. The
project’s building permit are active and will expire this month, on April 21, 2018. At that point, CUP 13-8005 and DR 13-7003 are deemed null and void due to the discontinuation of work after the commencement of construction.

The applicant is again requesting approval of the project to allow an extension of the building permit to construct a 64,327 square foot mixed use residential/industrial development in the Airport/Industrial Zone to construct one building consisting of 22 live work unit and 2 work units. Improvements to the site include a parking lot for approximately 125 vehicles, landscaping, and utilities. Senior Planner Pierce noted that the design and architecture is consistent with the Design Guidelines of the Zoning Ordinance.

Mark Quental, President of Watermark Development said the land was purchased on Lincoln Street approximately 14 years ago and the intent was to develop it as individual shops or industrial type units.

A CUP for the live/work lofts was obtained allowing the residential component under mixed uses as allowed by the Airport Industrial zoning district. The effort was to make the project viable and the units more desirable.

All City and County approvals have been obtained for this project, but the entitlements are soon to expire. The applicant asked the Planning Commission to approve, extend and renew the project entitlements as currently approved.

Commissioner Ellis asked if an eighteen-wheeler is able to pull to the property and make a delivery.

Mr. Quental said this development is for light manufacturing/assembly uses only and it was designed to satisfy the fire authority requirements and approvals that they will have access to the building in case of an emergency.

Fire hydrants will be added at the south end of the property and an existing fire hydrant at the north west corner, the fire connections will be off Barbour Street and all units will be fire sprinkled.

The living space will be about 650 square feet which will allow for two occupants only. One of the rules of the development will be that no work related activities occur in the parking lot. All work related activities must occur within the enclosed building and if there’s a complaint related to noise, they will be prepared to address it. He anticipates that it will probably be an on-going adjustment to the rules and regulations.

Mr. Quental said they have a waiting list for the units. Staff will review the use of each unit to make sure they confirm to the zoning for the development.

Commissioner Shuler questioned the on-site child care facilities use listed under Vehicle Trip Reduction section of the staff report. Director Nevins said the list comes from the City’s congestion management plan which provides a list of things you can do to reduce traffic, but child care is not one that this development would use.

Commissioner Krick asked if this project was being built as a future condominium conversion.
Mr. Quental said they were thinking of doing that at the start, but decided against that. The units will have separate meters but the water will be included. Commissioner Krick said that he would like to see rules and regulations be recorded in the CC &R’s. He sees many problems in the future if the owner decides to sell.

Assistant City Attorney Young said that the CC & R’s are part of the Conditions of Approval and are also required under the ALUC conditions that require the recording that will then give notice to future property owners that they exist.

Mr. Quental said his intention was not to create a property owner’s association as stated on condition of approval #92.

In order to prevent graffiti on the exterior walls, Mr. Quental said the walls facing Lincoln and Barbour will be landscaped in front of it.

Commissioner Krick stated that condition #92 should be stricken, because there will be no Board of Directors since the applicant is the owner.

Mr. Quental said his intent was not to have an association.

Discussion was made regarding graffiti prevention to the exterior walls. Mr. Quental said walls facing Lincoln and Barbour will have landscaping in front.

Commissioner Krick foresees problems ahead with subletting because of the proposed mixed use.

Commissioner Shaw opened public comment.

No public comments.

Commissioner Shaw closed public comment.

**ACTION: Motion/Second (KRICK/ELLIS)**

That the Planning Commission adopt Resolution 2018-04:

I. Making a determination under CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations).

II. Approving Conditional Use Permit 18-8001 for the construction of a 24-unit airport industrial live/work loft development, with related office/warehouse space and parking, subject to findings and conditions of approval with the following amendments:

48. The applicant shall prepare CC & R's. The CC & R's shall contain provisions that prohibit: (1) 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, and, to the extent permitted by State law. (2) prohibit subletting of units, and (3) tenant leases with terms of
less than six (6) months. The CC & R’s shall be subject to prior review and approval of the City Attorney. The applicant or developer shall bear the cost of the review.

22. Trash enclosure shall be provided with three, decorative walls with enhanced wall cap, a roof, and a gate, in a style compatible with the structure’s architecture. The gate shall be maintained in working order and shall remain closed except when in use.

92. The developer shall prepare the applicable Conditions, Covenants & Restrictions (CC & R’s), for review and approval of the City Engineer providing for the developer’s maintenance of the parkway, slopes adjacent to public right-of-ways, any debris basins and median island landscaping. The conditions, covenants and restrictions 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.

Condition Added by Planning Commission

136. The (perimeter) walls shall be painted with a graffiti resistant material.

VI. PLANNING COMMISSIONER COMMENTS:

No comments

VII. COMMUNITY DEVELOPMENT DIRECTOR’S COMMENTS:

No comments

VIII. ADJOURNMENT:

There being no further business, the meeting was adjourned at 9:06 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 FROM THE CITY CLERK’S OFFICE.
CITY OF BANNING
PLANNING COMMISSION REPORT

TO: PLANNING COMMISSION
FROM: Patty Nevins, Community Development Director
MEETING DATE: June 6, 2018
SUBJECT: Zoning Text Amendment 18-97501 to amend various sections of the zoning ordinance to allow, regulate and zone for certain commercial cannabis uses: indoor commercial cultivation, manufacturing level 1, and testing laboratories

RECOMMENDED ACTION:

Staff recommends that the Planning Commission adopt Resolution 2018-09:

1. Making a determination under CEQA Guidelines Section 15060(c)(3) that the Zoning Text Amendments are not subject to CEQA and further that under CEQA Guidelines Section 15061(b)(1) the project is exempt from CEQA as it is exempt by statute (Business and Professions Code section 26055(h)).

2. Recommending that the City Council approve Zoning Text Amendment 18-97501 to amend various sections of the Zoning Ordinance to allow, regulate and zone for certain commercial cannabis uses: indoor commercial cultivation, manufacturing level 1, and testing laboratories.

PROJECT/APPLICANT INFORMATION:

Project Applicant: City of Banning
99 E. Ramsey Street
Banning, CA 92220

PROJECT BACKGROUND AND DESCRIPTION:

Currently, no commercial cannabis activities are permitted within the City. At its June 27, 2017 meeting, the City Council appointed a two member City Council Cannabis Ad Hoc Committee to consider potential changes to the City’s current ordinances related to cannabis and at the December 12, 2017 City Council meeting, the Cannabis Ad Hoc Committee recommended that commercial cannabis cultivation activities be considered
as conditionally permitted uses within the City. After further Cannabis Ad Hoc Committee
discussions to refine the recommended approach and after holding a City Council
workshop on the topic, the City Council provided direction to staff at its May 8, 2018
meeting to proceed with the drafting of ordinances to allow commercial cannabis
cultivation, limited manufacturing, and laboratory testing uses in the City’s Industrial
zoning district, subject to the Banning voters approving a cannabis tax measure at the
November election.

PROPOSAL / ANALYSIS:

The overall approach for commercial cannabis regulation will include:

- Adopting amendments to the City’s Municipal Code to create a regulatory permit
  requirement for the purpose of investigating and regulating the operators of
  commercial cannabis businesses.
- Adopting amendments to the City’s Zoning Code to create a Cannabis Conditional
  Use Permit to allow and regulate indoor commercial cultivation, limited cannabis
  manufacturing uses, and cannabis testing laboratories in the Industrial zoning
  district, subject to certain limitations and requirements and subject to a
  recommendation by the Planning Commission and approval by the City Council.
- Adopting fees (to be determined at a future date) for the processing of applications
  and to pay the reasonable cost of the City’s regulatory program.
- Adopting a tax on commercial cannabis activities so as to generate revenue for the
  City’s General Fund. Pursuant to Propositions 62, 26 and 218, if the City would
  like to generate revenue for the City’s General Fund that would exceed the City’s
  regulatory program costs, then the Banning voters would need to approve a tax
  measure imposing a tax on the activity.

As Zoning Code Amendments fall within the purview of the Planning Commission, a
recommendation from the Planning Commission is sought regarding the proposed
commercial cannabis zoning code text amendments. After receiving the
recommendation, the City Council will make a final determination on the Banning
Municipal Code requirements related to the cannabis regulatory permit (Chapter 5,
Business Licenses), the Cannabis Conditional Use Permit (Chapter 17, Zoning), and the
placement of a cannabis tax measure on the November ballot.

Commercial Cannabis Uses Considered

As recommended by the Cannabis Ad Hoc Committee, the proposed regulations will
establish a Cannabis Conditional Use Permit process that will allow the operation of
certain commercial cannabis uses in the City. A Cannabis Conditional Use Permit could
be issued upon the recommendation of the Planning Commission and final approval by
the City Council. The proposed allowable uses are described as follows:

1. Indoor Commercial Cultivation. “Cultivation” means any activity involving the
   planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. The
cultivation facility would be required to be a minimum of 10,000 and a maximum of 22,000 square feet in the size.

2. Manufacturing Level 1: Includes sites that manufacture cannabis products using nonvolatile solvents, or no solvents.
   
a. Manufacturing means to compound, blend, extract or otherwise make or prepare cannabis. Manufacture includes the following processes: extraction, infusion, packaging and repackaging and labeling or relabeling.

b. “Volatile solvent” means any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. Examples of volatile solvents include, but are not limited to, butane, hexane, and propane.

3. “Testing laboratory” means a laboratory, facility, or entity in the City that offers or performs tests of cannabis or cannabis products and that is both of the following:

a. Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the State.

b. Licensed by the Bureau of Cannabis Control.

Commercial Cannabis Locations

Commercial cannabis indoor cultivation, limited manufacturing, and testing laboratory uses would only be permitted within the Industrial zoning district. Commercial cannabis uses are prohibited in all other land use districts within the City.

The Industrial zoning district areas within the City are depicted in the purple areas circled within the map below:
Regulations

Proposed regulations applicable to each of the three commercial cannabis uses include but are not limited to:

- Application requirements. In addition to business descriptions and site and floor plans, applications will be required to include:
  - a business plan;
  - water and energy demand information;
  - a list of all owners, employees, contractors, and volunteers;
  - a security plan and lighting plan, and;
  - a designated community relations representative
- Required personnel identification
- Security measures
- Signage requirements
- Waste management and odor regulations
- A minimum landscaped setback of twenty-five feet, solid wall, or other buffer/screen as deemed appropriate, shall be provided for all property lines adjacent to, or across a street or alley from, residential uses or residentially designated properties

Use-specific regulations include:

- Indoor Cultivation: Indoor cultivation facilities would be required to be between 10,000 square feet and 22,000 square feet in size. Seed to sale tracking, and other requirements would be imposed.

- Manufacturing Level 1: Edible cannabis products are required to be manufactured and packaged in compliance with State regulations, products must be child-resistant and tamper-evident, and persons involved must be state certified food handlers. The use of volatile solvents in the manufacturing process is prohibited.

- Cannabis Testing Laboratory: Testing laboratories must maintain ISO/EIC accreditation, adopt and adhere to standard operating procedures, and use statistically valid methodology.

Modifications to Draft Regulations

Since the most recent City Council discussions, staff has conferred with the Ad Hoc Committee and subsequently made two modifications to the proposed regulations. These modifications: (1) Require ventilation systems for each of the applicable commercial cannabis uses (rather than just for cultivation); and (2) Make any required buffers between cannabis uses and residential uses discretionary to the decision makers. These changes are shown in strikeout/underline under 17.53.150 Odor Control and 17.53.080-Premises, respectively, in the attached draft ordinance.
ENVIRONMENTAL DETERMINATION:

California Environmental Quality Act.

California Environmental Quality Act (CEQA)

Staff finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines Section 15060(c)(3), because it is not a Project as defined by the CEQA Guidelines Section 15378. Adoption of the Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to the Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

Staff further finds and determines that this Ordinance is exempt from review under the CEQA and the State CEQA Guidelines Section 15061(b)(1) which exempts a project from CEQA if the project is exempt by statute. Business and Professions Code section 26055(h) provides that Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. Pursuant to that exemption, the City is providing that discretionary review for applications for cannabis conditional use permits will be required to include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

Multiple Species Habitat Conservation Plan (MSHCP).

The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that may be subject to this Ordinance will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

REQUIRED FINDINGS FOR ZONING TEXT AMENDMENT:

Finding No. 1: Proposed Zone Text Amendment No. 18-97501 is consistent with the goals and policies of the General Plan.

Findings of Fact: Proposed Zone Text Amendment No. 18-97501 is consistent with the goals and policies of the General Plan. Unregulated commercial cannabis activities can adversely affect the health, safety and well-being of City residents. The unregulated cultivation and processing of cannabis can damage buildings through improper and dangerous electrical alterations and use, and inadequate ventilation leading to mold and mildew. Additionally, unregulated cultivation and processing of cannabis can also lead to an increase in the frequency of robberies and similar crimes. Cannabis cultivation or other concentration of cannabis in any location or premises without adequate regulations increases the risk that surrounding homes or businesses may be negatively impacted. The Banning Municipal
Code currently bans all commercial cannabis uses within the City. It is in the public interest to regulate cannabis, to allow for responsible and lawful commercial cannabis cultivation, manufacturing, and testing laboratories in the City. With adequate regulation and oversight, these limited categories of commercial cannabis activity are consistent with the following General Plan goals and policies:

**Land Use Element:**

**Industrial Goal**

A balanced mix of non-polluting industrial land uses which provide local jobs for the City’s residents.

**Economic Development Element:**

**Goal**

A balanced, broadly-based economy that provides a full range of economic and employment opportunities, while maintaining high standards of development and environmental protection.

**Policy 1**

General Plan land use designations and allocations will facilitate a broad range of residential, commercial, industrial and institutional development opportunities.

**Policy 2**

The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues.

**Finding No. 2:** Proposed Zone Text Amendment No. 18-97501 is internally consistent with the Zoning Ordinance.

**Findings of Fact:** Proposed Zone Text Amendment No. 18-97501 is consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of uses and lands within the City to protect the public health, safety, and welfare. The proposed amendments will protect the public health, safety, and welfare of the residents of the City by reasonably regulating commercial cannabis cultivation, manufacturing, and testing laboratory facilities so as to avoid the risks of criminal activity, malodorous smells, degradation of the natural environment, and indoor electrical fire hazards.

**Finding No. 3:** The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.
Findings of Fact: In accordance with the requirements of the California Environmental Quality Act ("CEQA"), the City Council finds and determines that this Ordinance is not subject to CEQA pursuant to the State CEQA Guidelines Section 15060(c)(3), because it is not a Project as defined by the CEQA Guidelines Section 15378. Adoption of the Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to this Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

The City Council has analyzed proposed Zone Text Amendment No. 18-97501 and has determined that, pursuant to California Business and Professions Code Section 26055(h), CEQA “does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity”, provided that said law, ordinance, rule, or regulations shall include any applicable environmental review pursuant to Division 13 of the Public Resources Code. As this Ordinance includes required CEQA compliance for individual conditional use permit applications for commercial cannabis businesses, the CEQA exemption applies to the adoption of this Ordinance.

PUBLIC COMMUNICATION:

This hearing was advertised in the Record Gazette newspaper on May 25, 2018, and notices were mailed to all property owners within the industrial zone of the City and within a 300-foot radius of the industrial zone in compliance with the City’s noticing requirements for public hearings.

PREPARED BY:

Patty Nevins
Community Development Director

PC Attachments:

1. PC Resolution No. 2018-09
2. Draft City Council Ordinance
3. Public Hearing Notice (PHN)
Attachment 1

Resolution No. 2018-09
RESOLUTION 2018-09

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA RECOMMENDING APPROVAL TO THE CITY COUNCIL OF A CATEGORICAL EXEMPTION AND ZONING TEXT AMENDMENT 18-97501 AMENDING TITLE 17 “ZONING” OF THE BANNING MUNICIPAL CODE TO ADD CHAPTER 17.53, “CANNABIS CONDITIONAL USE PERMITS” TO ALLOW INDOOR COMMERCIAL CANNABIS CULTIVATION, MANUFACTURING LEVEL 1, AND TESTING LABORATORY FACILITIES IN THE INDUSTRIAL ZONING DISTRICT WITH APPROVAL OF A CANNABIS CONDITIONAL USE PERMIT AND MAKING OTHER AMENDMENTS RELATED TO CANNABIS BUSINESSES

WHEREAS, on October 9, 2015 Governor Brown signed Assembly Bill 243, Assembly Bill No. 266, and Senate Bill 643 into law, which collectively were known as the Medical Cannabis Regulation and Safety Act (hereinafter “MCRSA”). The MCRSA established a State regulatory and licensing scheme for commercial medical cannabis businesses.

WHEREAS, on November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). The AUMA made it lawful under State and local law for persons 21 years of age or older to possess and cultivate limited quantities of cannabis for personal use. The AUMA also established a State regulatory and licensing scheme for commercial adult-use cannabis businesses.

WHEREAS, on June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medicinal and adult-use cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether cannabis businesses could operate in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under the MAUCRSA including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more businesses licensed by the State, within that local jurisdiction.

WHEREAS, the Planning Commission finds that unregulated commercial cannabis activities have the potential to adversely affect the public health and safety of Banning residents and those engaged in commercial cannabis activity. The Planning
Commission also finds that, if a commercial cannabis business tax is adopted by the voters, that commercial cannabis activity that is limited to certain types of indoor cannabis cultivation, manufacturing, and testing laboratory facilities may provide financial benefits to the City as long as they are sufficiently regulated by the City. The establishment of land use regulations for cannabis cultivation, manufacturing and testing laboratory facilities will substantially reduce this threat to the public health and safety.

WHEREAS, the Planning Commission desires to recommend the establishment of reasonable zoning and land use regulations regarding the operation of cannabis businesses that are intended to address the potential negative impacts of unregulated cannabis businesses.

WHEREAS, the Planning Commission desires to recommend the establishment of zoning and land use regulations through this Ordinance for commercial indoor cannabis cultivation, manufacturing, and testing laboratory facilities that are companion elements to the City’s adoption of cannabis business permit regulations and the voter’s adoption of cannabis business taxes.

WHEREAS, the Planning Commission has authority pursuant to Section 17.116.030 (Planning Commission Action on Amendments) of the City of Banning Municipal Code to make a written recommendation to the City Council to approve, approve with modifications, or disapprove amendments to the Zoning Ordinance; and

WHEREAS, the City has reviewed the proposed Zoning Text Amendment for compliance with the California Environmental Quality Act (CEQA) and it is determined that Zone Text Amendment 18-97501 is not a ‘project’ under CEQA Guidelines section 15061(b)(3) and has further determined that the Zoning Text Amendment is further exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(1); and

WHEREAS, on May 25, 2018, the City gave public notice by advertisement in the Record Gazette newspaper of a public hearing concerning Zone Text Amendment 18-97501 and the environmental findings, and also mailed notice of the public hearing to all property owners within the industrial zone and within a 300-foot radius of the industrial zone; and

WHEREAS, on June 6, 2018, the Planning Commission held the noticed public hearing at which time interested persons had an opportunity to testify in support of, or opposition to, the Zoning Text Amendment and at which the Planning Commission considered the Categorical Exemption and Zone Text Amendment 18-97501.

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

SECTION 1. ENVIRONMENTAL FINDINGS.
The following environmental findings are made and supported by substantial evidence on the record before the Planning Commission, including and incorporating all evidence in the staff report and attendant attachments thereto:

**California Environmental Quality Act (CEQA)**

The Planning Commission finds and determines that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines Section 15060(c)(3), because it is not a Project as defined by the CEQA Guidelines Section 15378. Adoption of this Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to this Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

The Planning Commission further finds and determines that this Ordinance is exempt from review under the CEQA and the State CEQA Guidelines Section 15061(b)(1) which exempts a project from CEQA if the project is exempt by statute. Business and Professions Code section 26055(h) provides that Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. Pursuant to that exemption, the City is providing that discretionary review for applications for cannabis conditional use permits will be required to include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

**Multiple Species Habitat Conservation Plan (MSHCP)**

The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that may be subject to this Ordinance will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

**SECTION 2. ADDITIONAL REQUIRED FINDINGS.**

The California Government Code and Section 17.116.050 (Findings) of the City of Banning Municipal Code require that Zoning Text Amendments meet certain findings prior to the approval by the City Council. The following findings are provided in support of the approval of the Zoning Text Amendment No. 18-97501.

**Finding No. 1:** Proposed Zone Text Amendment No. 18-97501 is consistent with the goals and policies of the General Plan.

**Findings of Fact:** Proposed Zone Text Amendment No. 18-97501 is consistent with the goals and policies of the General Plan. Commercial cannabis activities can adversely affect the health, safety and well-being of City residents. The unregulated cultivation and processing of
cannabis can damage buildings through improper and dangerous electrical alterations and use, and inadequate ventilation leading to mold and mildew. Additionally, unregulated cultivation and processing of cannabis can also lead to an increase in the frequency of robberies and similar crimes. Cannabis cultivation or other concentration of cannabis in any location or premises without adequate regulations increases the risk that surrounding homes or businesses may be negatively impacted. The Banning Municipal Code currently bans all commercial cannabis uses within the City. It is in the public interest to regulate cannabis, to allow for responsible and lawful commercial cannabis cultivation, manufacturing, and testing laboratories in the City. With adequate regulation and oversight, these limited categories of commercial cannabis activity are consistent with the following General Plan goals and policies:

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**Industrial Goal**

A balanced mix of non-polluting industrial land uses which provide local jobs for the City’s residents.

**Economic Development Element:**

**Goal**

A balanced, broadly-based economy that provides a full range of economic and employment opportunities, while maintaining high standards of development and environmental protection.

**Policy 1**

General Plan land use designations and allocations will facilitate a broad range of residential, commercial, industrial and institutional development opportunities.

**Policy 2**

The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues.

**Finding No. 2:** Proposed Zone Text Amendment No. 18-97501 is internally consistent with the Zoning Ordinance.
Findings of Fact: Proposed Zone Text Amendment No. 18-97501 is consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of uses and lands within the City to protect the public health, safety, and welfare. The proposed amendments will protect the public health, safety, and welfare of the residents of the City by reasonably regulating cannabis cultivation, manufacturing, and testing laboratory facilities so as to avoid the risks of criminal activity, malodorous smells, degradation of the natural environment, and indoor electrical fire hazards.

Finding No. 3: The Planning Commission has independently reviewed and considered the requirements of the California Environmental Quality Act.

Findings of Fact: In accordance with the requirements of the California Environmental Quality Act ("CEQA"), the Planning Commission finds and determines that this Ordinance is not subject to CEQA pursuant to the State CEQA Guidelines Section 15060(c)(3), because it is not a Project as defined by the CEQA Guidelines Section 15378. Adoption of this Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to this Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

The Planning Commission has analyzed proposed Zone Text Amendment No. 18-97501 and has determined that, pursuant to California Business and Professions Code Section 26055(h), CEQA “does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity”, provided that said law, ordinance, rule, or regulations shall include any applicable environmental review pursuant to Division 13 of the Public Resources Code. As this Ordinance includes required CEQA compliance for individual conditional use permit applications for commercial cannabis businesses, the CEQA exemption applies to the adoption of this Ordinance.

SECTION 3. PLANNING COMMISSION ACTION.

The Planning Commission hereby takes the following action:

Adoption of Planning Commission Resolution 2018-09:
1. Recommending to the City Council the adoption of a Categorical Exemption for Zone Text Amendment 18-97501; and

2. Recommending to the City Council the adoption of Ordinance 1523 approving Zone Text Amendment 18-97501.

PASSED, APPROVED AND ADOPTED this 6th day of June, 2018.

____________________
Eric Shaw, Chairman
Banning Planning Commission

APPROVED AS TO FORM:

____________________
Serita Young, Assistant City Attorney
Richards Watson & Gershon

ATTEST:

____________________
Sandra Calderon, Recording Secretary
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, 2018-09, was duly
adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 6th day of June, 2018, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

____________________
Sandra Calderon, Recording Secretary
City of Banning, California
ORDINANCE NO. 1523

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING A CATEGORICAL EXEMPTION AND APPROVING ZONING ORDINANCE AMENDMENT 18-97501 AMENDING TITLE 17 "ZONING" OF THE BANNING MUNICIPAL CODE TO ADD CHAPTER 17.53, "CANNABIS CONDITIONAL USE PERMITS" TO ALLOW CANNABIS CULTIVATION, MANUFACTURING LEVEL 1, AND TESTING LABORATORY FACILITIES IN CERTAIN INDUSTRIAL ZONES WITH APPROVAL OF A CANNABIS CONDITIONAL USE PERMIT AND MAKING OTHER AMENDMENTS RELATED TO CANNABIS BUSINESSES

WHEREAS, on October 9, 2015 Governor Brown signed Assembly Bill 243, Assembly Bill No. 266, and Senate Bill 643 into law, which collectively were known as the Medical Cannabis Regulation and Safety Act (hereinafter “MCRSA”). The MCRSA established a State regulatory and licensing scheme for commercial medical cannabis businesses.

WHEREAS, on November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). The AUMA made it lawful under State and local law for persons 21 years of age or older to possess and cultivate limited quantities of cannabis for personal use. The AUMA also established a State regulatory and licensing scheme for commercial adult-use cannabis businesses.

WHEREAS, on June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medicinal and adult-use cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether cannabis businesses could operate in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under the MAUCRSA including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more businesses licensed by the State, within that local jurisdiction.

WHEREAS, the City Council finds that unregulated commercial cannabis activity has the potential to adversely affect the public health and safety of Banning residents and those engaged in commercial cannabis activity. The City Council also finds that, if a commercial cannabis business tax is adopted by the voters, that commercial cannabis activity that is limited to certain types of indoor cannabis cultivation, manufacturing, and testing laboratory facilities may provide financial benefits to the City as long as they are
sufficiently regulated by the City. The establishment of land use regulations for cannabis cultivation, manufacturing and testing laboratory facilities will substantially reduce this threat to the public health and safety.

WHEREAS, the City Council desires to establish reasonable zoning and land use regulations regarding the operation of cannabis businesses that are intended to address the potential negative impacts of unregulated cannabis businesses.

WHEREAS, the City Council desires to establish zoning and land use regulations through this Ordinance for commercial cannabis cultivation, manufacturing, and testing laboratory facilities that are companion elements to the City’s adoption of cannabis business permit regulations and the voter’s adoption of cannabis business taxes.

WHEREAS, on June 6, 2018, the Planning Commission of the City of Banning held a public hearing regarding this Ordinance, at which time all persons interested in the contents of this Ordinance had the opportunity and did address the Planning Commission on these matters. Following the receipt of public testimony the Planning Commission closed the public hearing. At the conclusion of the Planning Commission hearing, and after due consideration of the testimony, the Planning Commission adopted Resolution No. ______ recommending that the City Council adopt this Ordinance to allow cannabis cultivation facilities, manufacturing facilities, and testing laboratory facilities as conditionally permitted uses in industrial zones.

WHEREAS, the City Council of the City of Banning held a public hearing on the proposed Ordinance, at which time all persons interested in this Ordinance had the opportunity and did address the City Council on these matters. Following the receipt of public testimony the City Council closed the public hearing.

WHEREAS, on June 26, 2018, the Banning City Council adopted Ordinance No. ___ establishing a regulatory permitting process for commercial indoor cannabis cultivation, manufacturing, and testing laboratory facilities to operate in industrial zones. This Ordinance and Ordinance No. ___ will only go into effect if the Banning voters approve a tax measure imposing taxes on these facilities.

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. ENVIRONMENTAL FINDINGS

A. California Environmental Quality Act (CEQA)

The City Council finds and determines that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines Section 15060(c)(3), because it is not a Project as defined by the CEQA Guidelines Section 15378. Adoption of the Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect
physical change in the environment. Further projects subject to the Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

The City Council further finds and determines that this Ordinance is exempt from review under the CEQA and the State CEQA Guidelines Section 15061(b)(1) which exempts a project from CEQA if the project is exempt by statute. Business and Professions Code section 26055(h) provides that Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. Pursuant to that exemption, the City is providing that discretionary review for applications for cannabis conditional use permits will be required to include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

The City Council hereby adopts a categorical exemption for this Ordinance and directs staff to file a Notice of Exemption.

B. Multiple Species Habitat Conservation Plan (MSHCP)

The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that may be subject to this Ordinance will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

**SECTION 2. ADDITIONAL REQUIRED FINDINGS**

The California Government Code and Section 17.116.050 (Findings) of the City of Banning Municipal Code require that Zoning Text Amendments meet certain findings prior to the approval by the City Council. The following findings are provided in support of the approval of the Zoning Text Amendment No. 18-97501.

**Finding No. 1:** Proposed Zone Text Amendment No. 18-97501 is consistent with the goals and policies of the General Plan.

**Findings of Fact:** Proposed Zone Text Amendment No. 18-97501 is consistent with the goals and policies of the General Plan. Commercial cannabis activities can adversely affect the health, safety and well-being of City residents. The unregulated cultivation and processing of cannabis can damage buildings through improper and dangerous electrical alterations and use, and inadequate ventilation leading to mold and mildew. Additionally, unregulated cultivation and processing of cannabis can also lead to an increase in the frequency of robberies and similar crimes. Cannabis cultivation or other concentration of cannabis in any location or premises without adequate regulations increases the risk that surrounding homes or businesses may be negatively impacted. The Banning Municipal Code currently bans all commercial cannabis uses within the City. It
is in the public interest to regulate cannabis, to allow for responsible and lawful commercial cannabis cultivation, manufacturing, and testing laboratories in the City. With adequate regulation and oversight, these limited categories of commercial cannabis activity are consistent with the following General Plan goals and policies:

**Land Use Element:**

**Industrial Goal**

A balanced mix of non-polluting industrial land uses which provide local jobs for the City's residents.

**Economic Development Element:**

**Goal**

A balanced, broadly-based economy that provides a full range of economic and employment opportunities, while maintaining high standards of development and environmental protection.

**Policy 1**

General Plan land use designations and allocations will facilitate a broad range of residential, commercial, industrial and institutional development opportunities.

**Policy 2**

The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues.

**Finding No. 2:** Proposed Zone Text Amendment No. 18-97501 is internally consistent with the Zoning Ordinance.

**Findings of Fact:** Proposed Zone Text Amendment No. 18-97501 is consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of uses and lands within the City to protect the public health, safety, and welfare. The proposed amendments will protect the public health, safety, and welfare of the residents of the City by reasonably regulating cannabis cultivation, manufacturing, and testing laboratory facilities so as to avoid the risks of criminal activity, malodorous smells, degradation of the natural environment, and indoor electrical fire hazards.
Finding No. 3: The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.

Findings of Fact: In accordance with the requirements of the California Environmental Quality Act ("CEQA"), the City Council finds and determines that this Ordinance is not subject to CEQA pursuant to the State CEQA Guidelines Section 15060(c)(3), because it is not a Project as defined by the CEQA Guidelines Section 15378. Adoption of this Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to this Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

The City Council has analyzed proposed Zone Text Amendment No. 18-97501 and has determined that, pursuant to California Business and Professions Code Section 26055(h), CEQA “does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity”, provided that said law, ordinance, rule, or regulations shall include any applicable environmental review pursuant to Division 13 of the Public Resources Code. As the this Ordinance includes required CEQA compliance for individual conditional use permit applications for commercial cannabis businesses, the CEQA exemption applies to the adoption of this Ordinance.

SECTION 3. ZONE TEXT AMENDMENT NO. 18-97501

Title 17 (Zoning) of the Banning Municipal Code is amended as follows:

A. The alphabetized list of definitions provided for in Section 17.04.070 (Definitions) of Chapter 17.04 (Basic Provisions) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to delete the definition of “Marijuana Dispensary” and to add and/or modify the following definitions:

**Canopy space** means a cultivation facility, manufacturing facility, or a testing laboratory facility.

**Cannabis Commercial Indoor Cultivation** means the indoor planting, growing, harvesting, drying, curing, grading, or trimming of one or more cannabis plants or any part thereof for commercial purposes. The canopy space within a Cannabis Commercial Indoor Cultivation facility shall not be less than 10,000 square feet nor exceed 22,000 square feet per Cannabis Conditional Use Permit holder, and shall be licensed by a state licensing authority.
Cannabis Manufacturing Level 1 means a commercial cannabis manufacturing facility where a State licensed cannabis manufacturer engages in the manufacture (compounding, blending, extracting, infusing, or otherwise making or preparing) of cannabis products using nonvolatile solvents, or no solvents.

Cannabis Testing Laboratory means a laboratory, facility, or entity that offers or performs tests of cannabis or cannabis products and is accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state and is licensed by the Bureau of Cannabis Control.

Commercial Cannabis Activity includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products, or engaging in any other cannabis activity that requires a State license issued by a licensing authority.

Nonvolatile Solvent means any solvent used in the extraction process that is not a volatile solvent. For purposes of this Chapter only, nonvolatile solvents include carbon dioxide and ethanol.

Other Cannabis Uses means any location where commercial cannabis activity occurs that does not fall under the definition of Cannabis Commercial Indoor Cultivation, Cannabis Manufacturing Level 1, Cannabis Testing Laboratory, or Cannabis Personal Cultivation.

Volatile Solvent means any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. Examples of volatile solvents include, but are not limited to, butane, hexane, and propane.

Marijuana Cannabis Personal Cultivation means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana cannabis plants or any part thereof. Marijuana Cannabis Personal Cultivation shall not exceed six (6) cannabis plants per primary residence, and shall comply with the regulations set forth in Chapter 5.34.

B. Table 17.08.020 of Section 17.08.020 (Permitted, conditional and prohibited uses) of Chapter 17.08 (Residential Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to delete “Marijuana Dispensary” and to add and/or amend the following uses, with all other provisions of Table 17.08.020 remaining unchanged:

<table>
<thead>
<tr>
<th>Zone</th>
<th>R/A</th>
<th>R/A/H</th>
<th>RR</th>
<th>RR/H</th>
<th>VLDR</th>
<th>LDR</th>
<th>MDR</th>
<th>HDR</th>
<th>MHP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Uses</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cannabis Personal Marijuana Cultivation⁰</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
</tbody>
</table>

⁰ Subject to additional regulations and permits.
<table>
<thead>
<tr>
<th>Zone</th>
<th>R/A</th>
<th>R/A/H</th>
<th>RR</th>
<th>RR/H</th>
<th>VLDR</th>
<th>LDR</th>
<th>MDR</th>
<th>HDR</th>
<th>MHP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cannabis Commercial Indoor Cultivation</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Cannabis Manufacturing Level 1</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Cannabis Testing Laboratory</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Other cannabis uses</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

6 Marijuana Cultivation requires a Marijuana Cultivation License. See Chapter 5.34 for provisions. Cannabis Personal Cultivation must comply with the provisions of Chapter 5.34.

C. Table 17.12.020 (Permitted, conditional, and prohibited commercial and industrial uses.) of Section 17.12.020 (Permitted, conditional and prohibited uses) of Chapter 17.12 (Commercial and Industrial Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to delete "Marijuana Cultivation" and "Marijuana Dispensary" from the table and to add or amend the following uses with all other provisions of Table 17.12.020 remaining unchanged:

<table>
<thead>
<tr>
<th>Zone</th>
<th>DC</th>
<th>GC</th>
<th>HSC</th>
<th>PO</th>
<th>I</th>
<th>AI</th>
<th>BP</th>
<th>IMR</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Resource and Open Space Uses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cannabis Personal Cultivation®</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Cannabis Commercial Indoor Cultivation</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Cannabis Manufacturing Level 1</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Cannabis Testing Laboratory</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

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-7-
Other Cannabis Uses  X  X  X  X  X  X  X  X  X

8. Cannabis Personal Cultivation is prohibited except in a house, an apartment unit, a mobile home, or other similar dwelling that is a legal non-conforming use and that otherwise complies with Chapter 5.34 of this Code.

D. Table 17.12.050 (Use Specific Development Standards) of Section 17.12.050 (Use specific standards) of Chapter 17.12 (Commercial and Industrial Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to add the following uses to the list of Use-Specific Development Standards:

<table>
<thead>
<tr>
<th>Zone</th>
<th>DC</th>
<th>GC</th>
<th>HSC</th>
<th>PO</th>
<th>I</th>
<th>AI</th>
<th>BP</th>
<th>IMR</th>
</tr>
</thead>
<tbody>
<tr>
<td>V. Cannabis Commercial Indoor Cultivation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>W. Cannabis Manufacturing Level 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>X. Cannabis Testing Laboratory</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>*</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

V. Commercial Cannabis Indoor Cultivation uses shall require approval of a Cannabis Conditional Use Permit by the City Council, after recommendation by the Planning Commission, and shall be subject to the requirements of Chapter 17.53.

W. Commercial Cannabis Manufacturing Level 1 uses shall require approval of a Cannabis Conditional Use Permit by the City Council, after recommendation by the Planning Commission, and shall be subject to the requirements of Chapter 17.53.

X. Commercial Cannabis Testing Laboratory uses shall require approval of a Cannabis Conditional Use Permit by the City Council, after recommendation by the Planning Commission, and shall be subject to the requirements of Chapter 17.53.

E. Table 17.16.020 (Permitted, conditional and prohibited public facilities uses.) of Section 17.16.020 (Permitted, conditional, and prohibited uses) of Chapter 17.16 (Public Facilities Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to delete “Marijuana Cultivation” and “Marijuana Dispensary” from the table, and to add or amend the following uses with all other provisions of Table 17.16.020 remaining unchanged:
<table>
<thead>
<tr>
<th>Zone</th>
<th>PF-A</th>
<th>PF-G</th>
<th>PF-F</th>
<th>PF-S</th>
<th>PF-H</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cannabis Personal Cultivation</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Cannabis Commercial Indoor Cultivation</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Cannabis Manufacturing Level 1</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Cannabis Testing Laboratory</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Other Cannabis Uses</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

F. Table 17.20.020 (Permitted, conditional and prohibited open space uses.) of Section 17.20.020 (Permitted, conditional and prohibited uses) of Chapter 17.20 (Open Space Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to delete "Marijuana Cultivation" and "Marijuana Dispensary" from the table, and to add or amend the following uses with all other provisions of Table 17.20.020 remaining unchanged:

<table>
<thead>
<tr>
<th>Zone</th>
<th>OS-R</th>
<th>OS-PA</th>
<th>OS-PU</th>
<th>OS-H</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cannabis Personal Cultivation</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Cannabis Commercial Indoor Cultivation</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Cannabis Manufacturing Level 1</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Cannabis Testing Laboratory</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Other Cannabis Uses</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

G. Chapter 17.53 (Cannabis Conditional Use Permits) is hereby added to Title 17 (Zoning) of the Banning Municipal Code to read as follows:
Chapter 17.53 Cannabis Conditional Use Permits

Sections

17.53.010 Definitions.
17.53.020 Commercial Cannabis Conditional Use Permit Required.
17.53.030 Commercial Cannabis Conditional Use Permit - Fees and Terms.
17.53.040 Cannabis Conditional Use Permit Application Requirements.
17.53.050 Additional Application Requirements.
17.53.060 Procedures and Findings for Approval of Cannabis Conditional Use Permit.
17.53.070 Approval of Cannabis Conditional Use Permit With Conditions.
17.53.080 Premises.
17.53.090 Personnel and Visitors.
17.53.100 Security.
17.53.110 Track and Trace.
17.53.120 Signage.
17.53.130 Cannabis Waste Management.
17.53.140 General Sanitary Requirements.
17.53.150 Odor Control.
17.53.160 Cannabis Indoor Cultivation.
17.53.170 Cannabis Manufacturing Level 1.
17.53.180 Cannabis Testing Laboratory.
17.53.190 Other Provisions.
17.53.200 Indemnification.

17.53.010 Definitions

For the purpose of this Chapter, the following words and phrases shall be defined as follows:

A. "Applicant" means an owner applying for a cannabis conditional use permit pursuant to this Chapter.

B. "Bureau" means the Bureau of Cannabis Control within the California Department of Consumer Affairs.

C. "Cannabis" means all parts of the plant Cannabis sativa Linnæus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Chapter, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.
D. “Cannabis business” means a cultivation facility, manufacturing facility, or a testing laboratory facility.

E. “Cannabis products” has the same meaning as in Section 11018.1 of the Health and Safety Code.

F. “Canopy space” means the designated areas at a cultivation facility that will contain mature plants at any point in time.

G. “City” means the City of Banning.

H. “City Manager” means the City Manager or his/her designee.

I. “Convicted” or “conviction” means a plea or verdict of guilty or a conviction following a plea of nolo contendere was entered, but does not include any plea, verdict, or conviction that is expunged pursuant to California law or a similar federal or state law where the expungement was granted.

J. “Commercial cannabis activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products, or engaging in any other cannabis activity that requires a State license issued by a licensing authority.

K. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

L. “Cultivation facility” means a location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or a location where any combination of those activities occurs.

M. “Extraction” means a process by which cannabinoids are separated from cannabis plant material through chemical or physical means.

N. “Financial interest” shall have the meaning set forth in Section 5004 of Title 16 of the California Code of Regulations, as the same may be amended from time to time.

O. “Indoors” means within a fully enclosed and secure structure.

P. “Infusion” means a process by which cannabis, cannabinoids, or cannabis concentrates, are directly incorporated into a product formulation to produce a cannabis product.

Q. “Licensing authority” means the Bureau of Cannabis Control; CalCannabis Cultivation Licensing, a division of the California Department of Food and Agriculture (CDFA); the California Department of Public Health’s Manufactured Cannabis Safety Branch; or any other State cannabis licensing authority.
R. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

S. "Manufacturing facility" means a location that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

T. "MAUCRSA" means the Medicinal and Adult-Use Cannabis Regulation and Safety Act.

U. "Outdoors" means any area or location not specifically meeting the definition of indoors.

V. "Owner" means any of the following:

1. A person with an aggregate ownership interest of 20 percent or more in the person applying for a permit or a permittee, unless the interest is solely a security, lien, or encumbrance.

2. The chief executive officer of a nonprofit or other entity.

3. A member of the board of directors of a nonprofit.

4. An individual who will be participating in the direction, control, or management of the person applying for a permit. An owner who is an individual participating in the direction, control, or management of the commercial cannabis business includes any of the following:

   a) A partner of a cannabis business that is organized as a partnership.

   b) A member of a limited liability company of a cannabis business that is organized as a limited liability company.

   c) An officer or director of a cannabis business that is organized as a corporation.

W. "Nonvolatile solvent" means any solvent used in the extraction process that is not a volatile solvent. For purposes of this Chapter only, nonvolatile solvents include carbon dioxide and ethanol.

X. "Package" means any container or receptacle used for holding cannabis or cannabis products.
Y. "Permit" means a cannabis conditional use permit issued pursuant to this Chapter.

Z. "Permittee" means any person holding a cannabis conditional use permit under this Chapter.

AA. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

BB. "Premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant where the cannabis business will be conducted.

CC. "Significant discrepancy" means a difference in actual inventory compared to records pertaining to inventory of at least one thousand dollars ($1,000). For purposes of determining a discrepancy, the acquisition price of the cannabis goods shall be used to determine the value of cannabis goods in a permittee's inventory.

DD. "Testing laboratory" means a laboratory, facility, or entity in the City that offers or performs tests of cannabis or cannabis products and that is both of the following:

1. Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the State.

2. Licensed by the Bureau.

EE. "Volatile solvent" means any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. Examples of volatile solvents include, but are not limited to, butane, hexane, and propane.

17.53.020 Commercial Cannabis Conditional Use Permit Required.

A. Except as expressly authorized pursuant to this Title (Title 17, Zoning), all commercial cannabis activity is prohibited in the City.

B. Prior to initiating operations and as a continuing requisite to operating a cannabis business, the person(s) wishing to operate a cannabis business shall:

1. Obtain and maintain a validly issued cannabis conditional use permit approved by the City Council after recommendation by the Planning Commission, and comply with all conditions of approval.

2. Obtain and maintain a State license to engage in the specific cannabis business being operated on the premises.
3. Obtain and maintain a cannabis regulatory permit as required by Chapter 5.35 of this Code.

4. Obtain and maintain a business license or any other license or permit required by this Code.

**17.53.030 Commercial Cannabis Conditional Use Permit - Application Fees and Terms.**

A. No cannabis conditional use permit application shall be processed unless the applicant pays the nonrefundable application fee in the amount to be established by resolution of the City Council. No cannabis conditional use permit shall be issued unless the applicant pays the nonrefundable permit fee in the amounts to be established by resolution of the City Council.

B. No cannabis conditional use permit shall be issued if the applicant has an ownership or other direct financial interest in any other commercial cannabis business operating in the City.

**17.53.040 Cannabis Regulatory Permit Application Requirements.**

An applicant shall file the following information with the City at the time of application for a cannabis conditional use permit:

A. A completed cannabis conditional use permit application, together with the application fee in an amount to be established by resolution of the City Council.

B. Proof of a cannabis regulatory permit jointly approved by the City Manager and Chief of Police. The owner identified on the cannabis conditional use permit application shall be same owner as listed on the cannabis regulatory permit issued pursuant to Chapter 5.35.

C. An operating plan for the proposed cannabis business that includes:

1. A general description of the types of products and/or services to be provided by the cannabis business;

2. A site plan, drawn to scale and professionally prepared by a licensed civil engineer or architect, of the parcel of property on which the proposed cannabis business will be located. The site plan shall include the outline of all structures, driveways, parking and landscape areas, and boundaries of the parcel. In addition, if the parcel on which the cannabis business will be conducted is adjacent to or across the street from a parcel zoned or used for residential purposes, then the site plan shall show the separation and required buffering from such residential uses as required by this Chapter.

3. A floor plan, drawn to scale and professionally prepared by a licensed civil engineer or architect, designating all interior dimensions of the premises,
the proposed use of all spaces, identification of limited access areas, areas of ingress and egress, and all security camera locations.

4. An evaluation of accessibility by the physically disabled to and within the building and identification of any planned accessibility improvements to comply with all state and federal disability access laws, including, but not limited to, Title 24 of the California Code of Regulations and the Americans with Disabilities Act. The evaluation must be professionally prepared by a licensed civil engineer or architect.

5. A business plan describing how the cannabis business will operate in accordance with the Banning Municipal Code, state law, and other applicable regulations. The business plan must include plans for cash handling and transportation of cannabis and cannabis products to and from the premises.


7. Projected energy demand and energy efficiency plan that addresses illumination, heating, cooling and ventilation. The applicant shall also provide a letter from the Banning Municipal Electric Company stating that the Banning Municipal Electric Company can meet the cannabis business' energy demand.

8. A list of all owners, employees, independent contractors, and volunteers.

D. Neighborhood Context Map. An accurate straight-line drawing depicting the boundaries of the premises, the boundaries of all other properties within 600 feet of the premises, and the uses of those properties, specifically including, but not limited to, any use identified in Business and Professions Code section 26054(b), any park, any adjacent parcel zoned or used for residential use, or any parcels zoned or used for residential uses that are located across the street from the premises. The map must be professionally prepared by a licensed civil engineer or architect.

E. Security plan. A detailed security plan outlining the measures that will be taken to ensure the safety of persons and property on the premises. The security plan must be prepared by a qualified professional.

F. Lighting Plan. A lighting plan showing existing and proposed exterior and interior lighting levels that would be the minimum necessary to provide adequate security lighting for the use.

G. The name, phone number, and email address of an on-site community relations representative or staff member or other representative to whom the City can provide notice if there are operating problems associated with the cannabis business or refer members of the public who may have complaints or concerns regarding the cannabis business. This information shall be available to neighboring businesses and residences located within one hundred feet of the cannabis business, as measured in a straight line without regard to intervening structures.
17.53.050 Additional Application Requirements.

A. Each cannabis business shall obtain a separate conditional use permit.

B. Proof that the applicant is, or will be, entitled to possession of the premises for which application is made.

C. Proof of the nature of the cannabis business’s organizational status, such as articles of incorporation, by-laws, partnership agreements, and other documentation which may be required by the City.

17.53.060 Procedures and Findings for Approval of Cannabis Conditional Use Permit.

A. A cannabis conditional use permit shall be processed in accordance with the procedures set forth in Chapter 17.52, Conditional Use Permits, with the following exceptions:

1. Any provision that requires the approval by the Planning Commission with appeal to the City Council shall be replaced with the requirement that the Planning Commission make a recommendation on the cannabis conditional use permit and that the approval of such permit shall be made by the City Council.

2. Sections 17.52.020 (Application procedures) and 17.52.080 (Modifications) shall not apply.

3. Any procedures pertaining to noticing and the setting of a public hearing before the Planning Commission shall also apply to the City Council.

B. An applicant for a cannabis conditional use permit shall comply with the California Environmental Quality Act ("CEQA"). No cannabis conditional use permit shall be granted until the requisite CEQA review has been conducted.

17.53.070 Approval of Cannabis Conditional Use Permit With Conditions

A. Upon approval of a cannabis conditional use permit, the City Council may impose conditions in excess of the requirements set forth in this Chapter including, but not limited to, conditions relating to hours of operation, the operation of any cannabis business, restrictions relating to the deployment or use of the types of equipment used on the premises, and set back requirements.

B. The City may grant a cannabis conditional use permit prior to the applicant having obtained a state license from a licensing authority; however, no approved cannabis business may receive a certificate of occupancy nor operate in the City prior to possessing the requisite state and local licenses and permits.
C. All cannabis businesses must pay all applicable taxes pursuant to all federal, state, and local laws.

D. Cannabis businesses shall comply with all cannabis state laws and regulations.

17.53.080 Premises.

A. All cannabis businesses shall be conducted only in the interior of enclosed structures, facilities and buildings and all operations including the storage of or cultivation of cannabis plants at any stage of growth shall not be visible from the exterior of any structure, facility or building. There shall be no outdoor storage of any kind associated with the cannabis business.

B. No cannabis business shall be located within a 600 foot radius of any park, or public or private school providing instruction in kindergarten or any of grades 1-12, but not including any private school in which education is primarily conducted in a private home, day care center or youth center. The distance specified in this subsection shall be the horizontal distance measured in a straight line without regard to intervening structures, from the property line of the lot on which the cannabis business is located to the nearest property line of those uses described in this subsection. If the cannabis business is to be located on a parcel that immediately adjacent to or across the street from a parcel zoned or used for residential purposes, then the following additional conditions shall apply:

1. A minimum landscaped setback of twenty-five feet, solid wall, or other buffer/screen as deemed appropriate, shall may be provided required for all property lines adjacent to, or across a street or alley from, residential uses or residentially designated properties.

2. Outdoor storage on the premises shall be prohibited.

3. Loading areas and loading docks shall be located on the side or rear of the lot, away from residential uses and or residentially designated property, and shall be screened by solid, decorative walls.

4. Hours of operation shall be as approved with the Conditional Use Permit.

C. Cannabis businesses shall only be conducted on properties that are fully compliant with all Banning Municipal Code requirements, including required development standards such as parking, landscaping, etc.

D. Cannabis businesses located within the same building or on the same property shall each have a validly issued cannabis conditional use permit from the City.
E. All entrances into the premises shall be locked at all times with entry controlled by the permittee’s managers and staff.

F. The main entrance shall be maintained clear of barriers, landscaping, and other obstructions. Inside of the main entrance, there shall be a lobby to receive persons into the site and to verify whether they are allowed on the premises.

G. All commercial cannabis activity in any premises shall be separated from the main entrance and lobby, and cannabis and cannabis products shall be secured by a lock accessible only to managers and staff of the permittee.

H. A permittee shall not, without an approved amendment to the cannabis conditional use permit, make a physical change, alteration, or modification of the premises that alters the premises or the use of the premises from the premises diagram filed with the permit application. Material or substantial changes, alterations or modifications requiring approval include, but are not limited to, the removal, creation, or relocation of a common entryway, doorway, passage, or a means of public entry or exit, when such common entryway, doorway or passage alters or changes limited-access areas within the premises.

I. A permittee shall not sublet the premises.

J. Inspections. The City shall have the right to enter all cannabis businesses from time to time upon 24-hour’s notice for the purpose of making reasonable inspections to observe and enforce compliance with this Chapter. Such inspections shall be limited to observing the licensed premises for purposes of determining whether the cannabis business is being operated or maintained in compliance with this Code, state law, and other applicable laws and regulations. Any cannabis business licensed pursuant to this Chapter may be required to demonstrate, upon demand by the City that the source and quantity of any cannabis or cannabis products found upon the licensed premises is in full compliance with any applicable local or state law or regulation.

17.53.090 Personnel and Visitors.

A. All agents, officers, or other persons acting for or employed by a cannabis business shall display a laminated or plastic-coated identification badge issued by the cannabis business at all times while engaging in commercial cannabis activity. The identification badge shall, at a minimum, include the cannabis business’s "doing business as" name and city business license number, the employee’s first name, an employee number exclusively assigned to that employee for identification purposes, and a color photograph of the employee that clearly shows the full front of the employee’s face and that is at least 1 inch in width and 1.5 inches in height.

B. Employees and Volunteers Age Requirement. A cannabis business shall not employ an individual less than twenty-one (21) years of age, nor may a cannabis business permit an individual less than twenty-one (21) years of age to volunteer at or be within the cannabis business.
C. Visitors. Cannabis businesses shall not be open to the general public. Any individual permitted to enter a limited access area who is not a person that has undergone a background check in accordance with Chapter 5.35 of this Code and is not listed on the premises’s worker list shall be considered a visitor. Notwithstanding the foregoing, state and local employees, or their official designees, shall not be considered a visitor provided the individual is on the licensed premises for purposes of official government business.

1. Visitors Identification and Record Requirements. Prior to permitting a visitor into a limited access area, a cannabis business must check the individual’s valid government issued identification. The visitor shall be required to sign the cannabis business’s visitor log, which must include the individual’s name, date of entry, and purpose for entry.

2. Visitors Must Be at Least Twenty-One (21) Years of Age. A cannabis business may not permit a visitor who is less than twenty-one (21) years of age to enter a limited access area.

3. Visitors Prohibited Conduct. A visitor shall not be permitted to engage in any commercial cannabis activity while on the premises.

4. A manager shall be on the site at all times that any other person, except a security guard, is on the site.

17.53.100 Security.

The premises of a cannabis business must comply with all of the following security requirements:

A. Main entrance and lobby. The premises shall have a building with a main entrance that is clearly visible from the public street or sidewalk. The main entrance shall be maintained clear of barriers, landscaping, and other obstructions. Inside of the main entrance, there shall be a lobby to receive persons into the site and to verify whether they are allowed in the cultivation areas.

B. Transport area. The premises shall have an area designed for the secure transfer of cannabis from the cultivation, manufacturing, or testing laboratory area to a vehicle for transportation.

C. Commercial-Grade Locks. All points of ingress and egress to a premises shall ensure the use of commercial-grade, nonresidential door locks or window locks.

D. A permittee that is engaged in cultivation or manufacture shall hire or contract for 24-hour security personnel to provide security services for the premises. All security personnel hired or contracted for by the cannabis business shall comply with Chapters 11.4 and 11.5 of Division 3 of the Business and Professions Code.
E. Video Surveillance. The premises must be equipped with a video surveillance system that meets all of the requirements set forth in this subsection.

1. Each premises shall have a digital audio/video surveillance system with a minimum camera resolution of 1280 x 720 pixels.

2. The surveillance-system storage device or the cameras shall be transmission control protocol (TCP) capable of being accessed through the internet.

3. The video surveillance system shall at all times be able to effectively and clearly record images of the area under surveillance and shall capture audio such that all sounds are intelligible.

4. Each camera shall be permanently mounted and in a fixed location. Each camera shall be placed in a location that allows the camera to clearly record activity occurring within 20 feet of all points of entry and exit on the premises, and allows for the clear and certain identification of any person and activities in all areas required to be filmed under subsection 5 below.

5. Areas that shall be recorded on the audio/video surveillance system include the following:
   a) Areas where cannabis goods are weighed, packed, stored, loaded, and unloaded for transportation, prepared, or moved within the premises;
   b) Limited-access areas;
   c) Security rooms;
   d) Areas storing a surveillance-system storage device with at least one camera recording the access points to the secured surveillance recording area; and
   e) Entrances and exits to the premises.

6. Cameras shall record continuously 24 hours per day and at a minimum of 15 frames per second (FPS).

7. The physical media or storage device on which surveillance recordings are stored shall be secured in a manner to protect the recording from tampering or theft.

8. Surveillance recordings shall be kept for a minimum of 90 days.

9. Surveillance recordings shall be monitored by a third party surveillance company.
10. Surveillance recordings are subject to inspection by the City, and shall be kept in a manner that allows the City to view and obtain copies of the recordings at the licensed premises upon not less than 24 hours advance notice. The permittee shall also send or otherwise provide copies of the recordings to the City upon reasonable notice by the City.

11. Recorded images shall clearly and accurately display the time and date. Time is to be measured in accordance with the United States National Institute Standards and Technology standards.

12. The video surveillance system shall be equipped with a failure notification system that provides notification to the permittee of any interruption or failure of the video surveillance system or video surveillance-system storage device.

F. Alarm System. The premises shall have an audible interior and exterior security alarm system installed on all perimeter entry points and perimeter windows.

1. The alarm system shall be installed, maintained, monitored, and responded to by a security company licensed by the Department of Consumer Affairs, Bureau of Security and Investigative Services.

2. Upon request, a permittee shall make available to the City all information related to the alarm system.

G. Secure Storage of Product. Cannabis and cannabis products possessed by a cannabis business shall be kept and stored in a secured manner at all times. All areas where cannabis and/or cannabis products are kept shall be separated from the main entrance and lobby and secured by a lock accessible only to managers and staff.

H. Lighting. The business entrance(s) and all window areas of any cannabis business shall be illuminated during evening hours. The cannabis business shall comply with the City’s lighting standards regarding fixture type, wattage, illumination levels, and shielding.

17.53.110 Track and Trace.

All permittees shall comply with the track and trace system established by the State of California and as further described in Sections 5048 through 5052, inclusive, of Title 16 of the California Code of Regulations, as the same may be amended from time to time.

17.53.120 Signage.

The premises must comply with the following signage requirements.

A. A cannabis business shall conspicuously post signs a minimum of eight (8) inches wide by ten (10) inches high in size that can readily be seen by all persons
at the entrance that state: “This site is not open to the public” and “Retail sales of any goods and services is prohibited”.

B. Business signage shall be limited to the name of the cannabis business only, shall be in compliance with the City’s sign code, and shall contain no advertising of any companies, brands, products, goods, or services.

C. A sign shall be posted in a conspicuous place near each point of public access which shall be not less than twelve (12) inches wide and twelve (12) inches long, composed of letters not less than one inch in height, stating “All Activities Monitored by Video Camera.”

D. Limited access areas shall be clearly identified by the posting of a sign which shall be not less than twelve inches wide and twelve inches long, composed of letters not less than one-half inch in height, which shall state, “Limited Access Area—Authorized Personnel Only.”

E. A sign shall be posted stating “Smoking, vaporizing, ingesting, or otherwise consuming cannabis or cannabis products on these premises or in their vicinity is prohibited and a violation of the Banning Municipal Code.”

17.53.130 Cannabis Waste Management.

Cannabis waste disposal shall be conducted as follows:

A. Chemical, Dangerous and Hazardous Waste. Disposal of chemical, dangerous or hazardous waste must be conducted in a manner consistent with federal, state and local laws, regulations, rules or other requirements. This may include, but is not limited to, the disposal of all pesticide or other chemicals used in the cultivation process, certain solvents or other chemicals used in the production of cannabis concentrate.

B. Cannabis Waste. Cannabis waste must be made unusable and unrecognizable prior to leaving the licensed premises by grinding it and incorporating it with fifty percent non-medicinal cannabis waste. If necessary to protect the health and safety of individuals working on a licensed premises, a cannabis business may grind the stalk of a cannabis plant outside of its licensed premises provided all grinding activities occur within twenty feet of the licensed premises and cannot be seen from any public street.

C. Cannabis waste must be placed in either a trash enclosure or a trash receptacle for which either is locked with a commercial grade lock that is only accessible by the owner, manager, or employee of the cannabis business and any waste disposal company that provide waste disposal services for the cannabis business.
17.53.140 General Sanitary Requirements.

A. A cannabis business must ensure that its premises is maintained in a sanitary manner and activities on its premises are conducted in a sanitary manner.

B. All facilities of a cannabis business must have adequate and sufficient access to bathrooms and hand-washing facilities with running water at a suitable temperature.

C. All workers that engage in the preparation of edible cannabis products must comply with the provisions of all relevant state and local laws regarding the preparation, distribution, and sale of food.

17.53.150 Odor Control.

A. Any location used for cannabis cultivation A cannabis business must have a ventilation and filtration system installed that shall prevent cannabis plant odors from exiting the interior of the structure and shall comply with all related Building Code requirements.

B. The ventilation and filtration system must be approved by the Building Official and installed prior to the commencement of cannabis cultivation activities.

17.53.160 Cannabis Indoor Cultivation.

A. Cannabis Commercial Indoor Cultivation shall occur only indoors and shall contain not less than 10,000 square feet of canopy space nor exceed 22,000 square feet of canopy space per cannabis conditional use permit holder.

B. Seed to Sale Tracking Required. Until such a time that the state of California fully implements the California Cannabis Track and Trace System required by Section 26067 of the Business and Professions Code, a cannabis business must utilize seed to sale software, third-party software that tracks all sales, transfers, purchases, receipts, deliveries of cannabis and cannabis products. The software must be capable of producing electronic shipping manifests, tracking all cannabis inventory in possession of the cannabis business, promptly identifying a discrepancy in the stock, and tracking cannabis from the end purchaser back to its source in the event of a serious adverse event. Once implemented, all permittees shall comply with the California Cannabis Track and Trace System established by the State of California and as further described in Sections 5048 through 5052, inclusive, of Title 16 of the California Code of Regulations, as the same may be amended from time to time.

C. Cultivators must comply with the Federal Worker Protection Standard (40 CFR 170).

D. The cultivation of cannabis must be conducted in accordance with all applicable federal, state, and local laws and regulations governing the use of pesticides.
E. The cultivation of cannabis shall be conducted in a secure manner and shall not be visible from a public right of way. As used in this subsection, the term "visible" means capable of being seen without visual aid by an individual of normal acuity.

17.53.170 Cannabis Manufacturing Level 1.

A. Edible Cannabis Products. Edible cannabis products shall be manufactured, packaged and labeled in compliance with MAUCRSA and any implementing regulations adopted by the State.

B. Edible cannabis products must be individually packaged and ready for sale by the manufacturer prior to sale or transfer to another cannabis business.

C. Any person that is involved in the manufacture of edible cannabis products must be a state certified food handler. The valid certificate number of such person must be on record at the manufacturing facility where that individual produces edible cannabis products.

D. Any facility used by a cannabis business to manufacture edible cannabis products shall be constructed, operated and inspected in compliance with all applicable building code and food safety requirements.

E. A cannabis business that manufactures edible cannabis products must comply with the provisions of all relevant state and local laws regarding the preparation, distribution, and sale of food; which shall include, but not be limited to, hand-washing requirements, use of gloves for packaging, and policies prohibiting individuals suffering from symptoms associated with communicable diseases or infections from engaging the production of edible cannabis products.

F. Expiration Date. A cannabis business engaged in the manufacture of cannabis products, including an edible cannabis product, that is perishable shall assign an expiration date or use-by date, whichever is appropriate, to all perishable cannabis products. Once an expiration date or use-by date is assigned to cannabis products, it shall be unlawful for a person to alter that date or affix a new label with a later use-by or expiration date.

G. Extraction Requirements.

1. A manufacturer engaged in extraction may only engage in extraction using non-volatile solvents. The permittee shall not make any modifications to the method of extraction without first obtaining a modification of its permit.

2. Within the limitations set forth by state law, a cannabis business that extracts cannabis or produces cannabis concentrate using a solvent must use a professional grade, closed-loop extraction system capable of recovering the solvent used and must only use a solvent that is permissible under the MAUCRSA and any implementing regulations, and the manufacturer's state license.
H. Compliance with State Law. All packaging and labeling of cannabis and cannabis products by a cannabis business must, at a minimum meet the requirements set forth in the MAUCRSA and any implementing regulations, as the same may be amended from time to time or superseded or replaced by subsequent state legislation or by any state department or division.

I. Tamper-Evident, Child-Resistant Packaging Required. Cannabis and cannabis products shall be labeled and placed in a resealable, tamper-evident, child-resistant package and shall include a unique identifier for the purposes of identifying and tracking cannabis and cannabis products.

J. Cannot Be Attractive to Children. Cannabis packaging and labeling shall not be designed to appeal to children, including, but not limited to, cartoon characters or similar images.

K. State-Mandated Warnings and Information. All cannabis and cannabis product labels and inserts shall include the state-mandated warnings and information contained in Business and Professions Code section 26120(c). Notwithstanding the foregoing, during the period of time that the state permits untested cannabis and cannabis products to be sold to purchasers, all cannabis and cannabis products must have a label affixed to each package that clearly states "This product has not been tested as required by the Medicinal and Adult Use Cannabis Regulation and Safety Act" and must comply with any other labeling requirements imposed by the state.

17.53.180 Cannabis Testing Laboratory.

A. Accreditation. A testing laboratory shall obtain and maintain ISO/IEC 17025 accreditation.

B. Operating Procedures. A testing laboratory shall adopt and adhere to standard operating procedures to ensure the reporting of accurate test results, including but not limited to equipment, calibration, and methodology standards, that are consistent with its ISO/IEC 17025 accreditation.

C. A testing laboratory shall obtain samples of cannabis and cannabis products for testing in accordance with a statistically valid method designed to ensure that a sample is representative of the whole. Sampling methods should have at least a 95% confidence rate.

D. A testing laboratory shall destroy and safely dispose of the remains of any samples of cannabis or cannabis products tested upon completion of the analysis and the expiration of any retention time pursuant its standard operating procedures.

E. A testing laboratory shall maintain all testing results as a part of their respective business records.

17.53.190 Other Provisions.
A. Cannabis Consumption on Premises. Smoking, vaporizing, ingesting, or otherwise consuming cannabis and cannabis products at a premises is prohibited. Premises as used in this subsection includes the actual building, as well as any accessory structures, common areas and parking areas.

B. No person shall give, sell, distribute, or otherwise transfer any cannabis product in any manner not consistent with the approved cannabis conditional use permit or that violates local or state law.

C. Permittees must cooperate with City staff and Police Department personnel who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to this Chapter.

D. Permittees must comply with all state laws and regulations that pertain to cannabis businesses including, but not limited to, the MAUCRSA, and any regulations promulgated by a licensing authority.

17.53.200 Indemnification.

A. Indemnification. To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any permit pursuant to this Chapter or the operation of any cannabis business approved by such permit pursuant to this Chapter. As a condition of approval of a permit granted under this Chapter, the applicant shall:

1. Indemnify and hold the City harmless from any and all claims, damages, legal or enforcement actions, including, but not limited to, any actions or claims associated with violation of federal law associated with the operation of the cannabis business as provided in this chapter.

2. Maintain insurance in the amounts and of the types that are acceptable to the City pursuant to guidelines and policies set forth by the City.

3. Name the City as an additionally insured on all City required insurance policies.

4. Defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a permit or the operation of the cannabis business.

5. Reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge (or federal enforcement action) related to the City's approval of a permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.”

SECTION 4. SEVERABILITY
If any section, subsection, clause or phase or portion of this code is for any reason to invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of all other provisions of this ordinance.

The Mayor and City Council hereby declare that it would have passed the ordinance codified in this chapter; and each section, subsection, sentence, clause and phrase or portion thereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases or portions thereof be declared invalid or unconstitutional.

SECTION 5. PUBLICATION, EFFECTIVE DATE

The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a minute of the passage and adoption thereof in the records of and the proceedings of the City Council at which time the same is passed and adopted. Within fifteen (15) calendar days after its final passage, the City Clerk shall cause a summary of this Ordinance to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California. The City Clerk shall cause the Ordinance to be printed, published, and circulated.

Section 3 of this Ordinance shall not take effect unless Measure ____, imposing a tax on cannabis businesses, is adopted by the voters at the November 2018 election, and such tax becomes operative.

PASSED, APPROVED AND ADOPTED this ___ day of _______________, 2018.

______________________________
George Moyer, Mayor
City of Banning

ATTEST:

______________________________
Sonja De La Fuente, Deputy City Clerk
City of Banning

APPROVED AS TO FORM:

______________________________
Kevin G. Ennis, City Attorney
Richards, Watson & Gershon, APC
CERTIFICATION:

I, Sonia De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Banning, held on the ____ day of _____________, 2018, and was duly adopted at a regular meeting of said City Council on the ___ day of _____________, 2018, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

______________________________
Sonja De La Fuente, Deputy City Clerk
City of Banning
Attachment 3

Public Hearing Notice
NOTICE OF INTENT TO ADOPT A CATEGORICAL EXEMPTION AND NOTICE OF PUBLIC HEARING FOR ZONING TEXT AMENDMENT (ZTA) NO. 18-97501 AMENDING TITLE 17 “ZONING” OF THE BANNING MUNICIPAL CODE TO ADD CHAPTER 17.53, “CANNABIS CONDITIONAL USE PERMITS” TO ALLOW INDOOR COMMERCIAL CANNABIS CULTIVATION, MANUFACTURING LEVEL 1, AND TESTING LABORATORY FACILITIES IN THE INDUSTRIAL ZONING DISTRICT WITH APPROVAL OF A CANNABIS CONDITIONAL USE PERMIT AND MAKING OTHER AMENDMENTS RELATED TO CANNABIS BUSINESSES

NOTICE IS HEREBY GIVEN of a public hearing before the City of Banning Planning Commission to be held on Wednesday, June 6, 2018, at 6:30 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider proposed Zoning Text Amendment (ZTA) No. 18-97501 to amend Title 17 of the Banning Municipal Code to add Chapter 17.53 “Cannabis Conditional Use Permits” to allow Indoor Commercial Cannabis Cultivation, Manufacturing Level 1, and Testing Laboratory facilities in the Industrial Zoning District with approval of a Cannabis Conditional Use Permit and making other amendments related to cannabis businesses.

City staff has determined that the proposed Zoning Text Amendment is not subject to the California Environmental Quality Act (“CEQA”) pursuant to the State CEQA Guidelines Section 15060(c)(3) because it is not a project as defined by the CEQA Guidelines Section 15378. Adoption of the Zoning Text Amendment does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. The Zoning Text Amendment is also exempt from review under the CEQA under State CEQA Guidelines Section 15061(b)(1) which exempts a project from CEQA if the project is exempt by statute. Business and Professions Code section 26055(h) provides that Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. The Zoning Text Amendment provides that discretionary review for applications for cannabis conditional use permits will be required to include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

Information regarding the Categorical Exemption, Zoning Text Amendment, and all relevant materials can be obtained by contacting the City's Community Development Department at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning during regular business hours. You may also go to the City of Banning website at http://www.ci.banning.ca.us/.

All parties interested in speaking either in support of or in opposition of this item are invited to attend the hearing, or to send their written comments to the Community Development Department, City of Banning at P.O. Box 998, Banning, California, 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the Planning Commission makes its decision on the proposal; or, that you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA

Patty Nevins
Community Development Director

Dated: May 22, 2018
Publish: May 25, 2018
CITY OF BANNING
Planning Commission Report

MEETING DATE: June 6, 2018

TO: Planning Commission

FROM: Patty Nevins, Community Development Director
       Art Vela, Public Works Director

SUBJECT: TENTATIVE TRACT MAP NO. 37298.
(ATWELL DEVELOPMENT)
PROPOSAL TO SUBDIVIDE APPROXIMATELY 199 GROSS
ACRES OF VACANT LAND FOR PURPOSES OF CREATING
264 SINGLE FAMILY LOTS, 1 LOT FOR FUTURE MEDIUM
DENSITY RESIDENTIAL DEVELOPMENT, 1 LOT FOR
FUTURE MEDIUM DENSITY RESIDENTIAL DEVELOPMENT
AND FUTURE PARK, 2 COMMERCIAL LOTS, A LOT FOR A
PARK, 15 OPEN SPACE LOTS, 1 SCHOOL LOT, AND
PUBLIC STREETS, ALL WITHIN THE BUTTERFIELD
SPECIFIC PLAN AREA

RECOMMENDATION:

1. Adopt Resolution No. 2018-08 (Attachment 1), recommending that the City
   Council take the following actions:

   I. Find that in accordance with CEQA Guidelines Section 15162,
      Subsequent EIRs and Negative Declarations, a subsequent
      environmental document is not required.

   II. Approve Tentative Tract Map No. 37298 to subdivide approximately
        199 gross acres of land for single family, multi-family, commercial,
        school, parks, and open space uses along with public streets, subject
        to the conditions of approval.

APPLICANT INFORMATION:

Project Applicant: Pardee Homes
1250 Corona Pointe Court, #600
Corona, CA 92879
Property Owner: Pardee Homes  
1250 Corona Pointe Court, #600  
Corona, CA  92879

Project Location: North of Wilson Street, east of Highland Springs Avenue, generally in the southwesterly portions of the Butterfield Specific Plan.

APN Information: 408-120-001 through -005, 408-120-007 through -009; portions of 408-120-006, 408-120-010, 408-120-012, 408-120-019, 408-120-020

REQUEST:

Tentative Tract Map No. 37298 would subdivide approximately 199 gross acres of vacant land into 264 single family lots, 2 lots for future medium density development, 2 commercial lots, 2 lots for parks, 15 open space lots, 1 lot for a school, and public streets. The Project site is located north of Wilson Street and east of Highland Springs Road within the Butterfield Specific Plan area; see Figures 1 and 2 for the overall Butterfield Specific Plan area, and a colored site plan of Tentative Tract Map No. 37298. The proposed Tentative Tract Map No. 37298 is also attached to this report.

Figure 1: Butterfield Specific Plan  
Figure 2: TTM 37298 Exhibit
BACKGROUND:

The Butterfield Specific Plan, General Plan and Zoning Map Amendments, Development Agreement, and accompanying Environmental Impact Report (EIR) were originally approved by the City Council in March of 2012. Subsequent litigation and a Settlement Agreement resulted in a request by the applicant for approval of a General Plan Amendment related to Highland Home Road as well as certain minor modifications to the Specific Plan. These applications were reviewed by the Planning Commission in January 2017 and were reviewed and approved by the City Council in February 2017.

In May of 2017, the Planning Commission reviewed and recommended approval of Tentative Maps for the Butterfield project for financing and conveyance purposes. The City Council subsequently approved these maps at their June 27, 2017 meeting.

ANALYSIS:

The overall Butterfield Specific Plan project site is approximately 1,528 acres and is located in the northwestern corner of the City of Banning (see Figure 1). Proposed Tentative Tract Map No. 37298 is located generally within the southwesterly area of the Specific Plan.

The boundaries of the proposed Tentative Tract Map No.37298 include the following Planning Areas (“PA”) within the Butterfield Specific Plan: Planning Areas 17 and 18 (Commercial); Planning Areas 2A, 3, 4, and 9B (Medium Density Residential); Planning Areas 1A and 1B (Low Density Residential); Planning Area 20 (School); Planning Areas 22 and 26 (Parks); and Planning Area 23 (Open Space). See Figure 3 below; a larger copy of the Butterfield Specific Plan land use map is included with this report as Attachment 4.

Additionally, the proposed Tentative Tract Map No. 37298 will create public streets. Backbone streets are identified as “A” Street (accessed from Highland Springs Avenue); “H” Street (accessed from Highland Springs Avenue); “C” Street (accessed from Wilson Street); “K” Street (accessed from Wilson Street); and “B” Street (an internal street connecting to both “H” Street and “C” Street). Additional neighborhood streets serve as entries and provide internal circulation for individual neighborhoods.

Residential Planning Areas

Low Density Residential: Planning Areas 1A and 1B

The proposed Tentative Tract Map encompasses two Planning Areas (PAs) – PA 1A and PA 1B – that are identified within the Butterfield Specific Plan as “Low Density Residential” (LDR) development planning areas.

LDR lots are intended as detached single-family homes with private yards. There
are two categories of development standards within the Butterfield Specific Plan for LDR planning areas; the minimum LDR lot sizes and dimensions for PA 1A and PA 1B are as follows:

Minimum lot area: 5,000 square feet  
Minimum lot width:  
  Interior: 46’  
  Corner: 51’  
Minimum lot frontage: 20’

Each of the LDR lots presented within the proposed Tentative Tract Map No. 37298 meets the lot area and dimensional requirements specified for PAs 1A and 1B. In PA 1A, the minimum lot size allowed is 5,000 square feet; the minimum lot size proposed is 5,829 square feet and the average lot size is 7,671 square feet. In PA 1B, the minimum lot size allowed is 5,000 square feet; the minimum lot size proposed is 6,180 square feet and the average lot size provided is 7,665 square feet.

<table>
<thead>
<tr>
<th>PA 1A # units</th>
<th>Approved SP</th>
<th>Proposed TTM</th>
<th>Difference</th>
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</thead>
<tbody>
<tr>
<td>PA 1A acreage</td>
<td>17</td>
<td>19.39</td>
<td>+15%</td>
</tr>
<tr>
<td>PA 1A density</td>
<td>0-5 du/ac</td>
<td>4.5 du/ac</td>
<td>within approved range</td>
</tr>
</tbody>
</table>

| PA 1B # units | 52          | 57           | +5         |
| PA 1B acreage | 11.4        | 12.77        | +12%       |
| PA 1B density | 0-10 du/ac  | 4.5 du/ac    | within approved range |

The Butterfield Specific Plan allows adjustment of residential planning boundaries of up to 20% to be approved by the Community Development Director as substantially conforming to the Specific Plan, and revisions to the number of dwelling units within a PA can be approved by the Community Development Director as substantially conforming to the Specific Plan as long as the total number of units for the Specific Plan area does not exceed the maximum number of approved Specific Plan units nor the maximum density allowed in a Planning Area. The number of dwelling units within PA 1A has decreased by one, and PA 1B has increased by five units; thus, the count is 4 units over. However, PA 2A, discussed below, is proposed at five units below the approved number. Thus, the overall unit count is within the number approved for the affected Planning Areas. Further, both PAs are within allowable density ranges.

**Medium Density Residential: Planning Areas 2A, 3, 4, and 9B**

**Planning Area 2A:**

The proposed Tentative Tract Map No. 37298 encompasses four Medium Density Residential Planning Areas (PAs) – PA 2A, 3, 4, and 9B. MDR lots are intended
as either conventionally plotted detached single-family homes on individual lots with private yards, or as a cluster product (green court, motor court, or stub street court). The minimum lot sizes and dimensions for Conventional Medium Density Residential lots are as follows:

Minimum lot area: 3,400 square feet  
Minimum lot width:  
  Interior 46'  
  Corner 51'  
Minimum lot frontage: 20'  
Maximum density: 10 du/ac

Each of the MDR lots presented within the proposed Tentative Tract Map No. 37298 meet the lot area and dimensional requirements specified for PA 2A. The minimum lot size proposed is 4,500 square feet and the average lot size is 5,848 square feet. All lots meet the minimum required dimensions.

Below is a comparison of the proposed Tentative Tract Map No. 37298 dwelling unit numbers, acreages, and densities to the approved Specific Plan:

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<th>Approved SP</th>
<th>Proposed TTM</th>
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<tbody>
<tr>
<td>PA 2A # units</td>
<td>125</td>
<td>120</td>
<td>-5</td>
</tr>
<tr>
<td>PA 2A acreage</td>
<td>20.40</td>
<td>20.38</td>
<td>less than 1%</td>
</tr>
<tr>
<td>PA 2A density</td>
<td>0-10 du/ac</td>
<td>5.9 du/ac</td>
<td>within approved range</td>
</tr>
</tbody>
</table>

Adjustment of residential planning boundaries of 20% or less can be approved by the Community Development Director as substantially conforming to the Specific Plan, and revisions to the number of dwelling units within a PA can be approved as substantially conforming to the Specific Plan as long as the total number of units for the Specific Plan area does not exceed the maximum number of approved Specific Plan units nor the maximum density allowed in a Planning Area.

Planning Areas 3, 4 and 9B:

The PA 3, 4 and 9B MDR lots encompass three lots for future Medium Density Residential development. PA 3 is 16.5 acres, PA 4 is 9.3 acres, and PA 9B is 3.92 acres. These residential lots will be subdivided and developed in the future.

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<th>Approved SP</th>
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<tbody>
<tr>
<td>PA 3 acreage</td>
<td>19.3</td>
<td>16.5</td>
<td>-14.5%</td>
</tr>
<tr>
<td>PA 4 acreage</td>
<td>13.9</td>
<td>9.3</td>
<td>-33%</td>
</tr>
<tr>
<td>PA 9B acreage</td>
<td>5.0</td>
<td>3.92</td>
<td>-22%</td>
</tr>
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</table>

Although the Planning Area acreages/boundaries for PAs 4 and 9B have changed more than 20%, the adjustments are due to the increase in acreage for the school site. School Planning Areas may be modified by more than 20% as provided for in the Specific Plan and necessarily modify acreage for adjoining planning areas.
Based on this, staff find that the changes to substantially conform with the Specific Plan.

Residential Lot Grading:

Pad elevations provided for some residential lots indicate that there may be elevational differentials between residential lots of 8 feet or more. The applicant has noted that the lot lines will be at top of slope where this condition occurs, that the elevation difference will be addressed via a 2:1 slope bank in the rear yard of the lower lot, and that the slope bank will occur outside of required rear yard setbacks to ensure usable yard area for the residence.

Where MDR residential lots are adjacent to the commercial lots, grade differentials may exceed 10 feet. Lot lines will be at top of slope where this condition occurs, the elevation difference will be addressed via a 2:1 slope bank in the rear yard of the lower lot, and the slope bank will occur outside of any required setbacks. Additional measures to protect the residential lots from commercial activities (e.g. setbacks, walls, landscaping) will be evaluated and further measures may be required during the Design Review process.

Commercial Planning Areas

The proposed Tentative Tract Map No. 37298 encompasses two commercial lots, one each within PAs 17 and 18. The proposed PA 18 commercial lot is 23 acres located at the northeast corner of Wilson Street and Highland Springs Avenue. The proposed PA 17 commercial lot is 12.89 acres and is located on the east side of Highland Springs Avenue, south of Oak Valley Parkway.

The Butterfield Specific Plan minimum lot area and dimensions for commercial lots are as follows:

Minimum lot area: 6,000 square feet
Minimum lot width: 60’

Each of the commercial lots meet the required development standards.

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<tbody>
<tr>
<td>PA 17 acreage</td>
<td>13.6</td>
<td>12.89</td>
<td>-5%</td>
</tr>
<tr>
<td>PA 18 acreage</td>
<td>23.1</td>
<td>23.00</td>
<td>-1%</td>
</tr>
</tbody>
</table>

Adjustment to commercial planning boundaries of 20% or less can be approved by the Community Development Director as substantially conforming to the Butterfield Specific Plan.
Grading:

Pad elevations provided for the commercial lots indicate that there may be
elevational differentials between the commercial lots and adjacent residential lots
of ten feet or more. As noted above, where residential lots are adjacent to the
commercial lots, measures to protect the residential lots from commercial activities
(e.g. setbacks, walls, landscaping) may be evaluated and imposed during the
Design Review process.

Future Commercial Development

Section 6.2.4 of the project’s Development Agreement indicates that the developer
shall maintain the potential to expand the site to as much as 88 acres to permit a
larger commercial development and shall advise the City within five years of the
Development Agreement’s Effective date as to what interest there might be in the
expanded project at which time the parties would mutually agree as to the scope
of the project. The developer has indicated that with the school district’s preferred
site, the expanded commercial option is no longer viable and that further,
discussions with several big box retail representatives have not identified interest
to construct at this location. With approval of the current configuration, the
commercial sites would remain as one 23 acre site and one 12.89 acre site.

Parks

The Tentative Tract Map No. 37298 includes two parks; PA 22 is a 2.02-acre park
lot located between the residential PA 1A and 1B lots, and PA 26 is a 1 acre future
park lot located within the Medium Density Residential PA to be subdivided and
developed in the future.

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<th>Approved SP</th>
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<tbody>
<tr>
<td>PA 22 acreage</td>
<td>2.0</td>
<td>2.02</td>
<td>+ Less than 1%</td>
</tr>
<tr>
<td>PA 26 acreage</td>
<td>1.0</td>
<td>1.0</td>
<td>0</td>
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Open Space PA 23 and 35A and Lettered Lots

The proposed Tentative Tract Map No. 37298 includes 29 acres of open space
identified as Lot “L” comprised of 12.57 acres within PA 23 and 5 acres within PA
35A, along with various other lettered open space lots identified as lots “A” through
“O”. PAs 23 and 35A Lot “L” will be part of the open space system that replaced
the former golf course as included in the minor modifications that were approved
in February 2017. The Lot “L” open space lot will provide for stormwater
management and a channel/creek system and is also required to provide for active
and/or passive recreational amenities (e.g. trails, seating areas, etc.).

Although described at one point as a “lake”, the previous water area within Open
Space Lot “L” is now planned as a continuation of the channel/creek system that
will be integrated into the overall storm drain system to receive stormwater runoff
from areas onsite, as well ultimately from other areas of Atwell. The stormwater
design is proposed to provide water quality treatment for stormwater runoff and
nuisance flows, as well as stormwater detention.

Open space lots “A” through “K, and “M” through “O” total 5.0 acres and will provide
landscaped buffers and connectivity along and between streets and trails.

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<th>Approved SP</th>
<th>Proposed TTM</th>
<th>Difference</th>
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<tbody>
<tr>
<td>PA 23 acreage</td>
<td>16.5</td>
<td>12.57</td>
<td>-24%*</td>
</tr>
<tr>
<td>PA 35A acreage</td>
<td>12.4</td>
<td>5.0</td>
<td>-60%*</td>
</tr>
</tbody>
</table>

* Open Space Planning Areas 23 and 35A include area that will be contained
within subsequent maps. The applicant has indicated that PA 23 will ultimately
be 13.55 acres (an 18% decrease) and PA 35A will ultimately be 10.55 acres
(a 15% decrease). Both of these are within allowable substantial conformance
limits. Staff has included a condition of approval requiring that upon submittal
of the tentative tract map that includes the remaining open space areas, the
applicant shall provide an exhibit depicting the overall are within PA 23 and PA
35A confirming that the above acreages are being met and that additional open
space be provided in remaining open space Planning Areas to compensate.

Adjustment of open space planning boundaries of 20% or more can be approved
by the Community Development Director as substantially conforming to the
Butterfield Specific Plan.

PA 23 and PA 35A as depicted in the Specific Plan each overlap two phases.
Within the proposed Tentative Tract Map No. 37298, the acreages of both PA 23
and PA 35A are less than required by the Specific Plan; however additional PA 23
and 35A areas will be mapped in future adjacent tract map, at which time their
overall areas are expected to match the acreage of the approved SP. As such,
staff finds the open space PAs consistent with the Specific Plan and a condition of
approval has been included to ensure that the overall open space PA acreages
are consistent with the Specific Plan is included.

Grading:

As noted previously, Lot “L” will be required to incorporate trails and other active
or passive recreational amenities along both sides of the perimeter. Plans for this
open space area will be reviewed by the Planning Commission for Design Review
approval.

School Planning Area 20

The proposed Tentative Tract Map No. 37298 includes a 20-acre site for future
school development. This site will be rough graded and deeded over for future
school development.
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<th>Approved SP</th>
<th>Proposed TTM</th>
<th>Difference</th>
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</thead>
<tbody>
<tr>
<td>PA 20 acreage</td>
<td>14.0</td>
<td>20.0</td>
</tr>
</tbody>
</table>

As provided for in Section 6.1.2 of the Specific Plan, school sites may be increased by more than 20%. As such, the above, along with corresponding decreases required for adjacent planning areas, would be considered consistent with the Specific Plan.

**Streets/Circulation System**

Proposed streets within the subdivision will be public streets and are consistent with sections provided in the Butterfield Specific Plan. Residential streets proposed will be 36’ wide from curb to curb, consistent with the approved Specific Plan and allowing for on-street parking.

Backbone streets (i.e. “A” Street, “H” Street, “C” Street and “B” Street) will be 62’ wide from curb to curb, consistent with the approved Specific Plan.

Proposed “A” Street, “C” Street, “H” Street and entry streets to residential neighborhoods will include medians.

As part of each final map approval, or appropriate group of maps, the Applicant shall have prepared a Traffic Impact Analysis Validation Report (TVR) as required by the conditions of approval. The TVR shall identify the street improvements required to be constructed in order to ensure adequate emergency access and satisfactory level of service.

**Utilities**

Electrical service will be provided by the City of Banning; the Electric Utility has provided conditions of approval that have been incorporated into the proposed Conditions of Approval. Permanent City of Banning electrical utilities will be undergrounded with the exception of temporary overhead electrical lines and pad-mount equipment such as transformers and switchgear.

Water and wastewater services will be provided by the City of Banning; the Public Works Department has provided conditions of approval, related to the water and wastewater utilities, which have been incorporated into the draft project conditions.

A water and sewer system analysis shall be prepared and shall identify the water and sewer improvements that are required to serve the project.

Issuance of building permits for any portion of the project shall be contingent upon the availability of non-potable water supplies to serve any non-potable demands within the City in an amount greater than or equal to the non-potable demands of the portion of the project for which building permits are requested. This would
include water for open spaces, parks, medians, and greenbelts.

Proof of the availability of sufficient water supply to serve the project shall be based on a written verification prepared by the City consistent with Government Code § 66473.7

**Other Improvements**

The proposed Tentative Tract Map No. 37298 depicts interim drainage improvements corresponding with future grading and located adjacent to the southeast corner of the mapped lots, east of proposed Lot "L"/PA 23, and north/northeast of the mapped lots.

North of the proposed Tentative Tract Map No. 37298, an earthen berm will be constructed along the north edge of Phase 1 of the Butterfield Specific Plan project. This berm is intended to provide temporary flood protection from existing overland drainage flows coming from the northerly adjacent ranchland uphill of Phase 1, which is tributary to Smith Creek. The berm will be located outside of the street corridor of "H" Street and will be hydroseeded to stabilize the soil. The street corridor will include permanent landscaping which will be installed when the street is constructed.

Additionally, a stormwater management / flood control basin (Basin 3) will be constructed at the corner of Wilson and "C" Streets as part of Phase 1 of the Butterfield Specific Plan project. The project requires a larger drainage storage capacity in Basin 3 in Phases 1 and 2 than what will be required in later phases of the project, therefore Basin 3 will be constructed in a way that facilitates future alteration of the basin. In Phases 1 and 2 of the project, Basin 3 will serve as both a stormwater quality treatment/ infiltration basin and as a 100-year flood retention basin. After the construction of Phase 3 the basin will serve only as a water quality/infiltration basin. Therefore, the basin size will be reduced concurrently with the construction of Phase 3 of the Butterfield Specific Plan. Reducing the size of Basin 3 will allow the construction of the realigned Smith Creek channel. Basin 3 will include a low berm dividing the permanent portion of the basin on the western side, adjacent "C" Street from the temporary portion of the basin nearer to Smith Creek. Basin 3 will be hydroseeded in the interim condition and is ultimately expected to be landscaped with primarily riparian plantings.

**Future City Approvals:**

Grading permits may be issued by the City's Engineering Department after approval of the proposed Tentative Tract Map No. 37298.

A phasing plan indicating the timing of project development and public facilities installation is required to be approved by staff prior to commencement of development activities.

City Council approval of the final tract map shall also be required for Tentative
Tract Map No. 37298. The approval of final tract maps shall be appropriate once all required improvements (i.e. street, water, wastewater, recycled water) have been identified; improvement plans have been prepared and submitted for City review and approval; and applicant has on file with the City Clerk an acceptable security for the construction of the identified public improvements.

Planning Commission approval of Design Review applications for residential, commercial, and open space building architecture and related site improvements will be required prior to construction of structures and/or other improvements. Parks will be reviewed and approved by the Community Services Director and the Community Development Director as required by the Specific Plan and Development Agreement.

ENVIRONMENTAL DETERMINATION:

1. California Environmental Quality Act (CEQA)

Potential environment issues associated with the proposed Tentative Tract Map were analyzed in the previously certified Environmental Impact Report for the Butterfield Specific Plan project (SCH No. 2007091149) as modified by the Addendum approved by the City Council on February 14, 2017, which documents are on file in the Community Development Department. There have been no substantial changes in the project nor in the circumstances under which the project is undertaken which will require major revisions of the previous environmental document; nor is there new information that shows that the project will have a significant environmental effect or an effect more severe than originally thought. Therefore, in accordance with CEQA Guidelines Section 15162, Subsequent EIRs and Negative Declarations, a subsequent environmental document is not required.

The project will be conditioned to comply with the mitigation measures imposed under the approved Mitigation Monitoring and Reporting Program (MMRP).

2. Multiple Species Habitat Conservation Plan (MSHCP): The Project EIR’s mitigation measures, including submittal of a Determination of Biologically Equivalent of Superior Preservation (DBESP), ensure consistency with the Western Riverside County MSHCP. These mitigation measures will be incorporated into all development approvals as required by the Project MMRP to ensure consistency with the MSHCP.

SUBDIVISION MAP ACT FINDINGS

An application for a Tentative Tract Map requires that it meet specific findings in accordance with Title 16 (Subdivisions) of the Banning Municipal Code and Government Code Sections 66473.1, 66473.5 and 66474. A tentative map must
adequately meet the provisions of Title 16 and the Subdivision Map Act based upon the following findings:

1. **Finding:** Tentative Tract Map 37298 is consistent with the objectives, policies, general land uses, and programs specified in the City’s General Plan and the Butterfield Specific Plan.

**Findings of Fact:** The General Plan land use designation for the site is classified as Specific Plan; the Butterfield Specific Plan includes land use designations of Very Low Density Residential, Medium Density Residential, Commercial, School, Open Space, and Parks uses within the proposed Project area. The proposed Tentative Tract Map No. 37298 is consistent with the City’s General Plan in that it will provide for a range of housing types and commercial uses as envisioned by the General Plan’s Land Use element and an efficient transportation system as envisioned by the General Plan’s Circulation element. It is consistent with the Butterfield Specific Plan as it provides for land uses consistent with those designated for the Project area by the Specific Plan land use map. As such, the proposed Tentative Tract Map No. 37298 is consistent with the objectives, policies, general land uses, and programs specified in the City’s General Plan and the Butterfield Specific Plan.

2. **Finding:** The design and improvement of the subdivision proposed under Tentative Tract Map No. 37298 is consistent with the City’s General Plan and the Butterfield Specific Plan.

**Findings of Fact:** The design and improvement of the proposed subdivision is consistent with the City’s General Plan and the Butterfield Specific Plan in that it will provide for a range of housing, commercial uses to meet the needs of the City’s residents, and an efficient transportation system as envisioned by the General Plan, and is designed to meet City standards, including providing satisfactory pedestrian and vehicular circulation, emergency vehicle access and on site improvements, such as streets, utilities, and drainage facilities consistent with the Specific Plan.

3. **Finding:** The subject site is physically suitable for the type of development proposed under Tentative Tract Map No. 37298.

**Findings of Fact:** The Project site transitions from relatively flat land at the northeast corner of Highland Springs Avenue and Wilson Street to the foothills of the San Bernardino Mountains. Major access to the project site is provided by Highland Springs Avenue and Wilson Street. Analysis of the Project site relative to the physical suitability of the site for development was included in previous approvals for the Butterfield Specific Plan and the site is physically suitable for the proposed development as allowed under the Butterfield Specific Plan.
4. **Finding:** The site is physically suitable for the proposed density of development proposed under Tentative Tract Map No. 37298.

**Findings of Fact:** The Project site transitions from relatively flat land at the northeast corner of Highland Springs Avenue and Wilson Street to the foothills of the San Bernardino Mountains. Major access to the site is provided by Highland Springs Avenue and Wilson Street. Analysis of the Project site relative to the physical suitability for density of development was included in the approvals for the Butterfield Specific Plan, and the proposed number of dwelling units is slightly lower than that allowed under the Butterfield Specific Plan.

5. **Finding:** The design of the subdivision and improvements proposed under Tentative Tract Map No. 37298 is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

**Findings of Fact:** Potential environmental issues associated with the proposed Tentative Tract Map No. 37298 were analyzed in the previously certified Environmental Impact Report for the Butterfield Specific Plan project (SCH No. 2007091149) as amended by an Addendum approved by the City Council in February 2017. With the imposition of mitigation measures, the Project will not have a significant effect on biological resources. There have been no substantial changes in the Project nor in the circumstances under which the Project is undertaken that will require major revisions of the prior certified EIR or Addendum; nor is there new information that shows that the Project will have a significant environmental effect or an effect more severe than originally thought. Therefore, the proposed Tentative Tract Map No. 37298 is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

6. **Finding:** The design of the subdivision and improvements proposed under Tentative Tract Map No. 37298 is not likely to cause serious public health problems.

**Findings of Fact:** Tentative Tract Map No. 37298 is in conformance with the City's General Plan, Zoning Ordinance, and Subdivision Ordinance and the Butterfield Specific Plan, and the Project has been conditioned to comply with all applicable Specific Plan requirements and applicable requirements of the City's ordinances, codes, and standards. In addition, the design and construction of improvements are conditioned to be in conformance with adopted City street and public works standards. The City's ordinances, codes, and standards have been created based on currently accepted standards and practices for the preservation of the public health, safety and welfare.

7. **Finding:** The design of the subdivision and improvements proposed under Tentative Tract Map No. 37298 will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.
Findings of Fact: Tentative Tract Map No. 37298 will not conflict with any easements for access through or use of property within the proposed subdivision.

PUBLIC COMMUNICATION

Tentative Tract Map No. 37298 was advertised in the Record Gazette newspaper on May 25, 2018 (Attachment 10). Additionally, the notice was mailed to all property owners within 300 feet of the Project.

Prepared By:

Patty Nevins
Community Development Director

Attachments:

1. Planning Commission Resolution 2018-08
2. Tentative Tract Map No. 37298
3. Butterfield Specific Plan, Land Use Plan
4. Butterfield Specific Plan Excerpts, Development Regulations
5. Ordinance 1450 (Approving the Butterfield Specific Plan)
6. Butterfield Specific Plan Development Agreement
7. Settlement Agreement
8. CC Resolution 2017-07 Approving Minor Modifications and Attachment C, Conditions of Approval
9. Mitigation Monitoring and Reporting Program and Addendum Modifications
10. Public Hearing Notice
Attachment 1
Planning Commission Resolution 2018-08
RESOLUTION 2018-08

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF BANNING MAKE ENVIRONMENTAL DETERMINATIONS UNDER CEQA AND APPROVE TENTATIVE TRACT MAP NO. 37298, A SUBDIVISION OF APPROXIMATELY 199 GROSS ACRES INTO 264 SINGLE FAMILY LOTS, 1 LOT FOR FUTURE MEDIUM DENSITY RESIDENTIAL DEVELOPMENT, 1 LOT FOR FUTURE MEDIUM DENSITY RESIDENTIAL DEVELOPMENT AND A FUTURE PARK, 2 COMMERCIAL LOTS, 1 LOT FOR A PARKS, 15 OPEN SPACE LOTS, 1 SCHOOL LOT, AND PUBLIC STREETS, ON REAL PROPERTY LOCATED NORTH OF WILSON STREET AND EAST OF HIGHLAND SPRINGS AVENUE WITHIN THE SOUTHWESTERN PORTION OF THE BUTTERFIELD SPECIFIC PLAN (APNs: 408-120-001, -002, -003, -004, -005; 408-120-007, -008, -009; PORTIONS OF 408-120-006, 408-120-010, 408-120-012, 408-120-019, 408-120-020)

WHEREAS, an application for Tentative Tract Map No. 37298, attached hereto as Exhibit “A,” to subdivide approximately 199 gross acres of vacant real property into residential, commercial, school, park, and open space lots, along with public streets (the “Project”), has been duly filed by:

Project Applicant: Pardee Homes
1250 Corona Pointe Court, #600
Corona, CA 92879

Property Owner: Pardee Homes
1250 Corona Pointe Court, #600
Corona, CA 92879

Parcel Address: North of Wilson Street, east of Highland Springs

APN’s: 408-120-001 through -005, 408-120-007 through -009; portions of 408-120-006, 408-120-010, 408-120-019, 408-120-020

Lot Area: Approximately 199 gross acres;

WHEREAS, pursuant to Title 16 of the Banning Municipal Code, the Planning Commission has the authority to review and make recommendations to the City Council concerning Tentative Tract Map No. 37298;

WHEREAS, the Community Development Department has evaluated the Project’s potential effects on the environment as required under the California Environmental Quality Act (“CEQA”) (Cal. Pub. Res. Code § 21000 et seq.) and determined that potential
impacts associated with Tentative Tract Map No. 37298 were adequately analyzed under the previously approved Final Environmental Impact Report for the Butterfield Specific Plan project and that pursuant to CEQA Guidelines Section 15162 no further environmental analysis is required;

WHEREAS, in accordance with Government Coce Sections 66451.3, 65090 and 65091, on May 25, 2018, the City gave public notice, by advertisement in the Record Gazette Newspaper, and by mailing to the owner of the subject real property, the owner's duly authorized agent, the Project applicant, and property owners within 300 feet of the Project site, of a public hearing concerning the Project; and

WHEREAS, in accordance with Banning Municipal Code Section 16.12.080, on June 6, 2018, the Planning Commission held a public hearing at which time interested persons had an opportunity to testify in support of, or opposition to, the Project, and at which the Planning Commission considered Tentative Tract Map No. 37298.

WHEREAS, at this public hearing on June 6, 2018, the Planning Commission heard public comments on, and adopted this Resolution recommending that the City Council determine that no further CEQA review is required for the Project and approve Tentative Tract Map No. 37298.

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

SECTION 1: California Environmental Quality Act Findings. The Planning Commission of the City of Banning does hereby recommend that the City Council of the City of Banning make the following environmental findings and determinations in connection with the approval of the Project:

A. Pursuant to the California Environmental Quality Act ("CEQA") (Cal. Pub. Res. Code § 21000 et seq.), the State Guidelines (14 Cal. Code Regs. § 15000 et seq.), and the City's Local Guidelines, City staff has considered the potential environmental impacts of Tentative Tract Map No. 37298. City staff has also reviewed the previously certified Environmental Impact Report (EIR) for the Butterfield Specific Plan project (SCH No. 2007091149), including the impacts and mitigation measures identified therein, and reviewed the EIR in accordance with CEQA for the Project. Based on that review, the City of Banning Planning Division has determined that the Project and the circumstances under which the Project is undertaken do not involve substantial changes which will result in new significant environmental effects, and that the Project does not involve new information of substantial importance which shows that the Project will have significant effects not discussed in the prior EIR. All potential environmental impacts associated with the Butterfield Specific Plan and Tentative Tract Map No. 37298 are adequately addressed by the prior EIR.

B. The Planning Commission has independently reviewed the Planning Division's determination, and based upon the whole record before it, the the
Planning Division's determination, and its independent review and judgment, finds that that the Project is not subject to further environmental review pursuant to the Guidelines because: (1) the Project and the circumstances under which the Project is undertaken do not involve substantial changes which will result in new significant environmental effects, and that the Project does not involve new information of substantial importance which shows that the Project will have significant effects not discussed in the prior EIR; and (2) all potential environmental impacts associated with Butterfield Specific Plan and Tentative Tract Map No. 37298 are adequately addressed by the prior EIR.

C. The custodian of records for the prior EIR, and all other materials that constitute the record of proceedings upon which the City Council's recommendation is based, is the Planning Division of the City of Banning. Those documents are available for public review in the Planning Division located at 99 E. Ramsey Street, Banning, California 92220.

D. Multiple Species Habitat Conservation Plan (MSHCP). The Project EIR's mitigation measures, including submittal of a Determination of Biologically Equivalent of Superior Preservation (DBESP), ensure consistency with the Western Riverside County MSHCP. These mitigation measures will be incorporated into future development approvals as required by the Project Mitigation Monitoring and Reporting Program to ensure consistency with the MSHCP.

SECTION 2: Findings for Recommendation of Approval of Tentative Tract Map No. 37298. The Planning Commission of the City of Banning does hereby recommend that the City Council of the City of Banning find and determine that Tentative Tract Map No. 37298 should be approved because:

A. Finding: Tentative Tact Map No. 37298 is consistent with the objectives, policies, general land uses, and programs specified in the City’s General Plan and the Butterfield Specific Plan.

Findings of Fact:
The General Plan land use designation for the site is classified as Specific Plan; the Butterfield Specific Plan includes land use designations of Very Low Density Residential, Medium Density Residential, Commercial, School, Open Space, and Parks uses within the proposed Project area. The proposed Tentative Tract Map No. 37298 is consistent with the City's General Plan in that it will provide for a range of housing types and commercial uses as envisioned by the General Plan's Land Use element and an efficient transportation system as envisioned by the General Plan's Circulation element. It is consistent with the Butterfield Specific Plan as it provides for land uses consistent with those designated for the Project area by the Specific Plan land use map. As such, the proposed Tentative Tract Map No. 37298 is consistent with the objectives, policies, general land uses,
and programs specified in the City’s General Plan and the Butterfield Specific Plan.

B. **Finding:** The design and improvement of the subdivision proposed under Tentative Tract Map 37298 is consistent with the City’s General Plan and the Butterfield Specific Plan.

**Findings of Fact:**
The design and improvement of the proposed subdivision is consistent with the City’s General Plan and the Butterfield Specific Plan in that it will provide for a range of housing, commercial uses to meet the needs of the City’s residents, and an efficient transportation system as envisioned by the General Plan, and is designed to meet City standards, including providing satisfactory pedestrian and vehicular circulation, emergency vehicle access and on site improvements, such as streets, utilities, and drainage facilities consistent with the Specific Plan.

C. **Finding:** The subject site is physically suitable for the type of development proposed under Tentative Tract Map No. 37298.

**Findings of Fact:**
The Project site transitions from relatively flat land at the northeast corner of Highland Springs Avenue and Wilson Street to the foothills of the San Bernardino Mountains. Major access to the site is provided by Highland Springs Avenue and Wilson Street. Analysis of the Project site relative to the physical suitability of the site for development was included in previous approvals for the Butterfield Specific Plan and the site is physically suitable for the proposed development as allowed under the Butterfield Specific Plan.

D. **Finding:** The site is physically suitable for the proposed density of development under Tentative Tract Map No. 37298.

**Findings of Fact:**
The Project site transitions from relatively flat land at the northeast corner of Highland Springs Avenue and Wilson Street to the foothills of the San Bernardino Mountains. Major access to the site is provided by Highland Springs Avenue and Wilson Street. Analysis of the Project site relative to the physical suitability for density of development was included in the approvals for the Butterfield Specific Plan, and the proposed number of dwelling units is slightly lower than that allowed under the Butterfield Specific Plan.

E. **Finding:** The design of the subdivision and improvements proposed under Tentative Tract Map No. 37298 is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
Findings of Fact:
Potential environment issues associated with the proposed Tentative Tract Map No. 37298 were analyzed in the previously certified Environmental Impact Report for the Butterfield Specific Plan project (SCH No. 2007091149), as amended by the Addendum approved by the City Council in February 2017. With the imposition of mitigation measures, the Project will not have a significant effect on biological resources. There have been no substantial changes in the Project, nor in the circumstances under which the Project is undertaken, that will require major revisions of the prior certified EIR; nor is there new information that shows that the Project will have a significant environmental effect or an effect more severe than originally thought. Therefore, the proposed Tentative Tract Map No. 37298 is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

F. Finding: The design of the subdivision and improvements proposed under Tentative Tract Map No. 37298 is not likely to cause serious health problems.

Findings of Fact:
Tentative Tract Map No. 37298 is in conformance with the City’s General Plan, Zoning Ordinance, and Subdivision Ordinance and the Butterfield Specific Plan, and the Project has been conditioned to comply with all applicable Specific Plan requirements and requirements of the City’s ordinances, codes, and standards. In addition, the design and construction of improvements are conditioned to be in conformance with adopted City street and public works standards. The City’s ordinances, codes, and standards have been created based on currently accepted standards and practices for the preservation of the public health, safety, and welfare.

G. Finding: The design of the subdivision and improvements proposed under Tentative Tract Map No. 37298 will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

Findings of Fact:
Tentative Tract Map No. 37298 does not conflict with any easements for access through or use of property within the proposed subdivision.

SECTION 3: PLANNING COMMISSION ACTION - Recommendation of Approval of Tentative Tract Map No. 37298 with Conditions. Based on the foregoing, the Planning Commission of the City of Banning hereby recommends that the City Council of the City of Banning approve Tentative Tract Map No. 37298, attached hereto as Exhibit "A," a subdivision of approximately 199 gross acres into 360 single family lots, 1 lot for future medium density residential development, 1 lot for future medium density residential
density residential development and a future par, 2 commercial lots, 1 lots for parks, 15
open space lots, 1 school lot, and public streets, on real property located north of
wilson street and east of highland springs avenue within the southwesterly portion of the
Butterfield Specific Plan (APNs: 408-120-001, -002, -003, -004, -005; 408-120-007, -
008, -009; portions of 408-120-006, 408-120-010, 408-120-012, 408-120-019, 408-120-
020), subject to the recommended Conditions of Approval attached as Exhibit “B”.

PASSED, APPROVED AND ADOPTED this 6th day of June, 2018.

______________________________
Eric Shaw, Chairman
Banning Planning Commission

ATTEST:

______________________________
Sandra Calderon, Recording Secretary
City of Banning, California

APPROVED AS TO FORM
AND LEGAL CONTENT:

______________________________
Serita Young, Assistant City Attorney
Richards Watson & Gershon

CERTIFICATION:

I, Sandra Calderon, Recording Secretary of the Planning Commission of the City of
Banning, California, do hereby certify that the foregoing Resolution, No. 2018-08, was
duly adopted by the Planning Commission of the City of Banning, California, at a regular
meeting thereof held on the 6th day of June, 2018, by the following vote, to wit:

AYES:

NOES:
ABSENT:

ABSTAIN:

Sandra Calderon, Recording Secretary
City of Banning, California
Exhibit “A”
Tentative Tract Map No. 37298
Exhibit “B”
Tentative Tract Map No. 37298 Conditions of Approval
Exhibit “B”
Tentative Tract Map No. 37298 Conditions of Approval
(Phase 1A – Butterfield Specific Plan/Atwell Development)

Community Development

1. The City and applicant are parties to a Development Agreement, recorded on July 17, 2012, as document number 2012-0332888 (“DA”). In the event of any direct inconsistency or conflict between these Conditions of Approval and the DA, the DA shall control. The applicant shall indemnify the City as described in the DA.

2. Approval of this entitlement shall not waive compliance with any sections of the DA, Butterfield Specific Plan, or other applicable City ordinances in effect at the time of building permit issuance to the extent such City ordinances are applicable to the project and not vested under the DA.

3. Approval of Tentative Tract Map No. 37298 shall run with the term of the DA. All conditions of approval must be met on or before the expiration date or the applicant must request an extension of time at least thirty (30) days prior to the expiration date, and receive approval of said extension; otherwise, the approval shall expire and become null and void.

4. Unless approved otherwise by City, the applicant shall comply with all applicable conditions of City Council Ordinance No. 1450 approving the Butterfield Specific Plan and conditions of City Council Resolution No. 2017-07 approving Minor Modifications to the Butterfield Specific Plan.

5. All mitigation measures required by the Butterfield Specific Plan Environmental Impact Report (EIR) Mitigation Monitoring and Reporting Program (MMRP) (SCH No. 2007091149), as modified pursuant to the approved Addendum, and conditions of the project’s Settlement Agreement shall be implemented if those measures/conditions relate to this phase or part of the development or are required to be satisfied in connection with this phase or part of the development.

6. A copy of the signed resolution 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.

7. The applicant shall pay all development fees adopted by the City in effect at the time of issuance of any building permits, which shall include but not be limited to: TUMF, MSHCP, police and fire safety developer fees, water and sewer fees, park land dedication fees, electric meter installation fees, etc. Adjustments and/or fee credits to the applicable DIFs may be provided as defined in the DA. The applicant shall provide written evidence to the City that school mitigation fees have been paid or other arrangements acceptable to the applicable school district have been met.
8. The applicant shall provide an initial $10,000.00 deposit to cover the City’s work associated with the Tentative Tract Map No. 37298, including but not limited to the cost of condition tracking, review of required plans, and mitigation monitoring and shall replenish the deposit account, as needed, following the City’s written notification that the account is at or below $1,000. City shall provide a detailed accounting of deposit account upon request for additional deposit and the parties shall meet to discuss any disputed invoices, amounts or replenishment requests.

9. A copy of the final grading and erosion control plan, approved by Engineering, shall be submitted to the Planning Department for review and approval of the landscaping plans when graded cut slopes exceed 5 feet in height and fill slopes exceed 5 feet in height.

10. All slopes exceeding 5 feet in vertical height shall be planted as required by the approved erosion control plan. Prior to grading plan approval, the applicant shall submit five copies of a drought-tolerant slope planting and irrigation plan prepared by a licensed landscape architect to the Planning Division for review and approval. The approved slope planting plan shall be implemented/installed on a phase by phase basis prior to issuance of a Certificate of Occupancy for each single-family residence constructed within Phase 1A.

11. Prior to commencement of development within the tract, the applicant shall provide a written Phasing Plan specifying when the lots within the subdivision will be developed and when all appropriate public infrastructure within the subdivision will be constructed. Prior to approval of the Final Map, all conditions requiring the provision or proposed project facilities and subdivision improvements for the area covered by the Tentative Tract Map No. 37298 must be satisfied either through performance or through the provision of suitable security prior to recordation of the final map.

12. Prior to precise grading plan approval, the applicant shall develop a conceptual project wall/fencing plan to include retaining walls, perimeter walls, and interior walls subject to design review approval by the Planning Commission.

13. Prior to precise grading plan approval for open space planning areas of the Butterfield Specific Plan, Design Review applications shall be reviewed and approved by the Planning Commission. The Design Review application shall include conceptual details on recreational uses to be provided within the planning areas, including how these facilities will be linkable to other tracts, parks and open space including public access.

14. Prior to construction of the two proposed parks, the applicant shall obtain approval of a detailed site plan demonstrating the facilities to be provided from the Director of Community Development.

15. All residential and commercial neighborhoods and public facility structures shall require design review approval by the Planning Commission.
16. The applicant shall install temporary construction fencing around portions of the tract under construction until replacement by permanent walls/fencing or completion of improvements.

17. The applicant shall meet all requirements of responsible agencies.

18. The proposed temporary detention basin adjacent to the southeast corner of Tentative Tract Map No. 37298 shall be screened from views by temporary fencing with screen material at Wilson Street to the satisfaction of the Community Development Director.

19. Upon submittal of the adjacent tentative tract map that includes the remaining open space for PA 23 and PA 35A, the applicant shall provide an exhibit depicting the overall area within PA 23 and PA 35A confirming PA 23 acreage of 13.55 acres and PA 35A acreage of 10.55 acres. Future open space planning areas shall be increased in size to ensure that the overall project open space complies with the acreages required by the specific plan.

Engineering/Public Works

A. General Requirements

20. A Public Works Permit shall be required prior to commencement of any work within the public right-of-way. Any 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 new public improvements accepted or 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.

21. Prior to the issuance of any grading, construction, or public works permit by the City, the applicant shall obtain any applicable and legally required clearances and/or permits. When the requirements include approval of improvement plans, the applicant shall furnish proof of such approvals when submitting improvement plans to the City:

- Fire Marshal (access)
- Public Works Department (grading permits, street improvement permits)
- Community Development Department
- Riverside County Flood Control & Water Conservation District (storm drain)
- California Regional Water Quality Control Board Colorado River Basin (RWQCB)
- South Coast Air Quality Management District (SCAQMD)

22. The following improvement plans shall be prepared by a Civil Engineer licensed by the State of California 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 in writing by the City Engineer, the plans shall utilize the minimum scale specified and shall be drawn on 24” x 36” Mylar film for final signatures. 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. Rough Grading Plans  
   \(1" = 40'\) Horizontal

b. Haul Route Plans  
   (If soils is exported off site)  
   \(1" = 40'\) Horizontal

c. Clearing Plans  
   (Include fuel modifications zones)  
   (Include construction fencing plan)  
   \(1" = 50'\) Horizontal

d. Erosion Control & SWPPP, WQMP  
   (Note: a, b, c & d shall be reviewed and approved concurrently)  
   \(1" = 40'\) Horizontal

e. Storm Drain Plans  
   \(1" = 40'\) Horizontal

f. Street Improvement Plans  
   \(1" = 40'\) Horizontal  
   \(1" = 4' \) Vertical

g. Traffic Signal Plans  
   (Caltrans Standard)  
   \(1" = 20'\) Horizontal

h. Signing & Striping Plans  
   \(1" = 40'\) Horizontal

i. Construction Traffic Control Plan  
   (Major or Arterial Highways only)  
   \(1" = 40'\) Horizontal

j. Precise Grading Plans  
   \(1" = 40'\) Horizontal

k. Landscaping Plans  
   \(1" = 20'\) Horizontal

l. Water, Sewer, & Recycled Water Plans  
   \(1" = 40'\) Horizontal

Other engineered improvement plans prepared by the applicant for the City’s approval that are not listed herein shall be prepared in formats approved by the City Engineer prior to commencing plan preparation.

23. 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.

24. 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.

25. 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.

26. Upon completion of construction, the applicant shall furnish the City with reproducible record drawings on Mylar film 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 files submitted to the City, revised to reflect the “As-Built” conditions.

27. All future utility systems including gas, electric, telephone, water, sewer, and cable TV, except for temporary utility systems as defined under the DA, shall be provided for underground, with easements provided as required, and designed and constructed in accordance with City codes and the utility provider. Telephone, cable TV, and/or security systems shall be pre-wired.

B. Rights of Way/Public Improvements

28. Prior to issuance of any permit(s), the applicant shall acquire or confer property rights necessary for the construction or 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 emergency services, maintenance, utilities, storm drain facilities, or temporary construction purposes including the reconstruction of essential improvements.

29. The applicant shall offer for dedication on the final map, within final map boundaries, all public street right-of-way in conformance with the DA and the Butterfield Specific Plan. The City may reject the dedications and leave them open for future acceptance until all public improvements are installed by the applicant in the rights of way.

30. Maintenance easements dedicated to the City shall extend at most 10-feet beyond the toe of slope, where sufficient space available or as approved by the City Engineer, for those slope areas where maintenance falls within the responsibility of the City.

31. Prior to the issuance of any Certificates of Occupancy, the applicant shall not grant any easements over any property subject to a requirement of dedication or irrevocable offer of dedication to the City or the Riverside County Flood Control and Water Conservation District (RCFCD) unless such easements are expressly made subordinate to the easements to be offered for dedication to the City or RCFCD. 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.
32. All street improvement designs shall provide pavement and lane transitions per City and Caltrans standards for transition to existing street sections.

33. Design and construct full street improvements in accordance with City standards for ALL streets as approved on the Final Tract Map including, but not limit to street lighting, curb and gutter, cross gutters and spandrels, access ramps, driveway approaches, sidewalk, asphalt concrete pavement, street name signs, traffic signs and striping, and any transitions. Applicant’s geotechnical engineer shall provide the design of the pavement section based upon the Caltrans method. STREET AND SIDEWALK WIDTHS AND CROSS SECTIONS SHALL COMPLY WITH THE APPROVED 2016 UPDATED BUTTERFIELD SPECIFIC PLAN.

34. The applicant shall plant and perpetually maintain trees, shrubs, and ground cover placed in the parkway, slopes adjacent to public right-of-ways, and median islands constructed in connection with the project until maintenance of such area is turned over to the HOA, a Landscaping Maintenance District (LMD) or other public financing district. This includes providing irrigation and the clearing of debris and weed removal.

35. All applicable public improvements shall be completed, tested, and approved by the Engineering Division prior to issuance of any Certificate of Occupancy. City to provide inspections in timely manner and any inspections exceeding 2 inspections to require meeting with City Engineer to address.

C. Grading and Drainage

36. The applicant shall submit an Updated Drainage Study with hydrologic and hydraulic analysis for developed and undeveloped (existing) conditions to the Engineering Division for review and approval. The study and analysis shall be prepared by a civil engineer licensed by the State of California. Drainage design shall be in accordance with Banning Master Drainage Plan adopted by RCFCD, RCFCD Hydrology Manual, and standard plans and specifications. The 10-year storm flow shall be contained within the street curbs, and the 100-year storm shall be contained within the street right-of-way. When this criteria is exceeded, additional drainage facilities shall be designed and constructed.

37. At a minimum, all development will make provisions to store runoff from rainfall events up to and including the 100-year 3-hour duration event. Post-development peak urban runoff discharge rates shall not exceed pre-development peak urban runoff discharge rates.

38. If the site is located in a Flood Area as identified in Flood Insurance Rate Map dated August 28, 2008 the applicant is responsible for providing a certification by a registered professional engineer or architect demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

39. 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. The project shall accept and convey storm flows from the adjacent properties.

40. The applicant shall comply with Chapter 13.24 “Stormwater Management Systems” of the Banning Municipal Code (BMC) and Title 18 “Grading, Erosion and Sediment Control” of the California Building Code related to excavation and grading; and, the State Water Resources Control Board’s orders, rules and regulations.

41. 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.

42. 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. The applicant’s SWPPP shall include provisions for all of the following Best Management Practices (“BMPs”):

- Temporary Soil Stabilization (erosion control).
- Temporary Sediment Control.
- Wind Erosion Control.
- Tracking Control.
- Non-Storm Water Management.
- Waste Management and Materials Pollution Control.

43. All erosion and sediment control BMPs proposed by the applicant shall be designed using the CASQA BMP handbook and approved by the City Engineer prior to any onsite or offsite grading, pursuant to this phase.

44. 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.

45. 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.

46. Prior to the issuance of any building permit(s), a precise grading plan shall be submitted to the City Engineer for review and approval. A grading permit shall be obtained prior to commencement of any grading activity.

47. 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 California Regional Water Quality Control Board Colorado River Basin Region Order No. R7-2013-0011.
48. Prior to the issuance of a grading permit, the applicant shall execute a Stormwater Management Facilities Agreement on terms agreed to by the parties guaranteeing the maintenance of stormwater pollution controls. Said agreement shall be recorded with the Riverside County Recorder and run with the land.

49. Prior to issuance of any grading or building permit, the applicant shall install trash filters in all catch basins that will be constructed as part of the storm drain improvements for this development. The trash filters shall comply with the requirements of the Trash Amendment as amended and approved in accordance with California Regional Water Quality Control Board Colorado River Basin Region Order No. R7-2013-0011.

50. A notation shall be placed on the grading plan: “Compliance with Mitigation Measures BIO-1 and BIO-2 is required.” Biologist to conduct site visit for to re-validate survey findings no more than fourteen (14) days prior to any construction activities and provide technical memo to the City upon completion of re-validation.

51. Prior to the issuance of a building permit for any building lot, the applicant shall provide a lot pad certification. The pad certification shall include an elevation and compaction certification. The elevation certification shall be stamped and signed by a licensed civil engineer or land surveyor and shall list the pad elevation as shown on the approved grading plan, the actual pad elevation and the difference between the two, if any. The compaction certification shall list the relative compaction of the pad soil and shall be certified by a licensed geotechnical engineer.

52. This final map includes areas within a designated Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) Special Flood Hazard Zone. A letter of map revision (LOMR) shall be processed through FEMA and provided to the City Engineer prior to occupancy of affected lots.

53. 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.

D. Landscaping Public Right of Way

54. The applicant shall prepare a water conservation 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 ground-cover, a low percentage of turf coverage (limited to 25% of the planted area), and water conserving irrigation techniques and systems. A low water-using drought tolerant plant includes species suited to our climate, requiring less water in order to grow well.

55. An automatic sprinkler system and landscaping shall be installed, prior to certificate of occupancy for the portion of the project for which certificates of occupancy are
requested, within the common areas including perimeter slopes and the interior collector streets. Each system shall include a smart landscape irrigation controller (including remote communication), a separate water meter and electric meter, and plantings as approved by the Community Development Director. Landscaping plans and specifications shall be reviewed and approved by the City Engineer.

56. A Home Owners' Association (HOA) shall be established and the applicable Conditions, Covenants & Restrictions (CC & R's), shall be prepared for review and approval of the City Engineer providing for maintenance of the parkway on-site lighting and landscaping, slopes adjacent to public right-of-ways, onsite private parking/roadway, any debris basins, BMP’s referenced in the approved WQMP, and median island landscaping. The applicant shall appoint the initial members of the Board of Directors of the home 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 & R's individual lot owners have the power to elect the members of the Board of Directors in accordance with the CC & R's.

57. The CC&R’s shall contain provisions which prohibit dissolution of the home owners’ association unless another entity has agreed to assume the operation and maintenance responsibilities of the HOA. The CC&R’s shall contain provisions that prohibit the applicant and his/her successors-in-interest from amending said CC&R’s to conflict with these Conditions of Approval.

58. Alternatively to condition #55, a LMD, or other public financing mechanism, can be formed to provide for the maintenance of the parkway on-site lighting, , and/or median island landscaping on Highland Springs Avenue, Wilson Street and Highland Home Road.

59. 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.

E. Traffic

60. As part of the final tract map, a TIA validation report shall be prepared as required per Mitigation Measure TRF-2 for review and approval by the City Engineer.

61. Street name signs and traffic control devices including traffic legends and traffic striping shall be installed, or relocated in accordance with City Standards and as shown on the approved plans, and/or as directed by the City Engineer.

62. Prior to first building permit issuance of the phase, the applicant 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 turnout must be provided and approved by the Fire Marshall. Applicable CC&R’s 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.

63. Driveway grades shall be designed in accordance with current City standards.

64. Parking areas shall be designed and improved with grades not to exceed five percent slope. All applicable ADA standards will be adhered to.

65. Access drives to the public right-of-way shall be restricted to those approved by the City Engineer as shown on the approved plans.

66. 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 applicant until the street is accepted by the City for maintenance.

F. Final Map

67. Prior to approval of any final map, the applicant shall construct appropriate 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 on terms agreed to by the City and the applicant guaranteeing the construction of such improvements and the satisfaction of its obligations for same, or shall agree to any combination thereof, unless such improvements are deferred with City approval under the terms of the DA or as otherwise set forth under the terms of the DA.

68. 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 simultaneously with the final map, with the County Surveyor, 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. 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.
69. Prior to the recordation of the final map or the issuance of a grading permit, the applicant shall obtain approval from the Fire Marshall in consultation with the City Engineer, for a conceptual fuel modification plan and program. Prior to the issuance of any certificate of occupancy, the fuel modification shall be installed and completed under the supervision of the Fire Marshall with an approved plant palette. The CC&Rs or other approved documents shall contain provisions for maintaining the fuel modification zones, including the removal of all dead and dying vegetation.

70. Security for the construction of public improvements in accordance with Government Code Section 66499 shall be as follows:

<table>
<thead>
<tr>
<th>Bond Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Faithful Performance Bond</td>
<td>100% of estimated cost</td>
</tr>
<tr>
<td>Labor and Material Bond</td>
<td>100% of estimated cost</td>
</tr>
<tr>
<td>Monumentation Bond</td>
<td>$10,000.00</td>
</tr>
</tbody>
</table>

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.

71. Prior to approval of the final map, the applicant shall submit a list of street names and addresses in Microsoft Excel spreadsheet format for review and approval. The house number system shall be in accordance with Section 12.32 of the Banning Municipal Code. A reduced copy of the subdivision map shall be included with the submittal.

72. Revisions to the Tentative Tract Map during plan check including, but not limited to, lot line alignments, easements, improvement plan revisions, and similar minor changes that are in substantial compliance with the Tentative Tract Map may be administratively approved through the plan check process with the mutual consent and approval of the Community Development Director and City Engineer. The final maps shall be amended in accordance with the Subdivision Map Act.

73. Prior to approval of the 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 as approved by the City Engineer.

74. The applicant shall submit a copy of the title report, closure calculations, and any separate instruments or necessary right-of-way documents to the Engineering Division prior to final map approval.

75. The applicant shall submit a map of the proposed subdivision drawn at 1”=200’ showing the outline of the streets including street names to the City to update the city atlas map.

76. An original Mylar of the final map (after recordation) shall be provided to the City for the record files.
77. All public improvements shall be completed and accepted by City prior to release of Faithful Performance Bond and Labor and Material Bond. Faithful Performance Bond for applicable public improvements shall be reduced to 10% once City accepts improvements into maintenance period. Final 10% to serve as the maintenance bond for the 1-year maintenance period.

78. A record of all street centerline monument ties shall be submitted to the Engineering Division upon completion of improvements or prior to release of Monumentation Bond.

G. Water

79. The applicant shall submit Water Improvement Plans along with the infrastructure phasing plan to the City Engineer for review and approval. The phasing plan, which shall be supported by a hydraulic analysis, shall identify all required water infrastructure (e.g. water mains, wells, booster stations, pressure reducing stations, reservoirs, etc.) required to meet the demands of the Tentative Tract Map. The Water Improvement Plans shall design and construct water lines throughout and to property boundaries to tract. The proposed new water lines shall connect to the City’s water system and provide a connection to the Beaumont Cherry Valley Water District (BCVWD) system using existing stub-outs along Highland Springs Avenue.

80. The applicant shall submit a hydraulic analysis report demonstrating adequate pressures throughout the Phase 1A water system during max day demand (MDD) with fire flow conditions. The hydraulic analysis, based on the City’s latest calibrated water model, shall identify when and if additional facilities would be required to meet Phase 1A water demands.

81. All water lines and fitting shall be a minimum of 8-inch in diameter and shall be DIP. Water line easements shall be a minimum width of 20 feet if installed outside of right-of-way or public utility easement.

82. Fire hydrants shall be installed within and on the tract boundaries as per approved plans, at a 300-foot maximum spacing.

83. A backflow device must be installed on all commercial buildings and at each irrigation water connection. The backflow device must be in compliance with City of Banning.

84. Fire Services will require a Double Detector Check or RPP Device.

85. Timing and sizing of the required construction of the storage tank shall be identified in the phasing plan as determined by the Water & Sewer system analysis.

86. The applicant shall work with City on final location for BCVWD interconnects, sizing of facilities and required equipment (e.g. pressure reducing, metering, etc.). Ultimate facilities to be above ground, fully enclosed, and allow vehicle access.
H. Sewer

87. The applicant shall submit Sewer Improvement Plans along with the infrastructure phasing plan to the City Engineer for review and approval. The phasing plan shall identify all required sewer infrastructure (e.g. sewer mains, lift stations, treatment facilities, manholes, etc.) required to meet the demands of the Tentative Tract Map. A hydraulic analysis will need to be prepared and submitted that demonstrates the maximum discharge that can be accommodated by the existing collections system before a new trunk line is needed. The Sewer Improvement Plans shall design and construct sewer lines throughout and to property boundaries of tract. The proposed new sewer lines shall connect into the City’s sewer system.

88. All sewer lines to be constructed within the public right-of-way and be extra strength Vitrified Clay Pipe (VCP) or Polyvinyl Chloride (PVC) Pipe. All sewer mains shall be a minimum of 8 inches in diameter. Final sizes shall be approved by the City Engineer based on calculations submitted by the design engineer accounting for ultimate discharge flows for Phase 1A and all upstream areas. Sewer line easements shall be a minimum of 20 feet wide if installed outside of right-of-way or public utility easement.

89. A sewer check valve shall be provided for each building with a finish pad elevation lower than the rim elevation of the immediate up-stream sewer manhole.

I. Recycled Water (Non-Potable)

90. Submit Recycled Water Improvement Plans along with a Recycled Water Master Plan that includes a written phasing plan to the City Engineer for review and approval. Design and construct recycled water lines throughout to parks, schools, and other large irrigation areas and to tie-in points at the tract boundary. The proposed new recycled water lines shall have an interconnection to the BCVWD’s existing stub-outs located along Highland Springs Avenue.

91. All recycled water lines to be constructed within the Public right-of-way shall be a minimum of 8-inches in diameter DIP, encased in purple polyethylene wrap. Final sizes shall be approved by the City Engineer based on hydraulic calculations provided by the design engineer. Recycled waterline easements shall be a minimum of 20 feet wide if improvements are installed outside of right-of-way or public utility easements.

92. If the Phase 1A map does not have more than 500 units “Developer shall provide the Public Works Department with all recent data and calculations related to anticipated water demands and quantify any changes in assumptions made to the previously prepared Water Supply Assessment”. If the Phase 1A map has more than 500 units “A sufficient water supply shall be available. In connection with the City’s preparation of a Water Verification, which preparation has been requested by applicant and is underway by the City, applicant shall promptly provide the Public Works Department with all recent data and calculations related to
anticipated water demands and quantify any changes in assumptions made to the previously prepared Water Supply Assessment.”

**Electric Utility**

93. The City of Banning Electric Utility ("Utility") will require adequate easements needed to service the project. An easement area behind sidewalk may be needed for Wilson Street and Highland Springs Avenue for vaults, conduits, street lights and pad mounted transformers and switches.

94. Easements will be required for Arterial Streets “A”, “B”, “C”, “H”, and “K” for vaults, conduits, meter pedestals, and pad mounted transformers and switches. Easements will also be required for Local Streets “D” – “HH” to serve residential lots. The applicant shall grant a non-exclusive easement to the City to include the installation of electric distribution facilities within all common areas.

95. All street lights to be installed on the major thoroughfares, arterial streets, and local streets will be assumed to be publicly owned and maintained by the Utility unless otherwise approved by the Electric Department for private maintenance.

96. Prior to constructing the Utility’s electric distribution system, the applicant shall submit a detailed engineering plan showing design, location and schematics for the utility system to be approved by the Utility.

97. The applicant shall execute any legally required agreement with the Utility on terms agreed to by the City and the applicant providing for the installation, construction, improvement and dedication of the utility system following recordation of final map.

**Fire Department**

98. For residential areas, approved standard fire hydrants, located at each intersection and spaced 300 feet apart with no portion of any lot frontage more than a maximum of 250 feet from a hydrant. Minimum fire flow for all residential structures shall be 1000 GPM for a 2 –hour duration at 20 psi residual operating pressure, which must be available in time permitted per the DA.

99. The required water system, including fire hydrants, shall be accepted by the City of Banning Public Works, Water Division in accordance with the timing per the DA. The
applicant shall submit two sets of water plans are to be submitted to the Fire department for approval.

100. The applicant shall mount blue-dot retro-reflectors pavement markers on private/public streets and driveways to indicate locations of all fire hydrants. A marker shall be 8 inches from the centerline to the side that the fire hydrant is on, to identify the hydrant location.

101. Residential fire sprinklers are required in all dwellings per the California Residential Code.

102. Fire Apparatus access roads and driveways shall be in compliance with the Riverside County Fire Department Standard number 06-05 (located at www.rvccfire.org). Access lanes will not have an up or downgrade of more than 15%. Access roads shall have an unobstructed vertical clearance not less than 13 feet 6 inches. Access lanes will be designed to withstand the weight of 80 thousand pounds over 2 axles. Access will have a turning radius capable of accommodating fire apparatus. Access lane shall be constructed with a surface so as to provide all the weather driving capabilities.

103. Roadways may not exceed 1320 feet without secondary access. This access may be restricted to emergency vehicles only; however, public egress must be unrestricted.

104. Dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with approved provision for the turn-around capabilities of the fire apparatus.

105. Any turn-around requires a minimum 38-foot turning radius or as approved by the Fire Marshall

106. The minimum dimensions for gates is 20 feet clear and unobstructed width and a minimum vertical clearance of 13 feet 6 inches in height. Any gate providing access from a road shall be located at least 35 feet setback from the roadway and shall open to allow a vehicle to stop without obstructing traffic on the road. Where a one-way road with a single traffic lane provides access to a gate entrance, a 38-foot foot turning radius shall be used.

107. Gates may be automatic or manual and shall be equipped with a rapid entry system (KNOX).

108. Plans shall be submitted to the Fire Department for approval prior to installation. Automatic gate pins shall be rated with a shear pin force, not to exceed 30 pounds. Gates activated by the rapid entry system shall remain open until closed by the rapid entry system. Automatic gates shall be provided with backup power.

-END-
Attachment 2
Tentative Tract Map 37298
Attachment 3
Butterfield Specific Plan Land Use Plan
Attachment 4
Butterfield Specific Plan Land Excerpts – Development Regulations

(Full Pardee Butterfield Specific Plan available on City website at under Butterfield Specific Plan)
http://www.ci.banning.ca.us/Archive.aspx?ADID=1741
5.0 DEVELOPMENT REGULATIONS
5.0 DEVELOPMENT REGULATIONS

This section of the Butterfield Specific Plan has been prepared in accordance with California Government Code Section 65450, et seq. and the City of Banning Zoning Ordinance. This section sets forth standards for all uses allowed for development within the Butterfield Specific Plan. Regulations are provided for low and medium density residential, cluster residential, commercial, active recreational open space, parks, and undeveloped open space land uses. These regulations are based on and help to achieve compliance with the Design Guidelines presented in Section 4 of this Specific Plan.

Application of these regulations is specifically intended to provide for appropriate use of the project site, to create a well-ordered pattern of land uses within this Specific Plan, and to protect the health, safety and welfare of the community.

5.1 GENERAL PROVISIONS

5.1.1 Applicability

Upon adoption of the Butterfield Specific Plan, the development standards contained in this Section shall serve as the zoning regulations applicable to the Specific Plan area, in accordance with the City of Banning Zoning Ordinance. Development plans or agreements, 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. Actions deemed to be consistent with the Specific Plan shall be judged consistent with the City of Banning General Plan as mandated in California Government Code, Section 65454.

Should the regulations contained herein differ from the regulations of the City of Banning Zoning Ordinance, the regulations of this Specific Plan shall take precedence.

Development standards contained in this Section are subject to a ten percent deviation, subject to the discretion and approval of the Community Development Director.

5.1.2 Severability

In the event that any regulations, conditions, program, portion or policy of this Specific Plan or the application thereof to any person or circumstance is held to be invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed separate, distinct and independent provisions and shall not affect the validity of the remaining provisions of this Specific Plan or applications thereof which can be implemented without the invalid provision or application.

5.1.3 Determination of Unlisted Uses

Any land use not specifically covered by the provisions contained herein shall not be allowed unless the Community Development Director reviews the proposed use and makes a determination of similarity with allowed uses.
5.1.4 Interpretation

Any ambiguities related to the implementation of this Specific Plan’s provisions shall be resolved by the City of Banning Planning Division. Interpretations of the Planning Division shall take into account the stated goals and intent of the Specific Plan. Any interpretation made by the City of Banning Planning Division may be appealed to the Planning Commission. The decision(s) of the Planning Commission shall be final unless appealed to the City Council.

5.1.5 Definitions

Unless otherwise specified herein, terms used in this document shall be defined as provided in the City of Banning Zoning Ordinance (Municipal Code), Section 17.04.070, Definitions.

5.2 LOW DENSITY RESIDENTIAL (LDR)

5.2.1 Low Density Permitted Uses

Per Section 3.1, the Low Density Residential land use designation applies to 517 acres within this Specific Plan. Approximately 135 acres of the 488 acres designated for Low Density Residential could be developed as age-restricted, or “active adult” homes alternative. Table 5-1 summarizes potential land uses permitted within this designation either by right or which may be conditionally permitted. The areas designated Low Density Residential on the current Specific Plan Land Use Plan (Exhibit 3.1) consist of Planning Areas 1A, 1B, 2B, 6, 7, 9A, 9C, 10, 12, 16A, 16B, 40, 41, 42A, 42B, 43, 44A, 44B, 46, 48A, 48B, 50A, 50B, 52A, 52B, 56A, 57, 58 and 59. Please note that the residential uses which may be developed within the PAs listed above may also be developed within the Medium Density Residential and High Density Residential designations of this Specific Plan subject to the Low Density Residential Regulations. Section 6.1.2 in the Administration and Implementation section of this Specific Plan sets forth the allowance of minor adjustments and modifications of these regulations.

Land uses permitted within Low Density Residential planning areas shall comply with the following use and development standards provisions. The City of Banning Planning Division shall analyze all applications for approval of conditional uses for consistency with the intent of the Butterfield Specific Plan. A conditional use permit, if required, shall be subject to the provisions of the Banning Zoning Ordinance, Conditional Use Permits.

5.2.2 Low Density Development Standards

Low Density Residential lots are intended to accommodate detached single-family homes with private yards. These homes may have either street or alley vehicle access to garages. Typically, lots within this land use designation are at least 46 feet wide. Low Density Residential standards are applicable to Low Density Residential-designated Planning Areas 1A, 1B, 2B, 6, 7, 9A, 9C, 10, 12, 16A, 16B, 40, 41, 42A, 42B, 43, 44A, 44B, 46, 48A, 48B, 50A, 50B, 52A, 52B, 56A, 57, 58 and 59. Low-density, age-restricted housing is a further option which could be developed in compliance with these standards. These standards and permitted uses shall also apply in any of the Medium
Density or High Density Residential planning areas, as well as in Planning Areas 17, 18, 20 and 68 if alternate Low Density Residential uses are allowed in these areas.

Table 5-1  
LDR Permitted, Conditional and Prohibited Land Uses for  

<table>
<thead>
<tr>
<th>Residential Uses</th>
<th>Low Density Residential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assisted Living Facility</td>
<td>C</td>
</tr>
<tr>
<td>Bed &amp; Breakfast</td>
<td>C</td>
</tr>
<tr>
<td>Community Care Facility</td>
<td>C</td>
</tr>
<tr>
<td>Condominiums</td>
<td>P</td>
</tr>
<tr>
<td>Day Care Center</td>
<td>X</td>
</tr>
<tr>
<td>Homeless Shelters</td>
<td>X</td>
</tr>
<tr>
<td>Multi-Family Dwellings</td>
<td>X</td>
</tr>
<tr>
<td>Nursing Home &amp; Congregate Care</td>
<td>P</td>
</tr>
<tr>
<td>Planned Unit Development</td>
<td>P</td>
</tr>
<tr>
<td>Residential Care Facilities</td>
<td>C</td>
</tr>
<tr>
<td>Second Dwelling Unit</td>
<td>P</td>
</tr>
<tr>
<td>Single Family Dwelling</td>
<td>P</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Equestrian Uses</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Stables, Private</td>
<td>X</td>
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<tr>
<td>Stables, Commercial</td>
<td>X</td>
</tr>
<tr>
<td>Tack &amp; Feed Stores</td>
<td>X</td>
</tr>
<tr>
<td>Veterinary Offices and Hospitals</td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Agricultural Uses</th>
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<tbody>
<tr>
<td>Grazing of Animals</td>
<td>C</td>
</tr>
<tr>
<td>Kennels and Catteries, Commercial</td>
<td>C</td>
</tr>
<tr>
<td>Locally Adaptive Farming</td>
<td>X</td>
</tr>
<tr>
<td>Factory Farms with Genetic Monocultures</td>
<td>X</td>
</tr>
<tr>
<td>Ranching</td>
<td>X</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recreational Uses</th>
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</tr>
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<tbody>
<tr>
<td>Clubhouses/Community Centers</td>
<td>C</td>
</tr>
<tr>
<td>Swimming Pool/Sports Club</td>
<td>C</td>
</tr>
<tr>
<td>Parks, Sports Courts and Fields</td>
<td>C</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Accessory Uses</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Telecommunications Antennae</td>
<td>X</td>
</tr>
<tr>
<td>Rooftop Solar Energy/Water Heating Panels</td>
<td>P</td>
</tr>
<tr>
<td>In-Garage Electric/Compressed Natural Gas Fueling Station</td>
<td>P</td>
</tr>
<tr>
<td>Garages ²</td>
<td>C</td>
</tr>
<tr>
<td>Other Uses</td>
<td>Land Uses</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Cemeteries</td>
<td>C</td>
</tr>
<tr>
<td>Churches</td>
<td>C</td>
</tr>
<tr>
<td>Fire Stations</td>
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<td>Utility Facilities</td>
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<td>Private Schools</td>
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<td>Neighborhood Oriented Retail Stores 3</td>
<td>X</td>
</tr>
<tr>
<td>Temporary Uses 4</td>
<td>T</td>
</tr>
</tbody>
</table>

**NOTES:**
1. Use Code = Permitted (P); Subject to Conditional Use Permit (C); Prohibited (X) and Temporary (T).
2. Intended for vehicles storage only, except in excess of the parking required under Chapter 17.28 of the Banning Zoning Ordinance.
3. Defined in the Banning General Plan as consisting of "corner store" type development such as convenience stores, grocery or green grocer, video rental, drug stores, sit down restaurants, coffee shops or coffee or similar uses, less that 5,000 SF in total square footage.
4. Include such uses as model sales complexes and trailers, and construction offices. Temporary uses require a Temporary Use Permit, subject to the requirements of Chapter 17.108 of the Banning Zoning Ordinance, as modified by this Specific Plan.
Table 5-2 below establishes standards for lot dimensions, building setbacks and height, design variation and parking for Butterfield Specific Plan's Low Density Residential homes. Minimum lot sizes of 5000 square feet are allowed in Planning Areas 1A, 1B, 2B, 6, 7, 9A, 9C, 10, 12, 16A, 16B, 40, 41, 42A, 42B, 43, 44A, 44B, 46, 48A, 48B, 50B, 52B, 56A, 57, 58 and 59. For Planning Areas 50A and 52A, designated LDR-7500, the minimum lot size required is 5,000 square feet, with a minimum average (or mean average) lot size of 7,500 square feet (see Table 5.3). See Section 5.2.3 for an example of plotting and setback requirements for Low Density Residential areas.

### Table 5-2
Low Density Residential (LDR) Development Standards
for Planning Areas 1A, 1B, 2B, 6, 7, 9A, 9C, 10, 12, 16A, 16B, 40, 41, 42A, 42B, 43, 44A, 44B, 46, 48A, 48B, 50B, 52B, 56A, 57, 58 and 59

<table>
<thead>
<tr>
<th>Category</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Dimensions</td>
<td></td>
</tr>
<tr>
<td>Maximum Density</td>
<td>5 DU/AC</td>
</tr>
<tr>
<td>Minimum Lot Area</td>
<td>5,000 square feet</td>
</tr>
<tr>
<td>Minimum Lot Width</td>
<td></td>
</tr>
<tr>
<td>Interior</td>
<td>46’</td>
</tr>
<tr>
<td>Corner</td>
<td>51’</td>
</tr>
<tr>
<td>Minimum Lot Frontage</td>
<td>20’</td>
</tr>
<tr>
<td>Minimum Setbacks</td>
<td></td>
</tr>
<tr>
<td>Front Setback **</td>
<td></td>
</tr>
<tr>
<td>• Porch</td>
<td>10’</td>
</tr>
<tr>
<td>• Living</td>
<td>10’</td>
</tr>
<tr>
<td>• Front-Facing Garage</td>
<td>20’ door face to back of sidewalk</td>
</tr>
<tr>
<td>• Swing-In Garage</td>
<td>10’</td>
</tr>
<tr>
<td>Side Yard</td>
<td>5’</td>
</tr>
<tr>
<td>Street Side Yard</td>
<td></td>
</tr>
<tr>
<td>• Porch</td>
<td>5’</td>
</tr>
<tr>
<td>• Living</td>
<td>10’</td>
</tr>
<tr>
<td>Rear</td>
<td></td>
</tr>
<tr>
<td>• Living</td>
<td>15’</td>
</tr>
<tr>
<td>• Garage/Patio</td>
<td>5’</td>
</tr>
<tr>
<td>• Living Over Garage</td>
<td>10’</td>
</tr>
<tr>
<td>Maximum Building Height</td>
<td></td>
</tr>
<tr>
<td>Main Structure</td>
<td>35’</td>
</tr>
<tr>
<td>Projections Into Setbacks</td>
<td>Per Sec. 17.24.120 of the Banning Zoning Ordinance</td>
</tr>
<tr>
<td>Others</td>
<td></td>
</tr>
<tr>
<td>Lot Coverage</td>
<td>50% two-story; 70% one-story</td>
</tr>
<tr>
<td>Parking</td>
<td></td>
</tr>
<tr>
<td>• Resident</td>
<td>2 spaces per unit within a garage</td>
</tr>
<tr>
<td>• Guest</td>
<td>Provided on driveway or street</td>
</tr>
</tbody>
</table>

** Front setbacks shall be measured from the back of sidewalk, not from the property line.
Table 5-3 provides additional required development standards for Planning Areas 50A and 52A that require a minimum lot area of 5,000 square feet and a minimum average lot size of 7,500 square feet in these two planning areas.

Table 5-3  
Low Density Residential (LDR) – 7500  
Development Standards for Planning Areas 50A and 52B

<table>
<thead>
<tr>
<th>Category</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Dimensions</td>
<td></td>
</tr>
<tr>
<td>Maximum Density</td>
<td>5 DU/AC</td>
</tr>
<tr>
<td>Minimum Lot Area *</td>
<td>5,000 square feet</td>
</tr>
<tr>
<td>Minimum Average Lot Area *</td>
<td>7,500 square feet</td>
</tr>
<tr>
<td>Minimum Lot Width</td>
<td></td>
</tr>
<tr>
<td>Interior</td>
<td>50’</td>
</tr>
<tr>
<td>Corner</td>
<td>55’</td>
</tr>
<tr>
<td>Minimum Lot Frontage</td>
<td>30’</td>
</tr>
<tr>
<td>Minimum Setbacks **</td>
<td></td>
</tr>
<tr>
<td>Front Setback **</td>
<td></td>
</tr>
<tr>
<td>• Porch</td>
<td>10’</td>
</tr>
<tr>
<td>• Living</td>
<td>10’</td>
</tr>
<tr>
<td>• Front-Facing Garage</td>
<td>20’ door face to back of sidewalk</td>
</tr>
<tr>
<td>• Swing-In Garage</td>
<td>12’</td>
</tr>
<tr>
<td>Side Yard</td>
<td>5’</td>
</tr>
<tr>
<td>Street Side Yard</td>
<td></td>
</tr>
<tr>
<td>• Porch</td>
<td>5’</td>
</tr>
<tr>
<td>• Living</td>
<td>10’</td>
</tr>
<tr>
<td>Rear</td>
<td></td>
</tr>
<tr>
<td>• Living</td>
<td>15’</td>
</tr>
<tr>
<td>• Garage/Patio</td>
<td>5’</td>
</tr>
<tr>
<td>• Living Over Garage</td>
<td>10’</td>
</tr>
<tr>
<td>Maximum Building Height</td>
<td></td>
</tr>
<tr>
<td>Main Structure</td>
<td>35’</td>
</tr>
<tr>
<td>Projections Into Setbacks</td>
<td>Per Sec. 17.24.120 of the Banning Zoning Ordinance</td>
</tr>
<tr>
<td>Others</td>
<td></td>
</tr>
<tr>
<td>Lot Coverage</td>
<td>50% two-story; 70% one-story</td>
</tr>
<tr>
<td>Parking</td>
<td></td>
</tr>
<tr>
<td>• Resident</td>
<td>2 spaces per unit within a garage</td>
</tr>
<tr>
<td>• Guest</td>
<td>Provided on driveway or street</td>
</tr>
</tbody>
</table>

* Minimum average lot size shall be calculated as a mean average by dividing the total area of all residential lots in a planning area (excluding street right-of-way and open space lots) by the total number of residential lots in the planning area.

** Front setbacks shall be measured from the back of sidewalk, not from the property line.
5.2.3 Low Density Residential Lots – Illustrative Plot

Figure 5.1 provides an illustration of a concept plotting for Low Density Residential homes, which is expected to be typical of those developed within the Butterfield Specific Plan.

![Figure 5.1 Low Density Residential Illustrative Plot](image-url)

**Notes:** Diagram for illustrative plotting purposes only - Minimum setbacks are illustrated except where noted

*William Hezmalhalch Architects*

5.3 MEDIUM DENSITY RESIDENTIAL (MDR)

5.3.1 Medium Density Permitted Uses

Per Section 3.1, the Medium Density Residential land use designation applies to 336 acres within this Specific Plan. Approximately 115 acres of the 336 acres designated for Medium Density Residential could be developed as age-restricted, or “active adult” homes alternative. Table 5-4 summarizes potential land uses permitted within this designation either by right or which may be conditionally permitted. Areas designated Medium Density Residential consist of Planning Areas 2A, 3, 4, 5A, 5B, 8A, 9B, 11, 13, 45, 47A, 47B, 47C, 49A, 49B, 51, 53, 54, 55A, 55B and 56B per the current Specific Plan Land Use Plan (Exhibit 3.1).
Table 5-4
MDR Permitted, Conditional and Prohibited Land Uses for
Planning Areas 2A, 3, 4, 5A, 5B, 8A, 9B, 11, 13, 45, 47A, 47B, 47C, 49A, 49B, 51, 53, 54,
55A, 55B and 56B

<table>
<thead>
<tr>
<th>Land Uses</th>
<th>Medium Density Residential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Uses</td>
<td></td>
</tr>
<tr>
<td>Assisted Living Facility</td>
<td>C</td>
</tr>
<tr>
<td>Bed &amp; Breakfast</td>
<td>X</td>
</tr>
<tr>
<td>Community Care Facility</td>
<td>C</td>
</tr>
<tr>
<td>Condominiums &amp; Townhouses</td>
<td>P</td>
</tr>
<tr>
<td>Day Care Center</td>
<td>X</td>
</tr>
<tr>
<td>Homeless Shelters</td>
<td>X</td>
</tr>
<tr>
<td>Multi-Family Dwellings</td>
<td>X</td>
</tr>
<tr>
<td>Nursing Home &amp; Congregate Care</td>
<td>P</td>
</tr>
<tr>
<td>Planned Unit Development</td>
<td>P</td>
</tr>
<tr>
<td>Residential Care Facilities</td>
<td>C</td>
</tr>
<tr>
<td>Second Dwelling Unit</td>
<td>X</td>
</tr>
<tr>
<td>Single Family Dwelling</td>
<td>P</td>
</tr>
<tr>
<td>Equestrian Uses</td>
<td></td>
</tr>
<tr>
<td>Stables, Private</td>
<td>X</td>
</tr>
<tr>
<td>Stables, Commercial</td>
<td>X</td>
</tr>
<tr>
<td>Tack &amp; Feed Stores</td>
<td>X</td>
</tr>
<tr>
<td>Veterinary Offices and Hospitals</td>
<td>X</td>
</tr>
<tr>
<td>Agricultural Uses</td>
<td></td>
</tr>
<tr>
<td>Grazing of Animals</td>
<td>X</td>
</tr>
<tr>
<td>Kennels and Catteries, Commercial</td>
<td>X</td>
</tr>
<tr>
<td>Locally Adaptive Farming</td>
<td>X</td>
</tr>
<tr>
<td>Factory Farms with Genetic Monocultures</td>
<td>X</td>
</tr>
<tr>
<td>Ranching</td>
<td>X</td>
</tr>
<tr>
<td>Recreational Uses</td>
<td></td>
</tr>
<tr>
<td>Clubhouses/Community Centers</td>
<td>C</td>
</tr>
<tr>
<td>Swimming Pool/Sports Club</td>
<td>C</td>
</tr>
<tr>
<td>Parks, Sports Courts and Fields</td>
<td>C</td>
</tr>
<tr>
<td>Accessory Uses</td>
<td></td>
</tr>
<tr>
<td>Telecommunications Antennae</td>
<td>X</td>
</tr>
<tr>
<td>Rooftop Solar Energy/Water Heating Panels</td>
<td>P</td>
</tr>
<tr>
<td>In-Garage Electric/Natural Gas Fuelling Station</td>
<td>P</td>
</tr>
<tr>
<td>Garages^2</td>
<td>P</td>
</tr>
</tbody>
</table>
### Table 5-4 (continued)

<table>
<thead>
<tr>
<th>Land Uses</th>
<th>Medium Density Residential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Uses</td>
<td></td>
</tr>
<tr>
<td>Cemeteries</td>
<td>X</td>
</tr>
<tr>
<td>Churches</td>
<td>C</td>
</tr>
<tr>
<td>Fire Station</td>
<td>P</td>
</tr>
<tr>
<td>Utility Facilities ²</td>
<td>P</td>
</tr>
<tr>
<td>Private Schools</td>
<td>C</td>
</tr>
<tr>
<td>Neighborhood Oriented Retail Stores ⁴</td>
<td>X</td>
</tr>
<tr>
<td>Temporary Uses ⁵</td>
<td>T</td>
</tr>
</tbody>
</table>

**NOTES:**

1. Use Code = Permitted (P); Subject to Conditional Use Permit (C); Prohibited (X) and Temporary (T).
2. Intended for vehicles storage only, except in excess of the parking required under Chapter 17.23 of the Banning Zoning Ordinance.
3. This use category shall include development of a wastewater treatment plant to serve the Butterfield Specific Plan area.
4. Defined in the Banning General Plan as consisting of "corner store" type development such as convenience stores, grocery or green grocer, video rental, drug stores, sit down restaurants, coffee shops or coffee bars or similar uses, less than 5,000 in total square footage.
5. Include such uses as model sales complexes and trailers, and construction offices special events. Temporary uses required a Temporary Use Permit, subject to the requirements of Chapter 17.108 of the Banning Zoning Ordinance as modified by this Specific Plan.
Land uses permitted within the Medium Density Residential planning areas shall comply with the following use and development standards provisions. The City of Banning Planning Division shall analyze all applications for approval of conditional uses for consistency with the intent of the Butterfield Specific Plan. A conditional use permit, if required, shall be subject to the provisions of the Banning Zoning Ordinance, *Conditional Use Permits*.

5.3.2 Conventional Medium Density Development Standards

Conventionally plotted Medium Density Residential would consist of detached single-family homes on individual lots with private yards. These homes may have either street or alley vehicle access to the garage. Typically, conventional lots within this land use designation range from 36 to 50 feet in width. The standards below can be applied to Planning Areas 2A, 3, 4, 5A, 5B, 8A, 9B, 11, 13, 45, 47A, 47B, 47C, 49A, 49B, 51, 53, 54, 55A, 55B and 56B. Medium-density, age-restricted housing is a further option which could be developed in compliance with these standards. These standards may also be applied in any of the High Density Residential designated planning areas as well as in Planning Areas 18, 20 and 68 if alternative residential uses are allowed in these areas.

Table 5-5 which follows establishes the standards for lot dimensions, building setbacks, building height, design variation and parking for Butterfield Specific Plan’s conventionally-plotted Medium Density Residential homes in Planning Areas 2A, 3, 4, 5A, 5B, 8A, 9B, 11, 13, 45, 47A, 47B, 47C, 49A, 49B, 53, 54, 55A, 55B and 56B. Minimum lot sizes of 3,400 square feet are allowed. See Section 5.3.3 for an example of details on plotting and setback requirements for the Conventional Medium Density Residential areas.

Table 5-6 provides additional required development standards for Planning Area 51 that requires a minimum lot area of 4,500 square feet a minimum average lot size of 7,200 square feet in this particular planning area.
### Table 5-5

<table>
<thead>
<tr>
<th>Category</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Dimensions</td>
<td></td>
</tr>
<tr>
<td>Maximum Density</td>
<td>10 DU/AC</td>
</tr>
<tr>
<td>Minimum Lot Area</td>
<td>3, 400 square feet</td>
</tr>
<tr>
<td>Minimum Lot Width</td>
<td></td>
</tr>
<tr>
<td>• Interior</td>
<td>38’</td>
</tr>
<tr>
<td>• Corner</td>
<td>43’</td>
</tr>
<tr>
<td>Minimum Lot Frontage</td>
<td>20’</td>
</tr>
<tr>
<td>Minimum Setbacks</td>
<td></td>
</tr>
<tr>
<td>Front Setback **</td>
<td></td>
</tr>
<tr>
<td>• Porch</td>
<td>10’</td>
</tr>
<tr>
<td>• Living</td>
<td>10’</td>
</tr>
<tr>
<td>• Front-Facing Garage</td>
<td>20’ door face to back of sidewalk</td>
</tr>
<tr>
<td>Side Yard</td>
<td>5’</td>
</tr>
<tr>
<td>Street Side Yard</td>
<td></td>
</tr>
<tr>
<td>• Porch</td>
<td>5’</td>
</tr>
<tr>
<td>• Living Area</td>
<td>10’</td>
</tr>
<tr>
<td>Rear</td>
<td></td>
</tr>
<tr>
<td>• Living Area</td>
<td>10’</td>
</tr>
<tr>
<td>• Garage/Patio</td>
<td>5’</td>
</tr>
<tr>
<td>• Living Over Garage</td>
<td>10’</td>
</tr>
<tr>
<td>Maximum Building Height</td>
<td>10’</td>
</tr>
<tr>
<td>Main Structure</td>
<td>35’</td>
</tr>
<tr>
<td>Maximum Projections</td>
<td></td>
</tr>
<tr>
<td>Main Structure</td>
<td>45’</td>
</tr>
<tr>
<td>Projections Into Setbacks</td>
<td>Per Sec. 17.24.120 of the Banning Zoning Ordinance</td>
</tr>
<tr>
<td>Others</td>
<td></td>
</tr>
<tr>
<td>Lot Coverage</td>
<td>70%</td>
</tr>
<tr>
<td>Parking</td>
<td></td>
</tr>
<tr>
<td>• Resident</td>
<td>2 spaces per unit within a garage</td>
</tr>
<tr>
<td>• Guest</td>
<td>Provided on driveway or street</td>
</tr>
</tbody>
</table>

** *Front setbacks shall be measured from the back of sidewalk, not from the property line.*
### Table 5-6
Medium Density Residential (MDR) – 7200
Development Standards for Planning Area 51

<table>
<thead>
<tr>
<th>Category</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Dimensions</td>
<td></td>
</tr>
<tr>
<td>Maximum Density</td>
<td>10 DU/AC</td>
</tr>
<tr>
<td>Minimum Lot Area</td>
<td>4,500 square feet</td>
</tr>
<tr>
<td>Minimum Average Lot Area *</td>
<td>7,200 square feet</td>
</tr>
<tr>
<td>Minimum Lot Width</td>
<td></td>
</tr>
<tr>
<td>• Interior</td>
<td>45'</td>
</tr>
<tr>
<td>• Corner</td>
<td>50'</td>
</tr>
<tr>
<td>Minimum Lot Frontage</td>
<td>30'</td>
</tr>
<tr>
<td>Minimum Setbacks</td>
<td></td>
</tr>
<tr>
<td>Front Setback **</td>
<td></td>
</tr>
<tr>
<td>• Porch</td>
<td>10'</td>
</tr>
<tr>
<td>• Living Area</td>
<td>10'</td>
</tr>
<tr>
<td>• Front-Facing Garage</td>
<td>20' door face to back of sidewalk</td>
</tr>
<tr>
<td>Side Yard</td>
<td>5'</td>
</tr>
<tr>
<td>Street Side Yard</td>
<td></td>
</tr>
<tr>
<td>• Porch</td>
<td>5'</td>
</tr>
<tr>
<td>• Living Area</td>
<td>10'</td>
</tr>
<tr>
<td>Rear</td>
<td></td>
</tr>
<tr>
<td>• Living Area</td>
<td>15'</td>
</tr>
<tr>
<td>• Garage/Patio</td>
<td>5'</td>
</tr>
<tr>
<td>• Living Over Garage</td>
<td>10'</td>
</tr>
<tr>
<td>Maximum Building Height</td>
<td></td>
</tr>
<tr>
<td>Main Structure</td>
<td>35'</td>
</tr>
<tr>
<td>Projections Into Setbacks</td>
<td>Per Sec. 17.24.120 of the Banning Zoning Ordinance</td>
</tr>
<tr>
<td>Others</td>
<td></td>
</tr>
<tr>
<td>Lot Coverage</td>
<td>70%</td>
</tr>
<tr>
<td>Parking</td>
<td></td>
</tr>
<tr>
<td>• Resident</td>
<td>2 spaces per unit within a garage</td>
</tr>
<tr>
<td>• Guest</td>
<td>Provided on driveway or street</td>
</tr>
</tbody>
</table>

* Minimum average lot size shall be calculated as a mean average by dividing the total area of all residential lots in a planning area (excluding street right-of-way and open space lots) by the total number of residential lots in the planning area.

** Front setbacks shall be measured from the back of sidewalk, not from the property line.
5.3.3 Conventional Medium Density Residential Lots – Illustrative Plot

Figure 5.2 provides an illustration of a conceptual plotting for Medium Density Residential homes, which is expected to be typical of conventionally developed product within this density category of the Butterfield Specific Plan.

![Illustrative Plot](image)

**Notes:** Diagram for illustrative plotting purposes only - Minimum setbacks are illustrated except where noted.

*William Hezmalhalch Architects*

5.3.4 Cluster Medium Density Permitted Uses

As an alternative to conventionally-plotted Medium Density Residential development, a cluster approach to developing within the Medium Density Residential land use designation may be applied to Planning Areas 2A, 4, 5A, 5B, 8A, 9B, 11, 13, 45, 47A, 47B, 47C, 49A, 49B, 53, 54, 55A, 55B and 56B. Table 5-7 summarizes potential land uses to be developed within this designation which are permitted by right or which may be conditionally permitted.

Land uses permitted within the Cluster Medium Density Residential planning areas shall be permitted in accordance with the following use and development standard provisions of this Section. Applications for approval of conditional uses shall be submitted to and analyzed by the City of Banning Planning Division to assure that the application is consistent with the intent of the Butterfield Specific Plan. A conditional use permit, if required, shall be subject to the provisions of the Banning Zoning Ordinance. If required, a land use permit shall be subject to the provisions of the Banning Zoning Ordinance.
Table 5-7
Cluster Medium Density Residential
Permitted, Conditional and Prohibited Land Uses

<table>
<thead>
<tr>
<th>Land Uses</th>
<th>Green Court Cluster MDR</th>
<th>Motor Court Cluster MDR</th>
<th>Stub St. Court Cluster MDR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Uses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assisted Living Facility</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Bed &amp; Breakfast</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Community Care Facility</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Condominiums &amp; Townhouses</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Day Care Center</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Homeless Shelters</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Multi-Family Dwellings</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Nursing Home &amp; Congregate Care</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Planned Unit Development</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Residential Care Facilities</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Second Dwelling Unit</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Single Family Dwelling</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Equestrian Uses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stables, Private</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Stables, Commercial</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Tack &amp; Feed Stores</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Veterinary Offices and Hospitals</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Agricultural Uses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grazing of Animals</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Kennels and Catteries, Commercial</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Locally Adaptive Farming</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Factory Farms with Genetic Monocultures</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Ranching</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Recreational Uses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clubhouses/Community Centers</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Swimming Pool/Sports Club</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Parks, Sports Courts and Fields</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Accessory Uses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Telecommunications Antennae</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Rooftop Solar Energy/Water Heating Panels</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>In-Garage Electric/Natural Gas Vehicle Fueling</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Garages (^2)</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>
Table 5-7 (continued)
Cluster Medium Density Residential
Permitted, Conditional and Prohibited Land Uses

<table>
<thead>
<tr>
<th>Land Uses</th>
<th>Green Court Cluster MDR</th>
<th>Motor Court Cluster MDR</th>
<th>Stub St. Court Cluster MDR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Uses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cemeteries</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Churches</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Fire Stations</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Utility Facilities</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Private Schools</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Neighborhood Oriented Retail Stores</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Temporary Uses (^4)</td>
<td>T</td>
<td>T</td>
<td>T</td>
</tr>
</tbody>
</table>

NOTES:
1. Use Code = Permitted (P); Subject to Conditional Use Permit (C); Prohibited (X) and Temporary (T).
2. Intended for vehicles storage only, except in excess of the parking required under Chapter 17.28, Banning Zoning Ordinance.
3. Defined in the Banning General Plan as consisting of “corner store” type development such as convenience stores, grocery or green grocer, video rental, drug stores, sit down restaurants, coffee shops or coffee bars or similar uses, less than 5,000 SF in total square footage.
4. Include such uses as model sales complexes and trailers, and construction offices. Temporary require a Temporary Use Permit, subject to the requirements of Chapter 17.108 of the Banning Zoning Ordinance, as modified by this Specific Plan.

5.3.5 Cluster Medium Density Development Standards

5.3.5.1 Green Court Cluster Development Standards

Table 5-8 establishes the standards for lot dimensions, building setbacks, building height, design variation and parking for Butterfield Specific Plan’s green court cluster Medium Density Residential homes. Minimum lot sizes of 2800 square feet for green court homes are allowed. See Section 5.3.5.2 for an example of plotting and setback requirements.

Green court clusters are intended to accommodate detached single-family homes oriented on a paseo (green court), rather than a street. These homes have vehicular access through an alley, with guest parking provided on the street or in a common parking area. These standards could also be applied to green court-oriented, medium-density, age-restricted housing. The standards below can be applied to Planning Areas 2A, 4, 5A, 5B, 8A, 9B, 11, 13, 45, 47A, 47B, 47C, 49A, 49B, 53, 54, 55A, 55B and 56B. These standards may also be applied in any of the High Density Residential designated planning areas, as well as in Planning Areas 18, 20 and 68 if residential uses are allowed in these areas.
Table 5-8  
**Green Court Cluster**  
Medium Density Residential Development Standards

<table>
<thead>
<tr>
<th>Category</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Dimensions</td>
<td></td>
</tr>
<tr>
<td>Maximum Density</td>
<td>10 DU/AC</td>
</tr>
<tr>
<td>Minimum Lot Area</td>
<td>2,800 square feet</td>
</tr>
<tr>
<td>Minimum Lot Width</td>
<td>40'</td>
</tr>
<tr>
<td>Minimum Lot Depth</td>
<td>70'</td>
</tr>
<tr>
<td>Minimum Setbacks</td>
<td></td>
</tr>
<tr>
<td>Street-side yard</td>
<td></td>
</tr>
<tr>
<td>• Living – (Front entry) to back of</td>
<td>10'</td>
</tr>
<tr>
<td>sidewalk</td>
<td></td>
</tr>
<tr>
<td>• Side (no entry) to back of</td>
<td>5'</td>
</tr>
<tr>
<td>sidewalk</td>
<td></td>
</tr>
<tr>
<td>• Porch - to back of sidewalk</td>
<td>5'</td>
</tr>
<tr>
<td>Rear yard – to alley edge</td>
<td></td>
</tr>
<tr>
<td>• Living</td>
<td>10'</td>
</tr>
<tr>
<td>• Garage face to Alley (Apron)</td>
<td>3'</td>
</tr>
<tr>
<td>• Garage (Swing-In Side Wall)</td>
<td>4'</td>
</tr>
<tr>
<td>• Living Over Garage</td>
<td>2' minimum, minimum 3' from a P/L</td>
</tr>
<tr>
<td></td>
<td>3' maximum cantilever</td>
</tr>
<tr>
<td>Minimum Building Separation</td>
<td></td>
</tr>
<tr>
<td>Front to Front (entries) – at green</td>
<td>15'</td>
</tr>
<tr>
<td>court</td>
<td></td>
</tr>
<tr>
<td>Side to side (no entries)</td>
<td>10'</td>
</tr>
<tr>
<td>2nd-Story Living Rear to Rear at alley</td>
<td>24'</td>
</tr>
<tr>
<td>Garage Door to Door at alley</td>
<td>30'</td>
</tr>
<tr>
<td>Maximum Building Height</td>
<td></td>
</tr>
<tr>
<td>Main Structure</td>
<td>45'</td>
</tr>
<tr>
<td>Projections Into Setbacks</td>
<td>Per Sec. 17.24.120 of the Banning Zoning</td>
</tr>
<tr>
<td></td>
<td>Ordinance</td>
</tr>
<tr>
<td>Others</td>
<td></td>
</tr>
<tr>
<td>Minimum Private Yard Area</td>
<td>150 square feet with a minimum 10' dimension</td>
</tr>
<tr>
<td>Parking</td>
<td></td>
</tr>
<tr>
<td>• Resident</td>
<td>2 spaces per unit within a garage</td>
</tr>
<tr>
<td>• Guest</td>
<td>.33 spaces per unit</td>
</tr>
</tbody>
</table>
5.3.5.2 Green Court Cluster – Typical Illustrative Plot

Figure 5.3 provides an illustration of a conceptual plotting for green court cluster Medium Density Residential homes, which is expected to be typical of cluster developed product of this type within this density category of the Butterfield Specific Plan.

![Diagram of Green Court Cluster Home Illustrative Plot](image)

**Figure 5.3**
Green Court Cluster Home Illustrative Plot
Medium Density Residential

Notes: Diagram for illustrative plotting purposes only - Minimum setbacks are illustrated except where noted

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5.3.5.3 Motor Court Cluster Development Standards

Table 5-9 establishes the standards for lot dimensions, building setbacks, building height, design variation and parking for Butterfield Specific Plan’s motor court cluster Medium Density Residential homes. Minimum lot sizes of 2000 square feet for motor court homes are allowed. See Section 5.3.5.4 for an example of plotting and setback requirements.

Motor court clusters are intended to accommodate detached single-family homes on a common driveway, with guest parking provided on the street or in a common parking area. These standards could also be applied to motor court-oriented, medium-density, age-restricted housing. The standards below can be applied to PAs 2A, 4, 5A, 5B, 8A, 9B, 11, 13, 45, 47A, 47B, 47C, 49A, 49B, 53, 54, 55A, 55B and 56B. These standards may also be applied in any of the High Density Residential designated planning areas, as well as in Planning Areas 18, 20 and 68 if residential uses are allowed in these areas.
### Table 5-9
**Motor Court Cluster**  
**Medium Density Residential Development Standards**

<table>
<thead>
<tr>
<th>Category</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Dimensions</td>
<td></td>
</tr>
<tr>
<td>Maximum Density</td>
<td>10 DU/AC</td>
</tr>
<tr>
<td>Minimum Lot Area</td>
<td>2,000 square feet</td>
</tr>
<tr>
<td>Minimum Lot Width</td>
<td>30'</td>
</tr>
<tr>
<td>Minimum Lot Depth</td>
<td>60'</td>
</tr>
<tr>
<td>Minimum Setbacks</td>
<td></td>
</tr>
<tr>
<td>Front Setback (From Shared Drive or ROW)</td>
<td></td>
</tr>
<tr>
<td>• Garage</td>
<td>4'</td>
</tr>
<tr>
<td>• Garage to Alley (Apron)</td>
<td>3'</td>
</tr>
<tr>
<td>• Living Over Garage</td>
<td>2' minimum, 3' minimum from a P/L 3' maximum cantilever.</td>
</tr>
<tr>
<td>Street-side Yard</td>
<td></td>
</tr>
<tr>
<td>• Living - to back of sidewalk</td>
<td>10'</td>
</tr>
<tr>
<td>• Porch - to back of sidewalk</td>
<td>5'</td>
</tr>
<tr>
<td>Rear yard – to P/L</td>
<td></td>
</tr>
<tr>
<td>• Living</td>
<td>10'</td>
</tr>
<tr>
<td>• Porch</td>
<td>5'</td>
</tr>
<tr>
<td>Minimum Building Separation</td>
<td></td>
</tr>
<tr>
<td>Front to Front (entries)</td>
<td>15&quot;</td>
</tr>
<tr>
<td>Front to Side (entries)</td>
<td>15'</td>
</tr>
<tr>
<td>Side to Side (no entries)</td>
<td>8'</td>
</tr>
<tr>
<td>2nd-Story Front to Front Living</td>
<td>24'</td>
</tr>
<tr>
<td>Garage Door to Garage Door</td>
<td>30'</td>
</tr>
<tr>
<td>Maximum Building Height</td>
<td></td>
</tr>
<tr>
<td>Main Structure</td>
<td>45'</td>
</tr>
<tr>
<td>Projections Into Setbacks</td>
<td>Per Sec. 17.24.120 of the Banning Zoning Ordinance</td>
</tr>
<tr>
<td>Others</td>
<td></td>
</tr>
<tr>
<td>Minimum Private Yard Area</td>
<td>300 square feet with a minimum 10' dimension</td>
</tr>
<tr>
<td>Parking</td>
<td></td>
</tr>
<tr>
<td>• Resident</td>
<td>2 spaces per unit within a garage</td>
</tr>
<tr>
<td>• Guest</td>
<td>.33 spaces per unit</td>
</tr>
</tbody>
</table>
5.3.5.4 Motor Court Cluster – Typical Illustrative Plot

Figure 5.4 provides an illustration of a conceptual plotting for motor court cluster Medium Density Residential homes, which is expected to be typical of cluster developed product of this type within this density category of the Butterfield Specific Plan.

Figure 5.4
Motor Court Cluster Home Illustrative Plot
Medium Density Residential

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5.3.5.5 Stub Street Court Cluster Development Standards

Tables 5-10 establish the standards for lot dimensions, building setbacks, building height, design variation and parking for Butterfield Specific Plan’s stub street court cluster Medium Density Residential homes. Minimum lot sizes of 2200 square feet for stub street court homes are allowed. See Section 5.3.5.6 for an example of plotting and setback requirements.

Detached condo lots are intended to accommodate detached single-family homes oriented on a short stub street or alley. Guest parking for these homes is provided on the street or in a common parking area. These standards may also be applied to medium density detached condo cluster, age-restricted housing. The standards below are applicable to Planning Areas 2A, 4, 5A, 5B, 8A, 9B, 11, 13, 45, 47A, 47B, 47C, 49A, 49B, 53, 54, 55A, 55B and 56B. These standards may also be applied in any of the High Density Residential designated planning areas, as well as in Planning Areas 18, 20 and 68 if residential uses are allowed in these areas.
### Table 5-10
**Stub Street Court Cluster**  
Medium Density Residential Development Standards

<table>
<thead>
<tr>
<th>Category</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Dimensions</td>
<td></td>
</tr>
<tr>
<td>Maximum Density</td>
<td>10 DU/AC</td>
</tr>
<tr>
<td>Minimum Lot Area</td>
<td>2,200 square feet</td>
</tr>
<tr>
<td>Minimum Lot Width</td>
<td>40’</td>
</tr>
<tr>
<td>Minimum Lot Depth</td>
<td>55’</td>
</tr>
<tr>
<td>Minimum Setbacks</td>
<td></td>
</tr>
<tr>
<td>Front Setback (From back of sidewalk or curb)</td>
<td></td>
</tr>
<tr>
<td>• Porch</td>
<td>5’</td>
</tr>
<tr>
<td>• Living</td>
<td>10’</td>
</tr>
<tr>
<td>• Garage</td>
<td>18’</td>
</tr>
<tr>
<td>Side Yard</td>
<td>4’</td>
</tr>
<tr>
<td>Rear</td>
<td>10’</td>
</tr>
<tr>
<td>Minimum Building Separation</td>
<td></td>
</tr>
<tr>
<td>Building to Building</td>
<td>8’</td>
</tr>
<tr>
<td>Maximum Building Height</td>
<td></td>
</tr>
<tr>
<td>Main Structure</td>
<td>45’</td>
</tr>
<tr>
<td>Projections Into Setbacks</td>
<td>Per Sec. 17.24.120 of the Banning Zoning Ordinance</td>
</tr>
<tr>
<td>Others</td>
<td></td>
</tr>
<tr>
<td>Minimum Private Yard Area</td>
<td>300 square feet with a minimum 10’ dimension</td>
</tr>
<tr>
<td>Parking</td>
<td></td>
</tr>
<tr>
<td>• Resident</td>
<td>2 spaces per unit, one within a garage</td>
</tr>
<tr>
<td>• Guest</td>
<td>.33 spaces per unit</td>
</tr>
</tbody>
</table>

#### 5.3.5.6 Stub Street Court Cluster – Typical Illustrative Plot

Figure 5.5 provides an illustration of a conceptual plotting for stub street court cluster Medium Density Residential homes, which is expected to be typical of cluster developed product of this type within this density category of the Butterfield Specific Plan.
Figure 5.5
Stub Street Court Cluster Home Illustrative Plot
Medium Density Residential

Notes: Diagram for illustrative plotting purposes only - Minimum setbacks are illustrated except where noted

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5.4 **HIGH DENSITY RESIDENTIAL (HDR)**

5.4.1 High Density Residential Permitted Uses

Per Section 3.1, the High Density Residential land use designation applies to 38.4 acres within this Specific Plan. Table 5-11 summarizes potential land uses permitted within this designation either by right or which may be conditionally permitted. Areas designated High Density Residential consists of Planning Areas 8B, 15A, and 15B.

Land uses permitted within the High Density Residential planning areas shall comply with the following use and development standards provisions. Single family detached homes (i.e. Low Density Residential or Medium Density Residential uses and development standards) may also be utilized and developed under this development designation. The City of Banning Planning Division shall analyze all applications for approval of conditional uses for consistency with the intent of the Butterfield Specific Plan. A conditional use permit, if required, shall be subject to the provisions of the Banning Zoning Ordinance, *Conditional Use Permits*.

5.4.2 High Density Residential Development Standards

High Density Residential lots are intended to accommodate attached single-family dwellings with semi-private courtyards and common green spaces. These homes may be oriented either toward the street front, a common motor court or common ‘green court’ area. The standards below can be applied to Planning Areas 8B, 15A and 15B. Age-restricted housing is a further option which could be developed in compliance with these standards. Low Density and Medium Density Residential development may be developed in the HDR planning areas.

Table 5-12 which follows establishes the standards for lot dimensions, building setbacks, building height, design variation and parking for Butterfield Specific Plan’s conventionally-plotted High Density Residential homes in Planning Areas 8B, 15A and 15B. See Section 5.4.3 for an example of details on plotting and setback requirements for the High Density Residential areas.
<table>
<thead>
<tr>
<th>Land Uses</th>
<th>High Density Residential</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Residential Uses</strong></td>
<td></td>
</tr>
<tr>
<td>Assisted Living Facility</td>
<td>C</td>
</tr>
<tr>
<td>Bed &amp; Breakfast</td>
<td>X</td>
</tr>
<tr>
<td>Community Care Facility</td>
<td>C</td>
</tr>
<tr>
<td>Condominiums &amp; Townhouses</td>
<td>P</td>
</tr>
<tr>
<td>Day Care Center</td>
<td>C</td>
</tr>
<tr>
<td>Homeless Shelters</td>
<td>X</td>
</tr>
<tr>
<td>Multi-Family Dwellings</td>
<td>P</td>
</tr>
<tr>
<td>Nursing Home &amp; Congregate Care</td>
<td>P</td>
</tr>
<tr>
<td>Planned Unit Development</td>
<td>P</td>
</tr>
<tr>
<td>Residential Care Facilities</td>
<td>C</td>
</tr>
<tr>
<td>Second Dwelling Unit</td>
<td>X</td>
</tr>
<tr>
<td>Single Family Dwelling</td>
<td>P</td>
</tr>
<tr>
<td><strong>Equestrian Uses</strong></td>
<td></td>
</tr>
<tr>
<td>Stables, Private</td>
<td>X</td>
</tr>
<tr>
<td>Stables, Commercial</td>
<td>X</td>
</tr>
<tr>
<td>Tack &amp; Feed Stores</td>
<td>X</td>
</tr>
<tr>
<td>Veterinary Offices and Hospitals</td>
<td>X</td>
</tr>
<tr>
<td><strong>Agricultural Uses</strong></td>
<td></td>
</tr>
<tr>
<td>Grazing of Animals</td>
<td>X</td>
</tr>
<tr>
<td>Kennels and Catterias, Commercial</td>
<td>X</td>
</tr>
<tr>
<td>Locally Adaptive Farming</td>
<td>X</td>
</tr>
<tr>
<td>Factory Farms with Genetic Monocultures</td>
<td>X</td>
</tr>
<tr>
<td>Ranching</td>
<td>X</td>
</tr>
<tr>
<td><strong>Recreational Uses</strong></td>
<td></td>
</tr>
<tr>
<td>Clubhouses/Community Centers</td>
<td>P</td>
</tr>
<tr>
<td>Swimming Pool/Sports Club</td>
<td>P</td>
</tr>
<tr>
<td>Parks, Sports Courts and Fields</td>
<td>P</td>
</tr>
<tr>
<td><strong>Accessory Uses</strong></td>
<td></td>
</tr>
<tr>
<td>Telecommunications Antennae</td>
<td>X</td>
</tr>
<tr>
<td>Rooftop Solar Energy/Water Heating Panels</td>
<td>P</td>
</tr>
<tr>
<td>In-Garage Electric/Natural Gas Fueling Station</td>
<td>P</td>
</tr>
<tr>
<td>Hydrogen Vehicle Fueling Station (ancillary use)</td>
<td>C</td>
</tr>
<tr>
<td>Garages ²</td>
<td>X</td>
</tr>
</tbody>
</table>
Table 5-11 (continued)
HDR Permitted, Conditional and Prohibited Land Uses
for Planning Areas 8B, 15A and 15B

<table>
<thead>
<tr>
<th>Land Uses</th>
<th>High Density Residential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Uses</td>
<td>X</td>
</tr>
<tr>
<td>Cemeteries</td>
<td></td>
</tr>
<tr>
<td>Churches</td>
<td>C</td>
</tr>
<tr>
<td>Fire Station</td>
<td>P</td>
</tr>
<tr>
<td>Utility Facilities</td>
<td>C</td>
</tr>
<tr>
<td>Private Schools</td>
<td>C</td>
</tr>
<tr>
<td>Neighborhood Oriented Retail Stores</td>
<td>X</td>
</tr>
<tr>
<td>Temporary Uses</td>
<td>T</td>
</tr>
</tbody>
</table>

NOTES:
1. Use Code = Permitted (P); Subject to Conditional Use Permit (C); Prohibited (X) and Temporary (T).
2. Intended for vehicles storage only, except in excess of the parking required under Chapter 17.28 of the Banning Zoning Ordinance.
3. Defined in the Banning General Plan as consisting of "corner store" type development such as convenience stores, grocery stores or green grocer, video rental, drug stores, sit down restaurants, coffee shops or coffee bars, or similar uses, less than 5,000 SF in total square footage.
4. Include such uses as model sales complexes and trailers, and construction offices. Temporary uses require a Temporary Use Permit, subject to the requirements of Chapter 17.108 of the Banning Zoning Ordinance, as modified by this Specific Plan.
Table 5-12
High Density Residential (HDR) Development Standards
for Planning Areas 8A, 15A and 15B

<table>
<thead>
<tr>
<th>Category</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Dimensions</td>
<td></td>
</tr>
<tr>
<td>Maximum Density</td>
<td>18 DU/AC</td>
</tr>
<tr>
<td>Minimum Lot Area*</td>
<td>1 acre</td>
</tr>
<tr>
<td>Minimum Lot Width</td>
<td>55'</td>
</tr>
<tr>
<td>Minimum Setbacks</td>
<td></td>
</tr>
<tr>
<td>Street-side Yard</td>
<td></td>
</tr>
<tr>
<td>• Living - to back of sidewalk</td>
<td>10’</td>
</tr>
<tr>
<td>• Porch - to back of sidewalk</td>
<td>5’</td>
</tr>
<tr>
<td>Rear – to alley edge</td>
<td></td>
</tr>
<tr>
<td>• Living Over Garage at alley</td>
<td>3’ maximum cantilever, w/ minimum 3’ from all P/L</td>
</tr>
<tr>
<td>• Garage to Alley (Apron)</td>
<td>3’</td>
</tr>
<tr>
<td>Minimum Building Separation</td>
<td></td>
</tr>
<tr>
<td>Living Front to Front (entries)</td>
<td>20’</td>
</tr>
<tr>
<td>Living Side to Side (no entries)</td>
<td>15’</td>
</tr>
<tr>
<td>Living Front to Side (entry)</td>
<td>15’</td>
</tr>
<tr>
<td>Opposing Porches, Balconies, courtyard walls</td>
<td>10’</td>
</tr>
<tr>
<td>Garage Door to Garage Door at alley</td>
<td>30’</td>
</tr>
<tr>
<td>Maximum Building Height</td>
<td></td>
</tr>
<tr>
<td>Main Structure</td>
<td>45’</td>
</tr>
<tr>
<td>Projections Into Setbacks</td>
<td>Per Sec. 17.24.120 of the Banning Zoning Ordinance</td>
</tr>
<tr>
<td>Others</td>
<td></td>
</tr>
<tr>
<td>Minimum Private Yard Area</td>
<td>50 square feet</td>
</tr>
<tr>
<td>Parking</td>
<td></td>
</tr>
<tr>
<td>• Resident</td>
<td>1 space per 1 bedroom unit, 2 spaces per 2 or more bedroom units (1 space must be within a garage or carport)</td>
</tr>
<tr>
<td>• Guest</td>
<td>0.5 spaces per unit</td>
</tr>
</tbody>
</table>

* Development of single family detached or cluster homes at proposed densities of less than 10 DU/AC would comply with minimum lot area and other development standards for LDR (Table 5-2), conventional MDR (Table 5-6) or cluster MDR (Table 5-9, 5-10 or 5-11) as applicable.
5.4.3 High Density Residential Lots – Illustrative Plot

Figure 5.6 provides an illustration of a concept plotting for High Density Residential, which is expected to be typical of high density attached homes to be developed within the Butterfield Specific Plan, at a density of 10-18 DU/acre.

Figure 5.6
High Density Residential Illustrative Plot

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5.5 COMMERCIAL

5.5.1 Commercial Permitted Uses

Within the Butterfield Specific Plan, 36.7 acres have been designated Commercial in Planning Areas 17 and 18. While conventional retail and office uses are those primarily intended for PA 17, PA 18 may combine a number of uses onsite, some of which may complement those of the expanded Banning Healthcare complex nearby. A senior-oriented residential project, a restaurant, and a community care facility are potential additional elements of a mixed use development.

Table 5-13 summarizes potential land uses to be developed within this designation which are permitted by right or which may be conditionally permitted.

Land uses permitted within the Commercial planning areas shall be permitted in accordance with the following use and development standards provisions. Applications for approval of conditional uses shall be submitted to and analyzed by the City of Banning Planning Division to assure that the application is consistent with the intent of the Butterfield Specific Plan. A conditional use permit, if required, shall be subject to the provisions of the Banning Zoning Ordinance. If required, a land use permit shall be subject to the provisions of the Banning Zoning Ordinance.

5.5.2 Commercial Development Standards

General commercial allows a broad range of uses including food and drug stores, retail stores and services uses that serve the general neighborhood. The design of commercial areas will take into consideration the surrounding use. The standards below can be applied to Planning Areas 17 and 18. These standards shall also apply to Planning Areas 3, 4, 9B, 20 and 26 if alternate commercial use as allowed are proposed in these areas. Table 5-14 which follows establishes the standards for lot dimensions, building setbacks, building height, design variation and parking for Butterfield Specific Plan’s general commercial development.

If Commercial or mixed use development is proposed in any portions of PAs 3, 4, 9B, 20 and 26, approval of a Conditional Use Permit and/or a Planned Unit Development application will be required subject to Sections 17.52 and 17.92 of the City of Banning Zoning Ordinance. The City Community Development Director will have the discretion of determining which of these applications will be required. A Traffic Validation Report (TVR) will be required to verify that the Project’s total peak hour trips based on this alternative commercial use are consistent with the assumptions of the Butterfield Specific Plan Traffic Impact Analysis, dated December 2010.
### Table 5-13
Commercial Permitted, Conditional and Prohibited Land Uses

<table>
<thead>
<tr>
<th>Land Uses</th>
<th>Commercial Pas 17, 18</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recreation / Education / Public Assembly Uses</strong></td>
<td></td>
</tr>
<tr>
<td>Adult entertainment</td>
<td>X</td>
</tr>
<tr>
<td>Adult day care facilities</td>
<td>C</td>
</tr>
<tr>
<td>Automobile race track</td>
<td>X</td>
</tr>
<tr>
<td>Billiard parlors/pool halls</td>
<td>X</td>
</tr>
<tr>
<td>Churches</td>
<td>P</td>
</tr>
<tr>
<td>Community centers</td>
<td>P</td>
</tr>
<tr>
<td>Convention facilities</td>
<td>X</td>
</tr>
<tr>
<td>Day Care Centers</td>
<td>C</td>
</tr>
<tr>
<td>Health/fitness facilities</td>
<td>P</td>
</tr>
<tr>
<td>Indoor recreation centers</td>
<td>P</td>
</tr>
<tr>
<td>Libraries</td>
<td>P</td>
</tr>
<tr>
<td>Membership organization facilities</td>
<td>X</td>
</tr>
<tr>
<td>Museums</td>
<td>P</td>
</tr>
<tr>
<td>Outdoor commercial recreation</td>
<td>P</td>
</tr>
<tr>
<td>Public parks and playgrounds</td>
<td>X</td>
</tr>
<tr>
<td>Recreational vehicle (RV) parks</td>
<td>X</td>
</tr>
<tr>
<td>Recreational vehicle (RV) storage</td>
<td>C</td>
</tr>
<tr>
<td>Schools</td>
<td>P</td>
</tr>
<tr>
<td>Sport facilities and outdoor public assembly</td>
<td>C</td>
</tr>
<tr>
<td>Studios for dance, art, music, photography</td>
<td>P</td>
</tr>
<tr>
<td>Theatres and meeting halls</td>
<td>P</td>
</tr>
<tr>
<td><strong>Retail Uses</strong></td>
<td></td>
</tr>
<tr>
<td>Accessory retail uses</td>
<td>P</td>
</tr>
<tr>
<td>Alcoholic Beverage Sales, on- or off-site</td>
<td>C</td>
</tr>
<tr>
<td>Antique stores</td>
<td>P</td>
</tr>
<tr>
<td>Art Galleries</td>
<td>P</td>
</tr>
<tr>
<td>Mobile home &amp; motor vehicle sales, new</td>
<td>X</td>
</tr>
<tr>
<td>Mobile home &amp; motor vehicle sales, new &amp; used</td>
<td>X</td>
</tr>
<tr>
<td>Bakeries, retail</td>
<td>P</td>
</tr>
<tr>
<td>Bars and drinking establishments</td>
<td>X</td>
</tr>
<tr>
<td>Building material stores</td>
<td>X</td>
</tr>
<tr>
<td>Certified farmers' markets</td>
<td>T</td>
</tr>
<tr>
<td>Convenience Stores</td>
<td>P</td>
</tr>
<tr>
<td>Convenience Stores, no liquor sales</td>
<td>P</td>
</tr>
<tr>
<td>Department stores</td>
<td>P</td>
</tr>
<tr>
<td>Drive-in and drive-through sales</td>
<td>C</td>
</tr>
<tr>
<td>Drug stores</td>
<td></td>
</tr>
<tr>
<td>Land Uses</td>
<td>Commercial Pas 17, 18</td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>Factory outlet centers</td>
<td>P</td>
</tr>
<tr>
<td>Farm and ranch supply stores</td>
<td>X</td>
</tr>
<tr>
<td>Furniture, furnishings, home equipment stores</td>
<td>P</td>
</tr>
<tr>
<td>Gift shops</td>
<td>P</td>
</tr>
<tr>
<td>Grocery stores, retail butchers and greengrocers</td>
<td>P</td>
</tr>
<tr>
<td>Hardware/lumber stores</td>
<td>P</td>
</tr>
<tr>
<td>Liquor stores (off-site consumption)</td>
<td>X</td>
</tr>
<tr>
<td>Outdoor retail merchandise display/activities</td>
<td>X</td>
</tr>
<tr>
<td>Outdoor retail sales, temporary</td>
<td>T</td>
</tr>
<tr>
<td>Pawn shops</td>
<td>X</td>
</tr>
<tr>
<td>Pet stores and grooming</td>
<td>P</td>
</tr>
<tr>
<td>Restaurants, no beer, wine or liquor sales</td>
<td>P</td>
</tr>
<tr>
<td>Restaurants, serving beer, wine or liquor</td>
<td>C</td>
</tr>
<tr>
<td>Restaurants, drive-in, take-out, fast food</td>
<td>X</td>
</tr>
<tr>
<td>Retail stores, general merchandise</td>
<td>P</td>
</tr>
<tr>
<td>Second hand/thrift stores</td>
<td>X</td>
</tr>
<tr>
<td>Shopping centers, 15,000 SF +</td>
<td>P</td>
</tr>
<tr>
<td>Video rental stores</td>
<td>P</td>
</tr>
<tr>
<td>Warehouse or club stores</td>
<td>P</td>
</tr>
<tr>
<td><strong>Resource and Open Space Uses</strong></td>
<td></td>
</tr>
<tr>
<td>Plant nurseries, with on-site sales</td>
<td>X</td>
</tr>
<tr>
<td>Plant nurseries, without on-site sales</td>
<td>X</td>
</tr>
<tr>
<td>Surface Mining</td>
<td>X</td>
</tr>
<tr>
<td>Cargo/Storage Containers</td>
<td>P</td>
</tr>
<tr>
<td><strong>Services</strong></td>
<td></td>
</tr>
<tr>
<td>Freestanding ATM Machines</td>
<td>P</td>
</tr>
<tr>
<td>Banks and financial establishments/services</td>
<td>P</td>
</tr>
<tr>
<td>Barber Shops and Beauty Shops</td>
<td>P</td>
</tr>
<tr>
<td>Bed and breakfast establishments</td>
<td>X</td>
</tr>
<tr>
<td>Business support/secretarial services</td>
<td>P</td>
</tr>
<tr>
<td>Car wash</td>
<td>X</td>
</tr>
<tr>
<td>Columbriums and mortuaries</td>
<td>X</td>
</tr>
<tr>
<td>Construction storage (indoor &amp;/or outdoor)</td>
<td>X</td>
</tr>
<tr>
<td>Drive-in and drive-through services</td>
<td>C</td>
</tr>
<tr>
<td>Dry cleaning, retail</td>
<td>P</td>
</tr>
<tr>
<td>Equipment rental yards</td>
<td>X</td>
</tr>
</tbody>
</table>
### Table 5-13 (continued)
#### Commercial Permitted, Conditional and Prohibited Land Uses

<table>
<thead>
<tr>
<th>Land Uses</th>
<th>Commercial Pas 17, 18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government offices</td>
<td>P</td>
</tr>
<tr>
<td>Hotels and motels</td>
<td>P</td>
</tr>
<tr>
<td>Laundry, coin operated</td>
<td>X</td>
</tr>
<tr>
<td>Massage Parlors</td>
<td>X</td>
</tr>
<tr>
<td>Medical services, clinics and labs</td>
<td>P</td>
</tr>
<tr>
<td>Vehicle fueling/service stations (gas &amp; electric)</td>
<td>C</td>
</tr>
<tr>
<td>Professional offices</td>
<td>P</td>
</tr>
<tr>
<td>Public parking</td>
<td>C</td>
</tr>
<tr>
<td>Public utility and safety facilities</td>
<td>P</td>
</tr>
<tr>
<td>Real estate offices</td>
<td>P</td>
</tr>
<tr>
<td>Repair/maintenance of consumer products</td>
<td>X</td>
</tr>
<tr>
<td>Repair and maintenance of motor vehicles</td>
<td>X</td>
</tr>
<tr>
<td>Research and development facilities</td>
<td>P</td>
</tr>
<tr>
<td>Storage, accessory, including self-storage</td>
<td>X</td>
</tr>
<tr>
<td>Veterinary clinics, animal hospitals, grooming</td>
<td>C</td>
</tr>
</tbody>
</table>

### Residential Uses

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Commercial Pas 17, 18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Housing</td>
<td>P</td>
</tr>
<tr>
<td>Elder Care Housing</td>
<td>P</td>
</tr>
<tr>
<td>Assisted Living Facility</td>
<td>P</td>
</tr>
</tbody>
</table>

### Other Uses

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Commercial Pas 17, 18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Utility Facilities</td>
<td>P</td>
</tr>
<tr>
<td>Fire Stations</td>
<td>P</td>
</tr>
<tr>
<td>Telecommunications Antennae/Towers</td>
<td>P</td>
</tr>
<tr>
<td>Day Care Centers</td>
<td>C</td>
</tr>
<tr>
<td>General Retail / Gift Shops (ancillary use)</td>
<td>C</td>
</tr>
<tr>
<td>Restaurants (ancillary use)</td>
<td>C</td>
</tr>
<tr>
<td>Group Homes</td>
<td>X</td>
</tr>
<tr>
<td>Social Service Agency Offices</td>
<td>X</td>
</tr>
<tr>
<td>Rooftop Solar Energy/Water Heating Panels</td>
<td>P</td>
</tr>
<tr>
<td>Electric/Natural Gas Vehicle Fueling Station (ancillary use)</td>
<td>P</td>
</tr>
<tr>
<td>Hydrogen Vehicle Fueling Station (ancillary use)</td>
<td>C</td>
</tr>
<tr>
<td>Temporary Uses ³</td>
<td>T</td>
</tr>
</tbody>
</table>

### NOTES:
1. Use Code: Permitted (P); Subject to Conditional Use Permit (C); Prohibited (X) and Temporary (T).
2. Parking requirements for commercial and/or other uses shall be determined through a parking demand study provided in connection with processing a development application(s) to approve particular uses for implementation on each of these sites.
3. Include such uses as model sales complexes and trailers, construction offices, Christmas tree sales lots, and special events. Temporary uses require a Temporary Use Permit, subject to the requirements of Chapter 17.10B of the Banning Zoning Ordinance, as modified by this Specific Plan.
### Table 5-14
**Commercial Development Standards**

<table>
<thead>
<tr>
<th>Category</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Dimensions</td>
<td></td>
</tr>
<tr>
<td>Minimum Lot Area</td>
<td>6,000 square feet</td>
</tr>
<tr>
<td>Minimum Lot Width</td>
<td>60’</td>
</tr>
<tr>
<td>Minimum Setbacks</td>
<td></td>
</tr>
<tr>
<td>Front Setback</td>
<td></td>
</tr>
<tr>
<td>• Parking</td>
<td>10’</td>
</tr>
<tr>
<td>• Building</td>
<td>20’</td>
</tr>
<tr>
<td>Side Yard</td>
<td></td>
</tr>
<tr>
<td>• Parking adj. to Residential</td>
<td>10’</td>
</tr>
<tr>
<td>• Building adj. to Residential</td>
<td>20’</td>
</tr>
<tr>
<td>• Other</td>
<td>0’</td>
</tr>
<tr>
<td>Street Side Yard</td>
<td></td>
</tr>
<tr>
<td>• Parking</td>
<td>10’</td>
</tr>
<tr>
<td>• Building</td>
<td>20’</td>
</tr>
<tr>
<td>Rear</td>
<td></td>
</tr>
<tr>
<td>• Parking adj. to Residential</td>
<td>10’</td>
</tr>
<tr>
<td>• Building adj. to Residential</td>
<td>20’</td>
</tr>
<tr>
<td>• Other</td>
<td>0’</td>
</tr>
<tr>
<td>Maximum Building Height</td>
<td></td>
</tr>
<tr>
<td>Main Structure</td>
<td>50’</td>
</tr>
<tr>
<td>Others</td>
<td></td>
</tr>
<tr>
<td>Lot Coverage by Buildings</td>
<td>35%</td>
</tr>
<tr>
<td>Parking</td>
<td>Per Chapter 17.28, Parking and Loading Standards, of the Banning Zoning Ordinance</td>
</tr>
</tbody>
</table>
5.5.3 General Commercial – Typical Illustrative Plot

Figure 5.7
General Commercial – Typical Illustrative Plot

Notes: Diagram for illustrative plotting purposes only - Minimum setbacks are illustrated except where noted

William Hezmalhalch Architects
5.6 **ACTIVE OPEN SPACE**

5.6.1 Recreational Permitted Uses

Within the Butterfield Specific Plan, approximately 210 acres have been designated for active recreational uses, within Planning Areas 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35A-F, 36, 37, 38, 39, 62, 63, 64, 65, 66, 67 and 72. The Central Open Space in the Butterfield Specific Plan includes PAs 23, 25, 27, 35A-F, 64 and 66. Neighborhood, Recreation and Community Parks are proposed for the remaining planning areas. Only Planning Areas 21, 23, 25, 35, 39 and 63, as specified in Section 5.6.2 of the Specific Plan, are anticipated to potentially include buildings to house recreational-related uses. Buildings or structures are not allowed in Planning Areas 36, 37 and 38 (SCE easement), portions of Planning Areas 64, 65 and 66 (fault zone setback areas), or in any designated floodways.

Table 5-15 summarizes potential active recreational land uses to be developed within this designation which are permitted by right or which may be conditionally permitted.

*Table 5-15*

**Active Recreational Permitted, Conditional and Prohibited Land Uses**

<table>
<thead>
<tr>
<th>Land Uses</th>
<th>Neighborhood Parks (PA's 22, 24, 26, 28-33, 62, 65, 67, 72)</th>
<th>Neighborhood Recreation Parks (PA's 21, 39, 63)</th>
<th>Community Parks (PA's 36, 37, 38)</th>
<th>Central Open Space / Drainage (PA's 23, 25, 27, 35A-F, 64, 66)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recreational Uses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clubhouses</td>
<td>X</td>
<td>P</td>
<td>X</td>
<td>P</td>
</tr>
<tr>
<td>Community Centers</td>
<td>C</td>
<td>P</td>
<td>X</td>
<td>P</td>
</tr>
<tr>
<td>Interpretive or Visitor Information Centers</td>
<td>X</td>
<td>C</td>
<td>P</td>
<td>C</td>
</tr>
<tr>
<td>Playgrounds</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Buildings/Grounds/Equipment</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Maintenance</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Restroom Facilities</td>
<td>P</td>
<td>P</td>
<td>X</td>
<td>P</td>
</tr>
<tr>
<td>Theatres and Amphitheaters</td>
<td>X</td>
<td>P</td>
<td>X</td>
<td>C</td>
</tr>
<tr>
<td>Trails</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Passive Open Space</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Habitat Conservation Areas</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Parks, Sports Courts and Fields</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Lakes</td>
<td>X</td>
<td>X</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Commercial Recreation Facilities</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
</tr>
</tbody>
</table>

City of Banning

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### Table 5-15 (continued)
Active Recreational Permitted, Conditional and Prohibited Land Uses

<table>
<thead>
<tr>
<th>Land Uses</th>
<th>Neighborhood Parks (PA's 22, 24, 26, 28-33, 62, 65, 67, 72)</th>
<th>Neighborhood Recreation Parks (PA's 21, 39, 63)</th>
<th>Community Parks (PA's 36, 37, 38)</th>
<th>Central Open Space / Drainage (PA's 23, 25, 27, 35A-F, 64, 66)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Uses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative Offices</td>
<td>X</td>
<td>P</td>
<td>X</td>
<td>P</td>
</tr>
<tr>
<td>Fire Stations</td>
<td>P</td>
<td></td>
<td>X</td>
<td>P</td>
</tr>
<tr>
<td>Telecommunications Antennae/Towers</td>
<td>X</td>
<td>C</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Day Care Centers</td>
<td>P</td>
<td></td>
<td>X</td>
<td>C</td>
</tr>
<tr>
<td>Swimming Pool/Sports Club</td>
<td>P</td>
<td></td>
<td>X</td>
<td>C</td>
</tr>
<tr>
<td>Additional Parking</td>
<td>X</td>
<td></td>
<td>X</td>
<td>P</td>
</tr>
<tr>
<td>Rooftop Solar Energy/Heating Panels</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Electric Vehicle Fueling Stations</td>
<td>P</td>
<td></td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Hydrogen Vehicle Fueling Station</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Stables</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Plant Nurseries and Agriculture</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>P</td>
</tr>
<tr>
<td>Locally Adaptive Farming</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>C</td>
</tr>
<tr>
<td>Grazing of Animals</td>
<td>X</td>
<td>X</td>
<td>C</td>
<td>X</td>
</tr>
<tr>
<td>Water/Drainage Facilities</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
</tbody>
</table>

**NOTES:**
1. Use Code = Permitted (P), Subject to Conditional Use Permit (C), Prohibited (X) and Temporary (T).
2. Parking requirements for recreational and related uses shall be determined through a parking demand study provided in connection with processing a development application(s) to approve particular uses for implementation on each of these sites.
3. In addition to the parking determined to be required for PA's 35 & 39 which is expected to be provided within PA 39, overflow parking for permitted uses as well as special events may be provided on PA's 36, 37 and 38.

Land uses permitted within the Parks or Open Space planning areas shall be permitted in accordance with the use and development standards provisions of Section 5.6. Applications for approval of conditional uses shall be submitted to and analyzed by the City of Banning Planning Division to assure that the application is consistent with the intent of the Butterfield Specific Plan. A conditional use permit, if required, shall be subject to the provisions of the Banning Zoning Ordinance. If required, a land use permit shall be subject to the provisions of the Banning Zoning Ordinance.

#### 5.6.2 Community Recreation Development Standards

Community recreation allows for recreational uses including clubhouses and other recreational structures that may be found in a park or community recreation complex. The design of these recreation facilities will be compatible with the surrounding residential character and are considered to be the cornerstone of the community. The standards found in Table 5-16 below shall be applied to buildings that could potentially
be erected in Planning Areas 21, 23, 25, 27, 35A-F, 39, 63, and 64. Landscaping provided to accompany community recreation facilities will be governed by Chapter 4, Design Guidelines, of the Butterfield Specific Plan.

Table 5-16
Community Recreation Standards

<table>
<thead>
<tr>
<th>Category</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Dimensions</td>
<td></td>
</tr>
<tr>
<td>Minimum Lot Area</td>
<td>5,000 square feet</td>
</tr>
<tr>
<td>Minimum Lot Width</td>
<td>60'</td>
</tr>
<tr>
<td>Minimum Setbacks</td>
<td></td>
</tr>
<tr>
<td>Front Setback</td>
<td></td>
</tr>
<tr>
<td>• Parking</td>
<td>10'</td>
</tr>
<tr>
<td>• Building</td>
<td>20'</td>
</tr>
<tr>
<td>Side Yard</td>
<td></td>
</tr>
<tr>
<td>• Parking</td>
<td>10'</td>
</tr>
<tr>
<td>• Building</td>
<td>20'</td>
</tr>
<tr>
<td>Street Side Yard</td>
<td></td>
</tr>
<tr>
<td>• Parking</td>
<td>10'</td>
</tr>
<tr>
<td>• Building</td>
<td>20'</td>
</tr>
<tr>
<td>Rear</td>
<td></td>
</tr>
<tr>
<td>• Parking</td>
<td>10'</td>
</tr>
<tr>
<td>• Building</td>
<td>20'</td>
</tr>
<tr>
<td>Maximum Building Height</td>
<td></td>
</tr>
<tr>
<td>Main Structure</td>
<td>35'</td>
</tr>
<tr>
<td>Others</td>
<td></td>
</tr>
<tr>
<td>Lot Coverage by Building</td>
<td>35%</td>
</tr>
<tr>
<td>Parking</td>
<td>To be determined through a parking demand study provided during development review</td>
</tr>
</tbody>
</table>

5.7 PASSIVE OPEN SPACE

5.7.1 Passive Open Space

The Natural and Landscaped Open Space consists of natural vegetation and hillsides (Planning Areas 34 and 73), landscaped SCE easements (Planning Area 74), fuel modification setback areas (Planning Areas 69 and 75), and drainage facilities Planning Areas 19 and 71). This open space will also include such amenities as trails, vista points, and re-landscaped biological mitigation areas.

Tables 5-17 summarizes potential passive recreational land uses respectively to be developed within this designation which are permitted by right or which may be conditionally permitted.

Land uses permitted within the Natural / Landscape / Easement or Drainage planning areas shall be permitted in accordance with the following use and development

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standards provisions. Applications for approval of conditional uses shall be submitted to and analyzed by the City of Banning Planning Division to assure that the application is consistent with the intent of the Butterfield Specific Plan. A conditional use permit, if required, shall be subject to the provisions of the Banning Zoning Ordinance. If required, a land use permit shall be subject to the provisions of the Banning Zoning Ordinance.

Table 5-17
Passive Recreational Permitted, Conditional and Prohibited Land Uses

<table>
<thead>
<tr>
<th>Land Uses</th>
<th>Natural / Landscape/Easement (PAs 34, 69, 73, 74, 75)</th>
<th>Drainage (PA's 19, 71)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recreational Uses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clubhouses</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Community Centers</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Interpretive or Visitor Information Centers</td>
<td>C</td>
<td>X</td>
</tr>
<tr>
<td>Playgrounds</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Restroom Facilities</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Theatres and Amphitheatres</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Trails</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Passive Open Space</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Lakes</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Habitat Conservation Areas</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Sports Courts and Fields</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Other Uses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water/Drainage Facilities</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Telecommunications Antennae/Towers</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Campgrounds</td>
<td>C</td>
<td>X</td>
</tr>
<tr>
<td>Swimming Pool/Sports Club</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Stables</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Grazing of Animals</td>
<td>C</td>
<td>C</td>
</tr>
</tbody>
</table>

Permitted (P); Subject to Conditional Use Permit (C); Prohibited (X) and Temporary (T)

5.7.2 Passive Open Space Development Standards

All recreation facilities shall be designed in accordance with the design requirements of the City of Banning or any other involved maintenance entity.

All recreational facilities will provide parking in accordance with City standards as applicable.
All recreation and park facilities will be constructed to meet current State and Federal safety and accessibility standards.

All active and passive recreational facilities will be landscaped and, where necessary, irrigated in a manner conducive to the type of plant material and landscape setting.

Landscaping within Passive Open Space areas will be further governed by Chapter 4, Design Guidelines, of the Butterfield Specific Plan.

The project is subject to fees for neighborhood and community park facilities, in accordance with the City’s Parkland Development Fees. These fees shall be paid or facilities provided in lieu of fees for each dwelling unit constructed within the Specific Plan. Credit against these fees shall be granted by the City for all public parkland and improvements provided by the developer of Butterfield.

5.8 PUBLIC FACILITIES

5.8.1 Public Facility Development Standards

The California State Architect, in coordination with the Banning and Beaumont Unified School Districts respectively, has authority over design and permitting requirements for public school construction within PAs 20 and 68 of the Specific Plan area. No permits are required from any local government entity, including the City of Banning. Therefore, no development standards for school facilities are promulgated within Section 5 of this Specific Plan.

Planning Area 70 is a 4.2 acre site for the City of Banning’s use as an electrical substation facility. This City substation site facilitates interconnection with SCE’s transmission lines because of its location just north and adjacent to the east-west easement that runs through the mid-portion of the project site. The City’s own technical requirements for this facility will apply.

Approximately 2 to 5 acres of the south end of Planning Area 11, adjacent to Wilson Street and Highland Home Road, may be developed as a satellite wastewater treatment as an alternative for project wastewater treatment. A change to the Chromium drinking water standard has also occurred since the Butterfield Specific Plan approval in 2012. The City has identified this site also as a potential site for Chromium treatment facilities. The development of wastewater and water treatment facilities will comply with California state law and with the plan check requirements of the County Environmental Health Department and/or the City of Banning. The maximum height allowed on all structures associated with these treatment facilities will be 35 feet. The minimum structure setback will be 20 feet from all property lines. Screen walls and landscaping are allowed in the setback.

The Butterfield Project Development Agreement calls for the development of a site within the project for a public Community Recreation Center and proposes that PA 39 could be the site for such a center. The 3 acre Planning Area 39 site is reserved as a community park site in the Specific Plan and can be used as site for a community recreation center for the City of Banning if the City determines this is appropriate. Other areas in the Specific Plan that allow for development may also be used for the proposed community
recreation center site, including the south end of PA 11 as indicated in the Development Agreement.

PA 72 located on the proposed northerly extension of Highland Home Road has been identified as a potential fire station site (1.6 acres) option, if the City determines that an additional station is needed and that this location is appropriate, otherwise the site is designated for park use.
Attachment 5

Ordinance 1450 Approving the Butterfield Specific Plan and associated conditions of approval
ORDINANCE NO. 1450

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA AMENDING THE DEUTSCH SPECIFIC PLAN AND SUPERSEADING IT WITH THE BUTTERFIELD SPECIFIC PLAN AND ADOPTING CONDITIONS OF APPROVAL AND MAKING FINDINGS IN SUPPORT THEREOF

WHEREAS, the City of Banning received an application on August 20, 2007 for an amendment to the Deutsch Specific Plan to provide zoning regulations for the Butterfield Specific Plan including a General Plan Amendment and Zone Change, amendment to the Development Agreement, and approval of an EIR to allow the development of up to 5,387 dwelling units (937.4 acres of residential), a golf course and open space (253.9 acres), parks (66.5 acres) and other open space (108.4 acres), two school sites (23.0 acres), and existing utilities substation facility (4.2 acres), a fire station site (1.6 acres) and backbone roadways (113.6 acres). 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; designation of a site for a potential waste water treatment facility; various on-site and off-site conveyance pipelines for sewer, water, storm drain; a multi-purpose detention basin, and drainage improvements to Pershing Channel and Smith Creek immediately upstream and downstream of the 1,543-acre project site to accommodate the mixed-use master planned community.

Project Applicant: Pardee Homes (Authorized Agent Mike Taylor, Vice President of Pardee Homes, 10880 Wilshire Boulevard, Suite 1900, Los Angeles, CA 90024)

Property Owners: Pardee Homes owns 1,522 acres within the Butterfield Specific Plan.
Highland Springs Country Club Owners Association owns the 21-acre property that is located at the northwest corner of the Butterfield Specific Plan (APN: 408-060-006, 007 & 008 portion).

Project Location: Northeast Corner of Highland Springs Avenue and Wilson Street

APN Number: The project includes 34 parcels: 408-060-006, 007 & 008 (por.); 408-030-001 & 005; 408-120-001 through 020, 022, 024, 025, 027 & 033; and 531-080-013 & 014.

Specific Plan Size: 1,543 Acres

WHEREAS, Pardee Homes requests an amendment to the Deutsch Specific Plan by superseding it with the zoning regulations for the Butterfield Specific Plan so that future development within the project site conforms to the Butterfield Specific Plan.
WHEREAS, the Butterfield Specific Plan and Conditions of Approval (Exhibit “A”) including its companion entitlement applications for General Plan, Zone Change, and Development Agreement amendment, and Water Supply Assessment are considered a Project pursuant to CEQA Guidelines sections 21065.

WHEREAS, Government Code Sections 65450 through 65454 establish the authority for the adoption 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 Butterfield 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 an amendment to the Deutsch Specific Plan and superseding it with the Butterfield Specific Plan as referenced herein, including its companion applications for General Plan Amendment No. 11-2501 and Zone Change No. 11-3501, and Development Agreement amendment, 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 residents who are located within 300’ of the Project site and 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 three (3) public scoping meetings. Two (2) scoping meetings were held on October 16, 2007, from 2 p.m. to 4 p.m. and from 6 p.m. to 8 p.m. Another scoping meeting was held on October 22, 2007, from 6 p.m. to 8 p.m.

WHEREAS, a Final EIR (SCH No. 2007091149), including Draft EIR 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 6, 2011, to July 21, 2011. The NOA was published in the Press Enterprise and 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 the residents, who live within
300' radius of the Project boundaries, groups and organizations, and members of the public who requested to be on the mailing list of the Project.

WHEREAS, prior to the close of the comment period, the City held a public workshop on June 21, 2011 to provide information and answer questions from interested members of the public regarding the Project and the Draft EIR.

WHEREAS, during the public workshop of June 21, 2011, the City received questions and comments mostly on traffic, among other questions about the Project. In response to the oral comments on traffic, the City held another workshop on July 14, 2011 to respond to questions from members of the public regarding the traffic analysis report and conclusions.

WHEREAS, the City received 31 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 Butterfield 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 Friday, February 24, 2012. The Final EIR was made available at City Hall Community Development Counter, the Banning Public Library, and the City’s website.

WHEREAS, on March 7, 2012, 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 and certification of the Final EIR to the City Council.

WHEREAS, on March 16, 2012, 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 March 27, 2012, 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 make the following findings and based thereon and the administrative record does ordain as follows:

SECTION 1. ENVIRONMENTAL FINDINGS

A Final Environmental Impact Report [EIR] (SCH No. 2007091149), including Draft EIR and Mitigation Monitoring and Report Program 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. 2012-24, as referenced herein, provides additional environmental findings for the Project.

SECTION 2. REQUIRED FINDINGS FOR THE BUTTERFIELD SPECIFIC PLAN

Finding No. 1: The proposed Specific Plan is consistent with the General Plan, as amended.

Findings of Fact: The proposed Specific Plan is partially inconsistent with the existing General Plan. The current General Plan Land Use and Zoning designations for the project site is Deutsch Specific Plan. The proposed General Plan Amendment No. 11-2501 and Zone Change No. 11-3501 will change the land use designations and zoning of the project site from Deutsch Specific Plan to Butterfield Specific Plan which will make the Butterfield Specific Plan consistent with the General Plan Land Use and Zoning. With approval of the General Plan Amendment No. 11-2501 and Zone Change No. 11-3501, the proposed Butterfield Specific Plan would be consistent with the intent of the General Plan through designation of the site as Specific Plan. Consistency of the Butterfield Specific Plan pertaining to the proposed project is assessed in Section 7.0 of the Butterfield Specific Plan dated November 21, 2011 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 Butterfield Specific Plan includes the following information:

(1) The distribution, location, and extent of land uses, including residential, commercial, open space and trails, golf course, a site for fire station, a public community center, and sites for two elementary schools. Specifically, Section 1.0, pages 1-1 to 1-17 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. Furthermore Sections 3.0 through 3.1.2, pages 3-1 through 3-16 of the Specific Plan provide detailed development plans for each of the land uses. Detail information of the distribution, location, and extent of the parks and open space development is provided in Section3.6 through 3.6.6, pages 3-85 through 3-98.

(2) The distribution, location and 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 3.2 through 3.5.5, pages 3-17 through 3.84 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 3.7.1 on pages 2-97 through 3-99.

(3) Standards and criteria for which the development will proceed; and Specifically, the following sections of the Butterfield Specific Plan provides standards and criteria for which the development will proceed:

a. Section 3.7.2, pages 3-99 through 3-105 provide phasing for each development
b. Sections 4.1 through 4.13.9, pages 4-1 through 4-139 provide detail development design guidelines for the community, neighborhood, and individual buildings and how they are to be developed.
c. Sections 5.0 through 5.8.1 provide specific details development regulations for each of the land use districts and how they are to be developed.

(4) A program for implementation including regulations, programs, public works projects and financing measures necessary to carry out the project; Specifically, Section 6.0 through 6.2.2, pages 6-1 through 6-4 of the Butterfield 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 Community Facility District which is described in detail in Section 3.7.3 on page 3-105. Details of the finding of facts are included in Ordinance No 1450.

(5) A Statement of Relations of the Specific Plan to the adopted General Plan. Specifically, Section 7.0 of the Butterfield Specific Plan findings of consistency with the General Plan as referenced herein, the proposed General Plan Amendment and Zone Change 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 of the Plan 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. 2007091149] was prepared for the project. The EIR identified potentially significant effects on the environment and on the 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 and that which the impacts cannot be mitigated when there are economic, social, or other considerations that make it infeasible to mitigate the significant effects of the projects. 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. 2012-24).

Based upon the Statement of Overriding Considerations, sixteen (16) areas of Public Benefit related to the proposed Butterfield 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 project site is 1,543 acres and the majority of the site is located on flat land. The project site has been 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 development.

The proposed Project would continue a pattern of development that is already in place to the south, southeast, west and northwest of the site, providing desirable linkages between existing developments, extending
and improving the City's circulation system, and providing additional parks, schools, and other public facilities that would serve both proposed and existing land uses in the area. The Butterfield Specific Plan is proposing to substantially increase the open space to 428.8 acres, compared to the previously designated 268 acres of open space in the previously approved Deutsch Specific Plan. The Project would not physically divide an established community since the Project site is currently vacant and undeveloped.

As part of the community input and public review process for the preparation of the Specific Plan and at the request of the residents who live on Mockingbird Lane, the developer modified the lot sizes for the area that is located on the east side of the Highland Home Road and north of the “F” Street. Planning Area 50 of the Butterfield Specific Plan (refer to Exhibit 3.1, Land Use Plan, in the Specific Plan) which is the area to the north of the Mockingbird Lane has been designated as Low Density Residential, with an minimum average lot size of 7,500 sq. ft. Furthermore, starting at the back of lots along the existing lots on the north side of Mockingbird Lane, there would be approximately 390 ft. of open space between the rear property lines of lots located on Mockingbird Lane and the southern boundary of Planning Area 50.

Access to and from the project has been evaluated consistent with the General Plan policies and the County Master Plan of Roadways. Internal circulation systems have been reviewed to provide automobile, low speed electric vehicles, pedestrian, and bikeway connections within the project site. Additionally, each of the neighborhoods have been reviewed and provided two points of access for public safety vehicles during an emergency. Necessary utilities that include water, sewer, gas, electricity, cable, and telephone that will serve the development will be provided through the implementation of the Specific Plan.

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: The project site is 1,543 acres and is adequate and suitable to develop with the proposed land uses which are described in detailed in the Butterfield Specific Plan as incorporated herein by reference. The land use plan for the project takes into consideration the physical constraints and opportunities of the site including surrounding land uses, topography, geology, seismic hazards, soils, groundwater, drainage and flood control channels – Smith Creek and Pershing Channel, paleontology and archeology, biology, circulation and access, and utilities as described in detailed in Sections 2.1 through 2.7.2 of the Specific Plan.
The proposed Project would continue a pattern of development that is already in place to the south, southeast, west and northwest of the site, providing desirable linkages between existing developments, extending and improving the City’s circulation system, and providing additional parks, schools, and other public facilities that would serve both proposed and existing land uses in the area. The Butterfield Specific Plan is proposing to substantially increase the open space to 428.8 acres, compared to the previously designated 268 acres of open space in the previously approved Deutsch Specific Plan. The Project would not physically divide an established community since the Project site is currently vacant and undeveloped.

The location of the various land uses has been distributed and placed to provide compatibility within the neighborhoods in the project and the surrounding area, including the neighborhood on the north side of the Mockingbird Lane as this neighborhood provided input as to compatibility of the previous lot sizes which were smaller compared to lot sizes in their neighborhood. Specifically, to improve compatibility with the existing residential development on the north side of Mockingbird Lane, the Project has designated Planning Area 50 (refer to Exhibit 3.1, Land Use Plan, in the Specific Plan) as Low Density Residential, with an minimum average lot size of 7,500 sq. ft. Furthermore, starting at the back of lots along the existing lots on the north side of Mockingbird Lane, there would be approximately 390 ft. of open space between the rear property lines of lots located on Mockingbird Lane and the southern boundary of Planning Area 50.

Access to and from the project has been evaluated consistent with the General Plan policies and the County Master Plan of Roadways. Internal circulation systems have been reviewed to provide automobile, low speed electric vehicles, pedestrian, and bikeway connections within the project site. Additionally, each of the neighborhoods have been reviewed and provided two points of access for public safety vehicles during an emergency. Necessary utilities that include water, sewer, gas, electricity, cable, and telephone 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 ACTIONS.

The City Council hereby:

1. Adopts the Conditions of Approval attached hereto as Exhibit “A”.
2. Adopts Ordinance No. 1450 approving an amendment to the Deutsch Specific Plan and superseding it with the Butterfield Specific Plan.

SECTION 4. PUBLICATION

The Mayor shall sign this Ordinance and the City Clerk shall attest thereto and shall within fifteen (15) days of its adoption cause it, or a summary of it, to be published in the Record Gazette, a newspaper published and circulated in the City. Thereupon, this Ordinance shall take effect thirty (30) days after the adoption and be in effect according to the law.

PASSED, APPROVED AND ADOPTED this 10th day of April, 2012.

Don Robinson, Mayor
City of Banning

ATTEST:

Marie Calderón, City Clerk
City of Banning, California

APPROVED AS TO FORM AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP
City of Banning

Ord No. 1450
CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1450 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 27th day of March, 2012 and was duly adopted at a regular meeting of said City Council held on the 10th day of April 2012, by the following vote, to wit:

AYES: Councilmembers Botts, Franklin, Machisic, Mayor Robinson

NOES: None

ABSENT: None

ABSTAIN: None

(Note: Councilmember Hanna recused from voting)
(Conflict of Interest)

Marie Calderon, City Clerk
City of Banning, California
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. 2012-03. An amended 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 Butterfield Specific Plan.** This approval includes development of up to 5,387 new residential units on approximately 937.2 acres, a minimum of 36 and up to 88 acres of commercial/office, 253.9 acres of golf course or open space, 66.5 acres of park, 70.1 acres of natural/landscape/easement, 38.3 acres of drainage and open space areas, potentially two or more elementary school sites, as determined needed by the school districts, a 4.2 acre utility substation site, and approximately 113.6 acres of backbone roads as shown in the table below (“Project”).

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Gross Acres</th>
<th>% of Area</th>
<th>Dwelling Units</th>
<th>% of Dwelling Units</th>
<th>Average Gross Density</th>
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<tr>
<td>Residential 1</td>
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<td>Low Density (LDR) 0-5 DU/AC</td>
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<td>35.0%</td>
<td>2,222</td>
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<td>High Density (HDR) 11-18 DU/AC</td>
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<td>Residential Subtotals</td>
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<td>60.8%</td>
<td>5,387</td>
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<td>Open Space</td>
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<td>Golf Course/Drainage/Open Space</td>
<td>253.9</td>
<td>16.5%</td>
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<td>Parks</td>
<td>66.5</td>
<td>4.3%</td>
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<td>Natural/Landscape/Basement</td>
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<td>Drainage/Open Space</td>
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<td>Open Space Subtotals</td>
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<td>Schools 2</td>
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<td>Utility Substation – Existing</td>
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<td>113.6</td>
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<tr>
<td>SPECIFIC PLAN TOTALS</td>
<td>1,543</td>
<td>100.0%</td>
<td>5,387</td>
<td>100.0%</td>
<td>3.5</td>
</tr>
</tbody>
</table>

1 Alternate Residential use of School sites at up to 10 DU/AC is provided.
2 Alternate Residential use or mixed use of the Commercial sites is provided for with PA 17 at up to 4.5 DU/AC (LDR) and PA 18 at up to 10 DU/AC (MDR). The overall DU total for the Specific Plan shall not exceed 5,387 DU. In addition, Commercial use is allowed as an alternate use for all or a portion of Residential PAs 3, 4 and 5 (51.4 acres combined), and Park PAs 26 and 27 (0.9 acres combined).
3 The Specific Plan allows for cluster development and Active Adult residential within certain Planning Areas, as described in detail within the Specific Plan (Section 3.1.1.1, Residential).
EXHIBIT “A”
(to Ordinance 1450)

2a. The Phasing Plan. The phasing and timing requirements for the construction of all public improvements shall be in accordance with the Master Phasing Plan and the developed pursuant to the Development Agreement. Although the overall timing of Project development remains subject to the Developer’s discretion based on market conditions, 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. The Master Phasing Plan will contain the following elements:

   a. Project Phases. The Developer must achieve certain goals and objectives in terms of Project development in order to keep the Agreement in place for the full term of the agreement, as set forth in the Development Agreement. The development of the Project will be reviewed at each Ten Year Anniversary Review. The Development Goals are as follows:

<table>
<thead>
<tr>
<th>Phase I (10th Anniversary)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Development will begin near the corner of Highland Springs and Wilson unless otherwise agreed.</td>
<td></td>
</tr>
<tr>
<td>1,200 Residential Units to be constructed.</td>
<td></td>
</tr>
<tr>
<td>Commercial retail development of a minimum 23-acre retail-commercial site at the corner of Highland Springs and Wilson (Planning Area 18).</td>
<td></td>
</tr>
<tr>
<td>Outlet for Smith Creek and other commercial, recreation and/or emergency center improvements.</td>
<td></td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Phase II (20th Anniversary)</th>
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<tr>
<td>1,600 residential units to be constructed.</td>
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<table>
<thead>
<tr>
<th>Phase III (30th Anniversary)</th>
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<tbody>
<tr>
<td>1,400 residential units to be constructed.</td>
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<th>Phase IV (40th Anniversary)</th>
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<td>1,187 residential units to be constructed.</td>
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Within each Phase, as defined above, more detailed phasing plans for each subdivision shall be developed in accordance with Section 6.5 of the Development Agreement, and are subject to the City’s review and approval as conditions of approval of the Tract or Subdivision Map and, as approved, shall become a part of the Existing Approvals.

   b. Development of Phasing Plans During Subdivision Map Approvals. The phasing and timing requirements for the construction of all development including public improvements shall generally be in accordance with the Development Approvals and applicable provisions of the Development Agreement (For example, Sections 6.2, 6.4, 6.5, 7.3, 8.0, etc.) and be developed over time in accordance with the following process:

   i. Master Phase Tract Map. Each Phase shall have a Master Tract Map which shall be submitted for financing and conveyance purposes only and no improvements may be constructed nor shall development be permitted pursuant to such approved Tract Map except through submission and approval of tentative and final Subdivision Maps. Concurrently with processing of the Master Tract Map, all tentative Subdivision Maps for the Tract shall be submitted and processed.

   ii. Subdivision Maps. Each Master Tract Map shall designate future subdivisions within the Tract and the order of subdivision development to the extent that the need for development of public infrastructure dictates the logical progression of subdivision development. Each Subdivision Map 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. Generally all
streets, lighting, curbs and gutters, sidewalks, parkway landscaping, asphalt concrete paving, traffic signs and stripping, medians, landscaping, drainage facilities, storm drains, water lines, sewer lines, utility lines, trails and other facilities within the subdivision must be completed before release of any occupancy permits within the subdivision. All conditions which require the provision of Backbone Infrastructure and Subdivision Improvements for the area covered by each tentative Subdivision Map must be satisfied, either through performance or through the provision of suitable security, prior to the approval and recordation of the Subdivision Map.

iii. Backbone Infrastructure. Attached as Exhibit “A” is a list of Backbone Infrastructure, including roadways, detention basins, water lines, sewer lines, recycle water lines, utilities, storm drains and drainage facilities, treatment plants, power substations, community parks, community centers, fire stations, and other infrastructure serving area-wide populations. Backbone Infrastructure serves multiple subdivisions, and may need to be constructed in the initial phase of a particular Tract, or even before certain Tracts can be developed. The detailed phasing of construction will be provided through the Master Tract and Subdivision Phasing Plans. Exhibit A outlines the Backbone Infrastructure and when in the development of various Tracts it must be constructed.

3. Precedence of Conditions. If any of the Conditions of Approval alter a commitment made by the Developer in the Butterfield 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.

4. Compliance with City Codes and Conditions. Development of the property shall conform substantially to the approved Butterfield 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 Butterfield Specific Plan shall be subject to the City of Banning Zoning Code.

5. 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 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 and Beaumont Unified School Districts.

   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.

6. **Mitigation Measures and Mitigation Monitoring Program.** The owner, Developer, or successor in interest shall comply with the Mitigation Measures and Mitigation Monitoring Plan as approved in the Final Environmental Impact Report (SCH# 2007091149) as certified by the City Council on March 27, 2012 and incorporated herein by reference. The owner, Developer, or successor in interest shall pay for the cost of implementing and monitoring the mitigation measures.

7. **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.

8. **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.

9. **Property Management Association.** The owner, Developer, or successor in interest shall form a Property Management Association for maintenance of common areas within the commercial/office component of the Project.

10. **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.
11. **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.

12. **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.

13. **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. 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.

14. **Tentative Tract Map(s) or Tentative Parcel Map(s).** The Developer or successor in interest shall submit Master Tentative Tract Maps for each Planning Area and concurrently therewith tentative subdivision map(s) and/or tentative parcel map(s) for review and approval by the Planning Commission and City Council. The maps shall be developed consistent with the development standards as established in the Butterfield Specific Plan and the Development Agreement.

15. **Addresses.** All numbered lots shall have addresses assigned by the Building and Safety Department.

16. **Project Phasing.** The Project phasing shall be in conformance with the approved Butterfield Specific Plan and the approved Final EIR. A master phasing plan(s) will be developed as per the Development Agreement. Projects subject to a building permit shall have all required on and off-site improvements that will facilitate the ability to safely occupy or utilize said construction, required for each phase, completed and approved prior to final inspection of any buildings or structures. The term “phase” as used here shall mean the following: “The block of building permits drawn on less than the whole Project” or “A plan of building construction which indicates blocks of construction of less than the whole Project”. In each phase, the installation of any off-site improvements shall be sufficiently completed so as to assure protection from storm or drainage run off, a safe and drivable access for fire and safety, and the ordinary and intended use of the buildings or structures. The phasing plans shall be further developed as provided in the Development Agreement.

17. **Recycled Water.** All recycled water service is subject to compliance with all rules, regulations, and conditions of all regulatory agencies and payment for all charges and fees in effect at the time service is applied for.

18. **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.

19. **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").

20. **Disclosure Statement.** A Disclosure Statement shall be submitted to the City for review and approval and made available to all prospective buyers of homes within the development.

21. Such a Disclosure Statement shall at least include the disclosure that every transferee of property within the Project site shall, upon transfer, also provide to any transferee the notice of future Southern California Edison (SCE) improvements recited below in writing. This notice may be contained in any form of agreement or contract; however, the notice need be given only once in any transaction. The transferor shall acknowledge delivery of the notice and the transferee shall acknowledge receipt of the notice. The notice shall read as follows:

"NOTICE OF SOUTHERN CALIFORNIA EDISON (SCE) RIGHT-OF-WAY FUTURE PROJECTS

You are hereby notified that the property you are acquiring an interest in is located within close proximity to Southern California Edison right-of-way easement. SCE expects to apply to the California Public Utilities Commission (CPUC) for a Certificate of Public Convenience and Necessity to construct electrical facilities associated with the West of Devers Upgrade Project (or similarly defined project), as well as any other future utility project(s) that require construction of new or upgraded facilities within the SCE right-of-way easement."

22. **School District Fees.** The Developer shall provide certification from the appropriate school district as required by California Government Code Section 53080(b) that any fee, charge, dedication or other form or requirement levied by the governing board of the district pursuant to Government Code Section 53080(a) has been satisfied.

23. **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 adopted fee schedule, as amended or superseded prior to final inspection.

24. **Twenty-one (21) Acre Property.** The 21-acre property that is part of the Butterfield Specific Plan and designated Planning Area 43B is for the establishment of pre-zoning for the property if it was to be proposed for annexation to the City of Banning in the future, such as by its property owners; however, it is not planned for annexation at this time. If the property is annexed into the City; the property shall be annexed into the Community Facilities District as established.
25. **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.

26. **Bicycle Path and Neighborhood Electric Vehicle and Walking Trails.** The development shall provide bicycle paths/lanes, neighborhood electric vehicle/golf cart lanes, and walking trails in substantial conformance as shown in Exhibit 3.4 of the Butterfield Specific Plan. The dedication shall occur in accordance with the phasing plan in the Development Agreement.

27. **Fire Department Conditions of Approval.** The Developer shall comply with the conditions in the transmittal from the Fire Department which is under contract from the County through California Department of Forestry.

27a. **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 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.

28. **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, 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 1.10 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.
29. **Community Center/Emergency Site.** An approximately 6-acre site shall be dedicated to the City of Banning for a community or emergency housing center within either Planning Areas 35 or 39 or the site shall be provided within the surplus sites that may include the optional satellite waste water treatment plant site that is located at the northwest corner of Highland Home Road and Wilson Street. [Ultimate size of site will be adjusted to not adversely affect development area of surrounding property] The site shall be graded and be provided with a finished pad. Utilities will be stubbed to the property according to the requirements of the Public Works department. In the event that the City requests the Community Center within any of the residential Planning Areas that allow for such uses, per the provisions stated within the Specific Plan, the Owner and City shall enter into an agreement for the acquisition of the otherwise developable land. This site would be in addition to the parks and open space sites that are shown on Exhibit 3.1B of the Specific Plan. The dedication shall occur in accordance with the Phasing Plan in the Development Agreement. Developer shall not receive development fee credit for the value of the site, and may be asked to construct improvements in accordance with the Development Agreement.

30. **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.”

**PARKS, RECREATION, AND OPEN SPACE**

31. **Parks, Recreation and Open Space.** The Land Use Plan includes development of a total of 66.5 acres of neighborhood parks, neighborhood recreation centers, community parks, and an 18-hole golf course or open space as depicted in Table 3-3 and described in Section 3.6 of the approved Butterfield Specific Plan. All dedications and improvements shall be in accordance with the Phasing Plan in the Development Agreement except as specifically provided herein.

32. **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 neighborhood parks and utility easement parks (park improvements which will go in beneath the SCE easement area in the middle of the project in Planning Areas 36, 37 and 38), Planning Areas 22 through 34, 36 through 38, 62, 64 through 67 and 72, no later than the issuance of the final Certificate of Occupancy for residential units within the adjacent subdivisions. Active use park improvements may not be placed in the SCE easement parks if the Director and Commissions believe there are issues of public health with electro magnetic radiation. A subdivision separated from a park by a street shall not be considered to be adjacent to the park. The City and Developer shall, mutually, determine what constitutes the adjacent subdivision if a park adjoins more than one subdivision. Upon completion of each neighborhood park, the City shall after the 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.

b. The City’s Parks Master Plan identifies the need in the Project for a community recreation and/or emergency response center (the “Center”), and this is even more necessary if the Golf Course is not developed. This Center would be on an approximately six (6) acre parcel in Planning Area 39 in lieu of the golf clubhouse, or alternatively could be located as a part of a community park or other available site including in Planning Area 71, or in lieu of the waste water treatment plant site in Planning Area 11. Depending on the site selected, the six (6) acres may be reduced so as to not adversely affect the development area of adjacent parcels from the development areas shown in the Specific Plan. The Center is contemplated as a 30,000 sq. foot facility. The plan for the Center shall be included in the Park Master Plan and the site plan shall be processed at the time the chosen Planning Area is developed, subject to approved Phasing Plans, and provided that if the City chooses to put the Center in Planning Area 11, it may be developed as part of Phase I provided that Developer shall satisfy the Phase I obligation by providing a developed site, and need not fund the construction of the improvements if there are insufficient DIF’s for credit. The Developer shall dedicate the site to City without charge. If developed as part of a park it shall be developed at the time required for parks in Section 8.1.1 of the Development Agreement. The Center may include emergency operations and shelter components, and will also include appropriate landscaped grounds and facilities as specified in the Master Plan. Except as provided in this Condition, the Center may be developed and constructed by Developer in the same manner as for the waste water treatment plant.

33. **Golf Course Alternative.** Any alternative plan for the development of the golf course open space within Planning Areas 35 and 39 shall be subject to the City’s discretionary Design Review process as provided for in the Specific Plan and City Code. The determination on the golf course use shall be in accordance with the Phasing Plan in the Development Agreement except as specifically provided herein.

34. **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 City Code.

35. **Design Review for Parks, Recreation, and Open Space.** Review for improvement of applicable parks, recreation and open space for each development phase shall be approved by the Community Services Department and Community Development Department prior to recording of final subdivision maps for that phase, in accordance with the phasing schedule and procedures specified in these conditions of approval. Nothing herein shall prevent submission of plans for review by the appropriate commission. Generally, parks and open space shall include youth oriented amenities and designed as illustrated in the Conceptual Park Plans in the Butterfield Specific Plan. The Community Recreation Center in Planning Areas 21 and 63 could include amenities such as a clubhouse, tennis courts, pool and, basketball courts. The 34-acre land in Planning Area 71 that is reserved for the detention basin/lake shall be provided with looped multi-use trails adjacent to the basin as deemed acceptable by the Public Works Department with picnic areas and shade structures. Plans for the amenities within Planning Area 71 shall be submitted for review and approval prior to the issuance of grading permit for the lake. The detention basin/lake shall be constructed consistent with any changes made to Smith Creek and in accordance with the Phasing Plan in the Development Agreement.
36. **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 recording 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.

37. **North Basin within Planning Area 71.** The Developer, owner, or successor in interest shall develop amenities around the basin for recreational purposes to include multi-purpose trails, picnic shelter(s) with picnic tables and benches for seating. Maintenance of the amenities shall be provided by the Community Facilities District (CFD), Landscape Maintenance District (LMD), or other private funding mechanism.

38. **Installation of Plant Material.** Landscaping and permanent irrigation facilities shall be installed with street improvements including landscaped median on Highland Springs Avenue and Wilson Street in accordance with the approved Butterfield 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 subject to agreed upon phasing between the City and the Developer and in accordance with the Development Agreement.

39. **Content of Plans.** Landscape Improvement plans shall conform to the concepts, features, and standards established in the approved Butterfield Specific Plan and the conditions enumerated herein, and shall be prepared by a licensed landscaped architect.

40. **Water Conservation.** In accordance with the Banning Municipal Code, all landscape and irrigation plans shall provide drought resistant and/or native vegetation, automatic irrigation systems which minimize runoff, and, where feasible, a separate irrigation system for the conveyance and distribution of recycled water.

41. **Recycled Water.** All landscaping within the golf course open space shall be irrigated with non-potable water. The Developer shall install infrastructure for a recycled water system on site (conveyance and distribution facilities), as approved by the City and the Environmental Health Department. The Phasing Plan shall be in accordance with the Development Agreement. Developer will work with City Public Works Department if special watering needs are required by golf course operator. (See Condition 61 Below)

42. **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 thereon.
SITE AND ARCHITECTURAL DESIGN

43. **Architectural Styles.** The architectural styles for the Project shall be consistent with the conceptual architectural design as approved in the Butterfield Specific Plan. Any major significant deviations from the architectural styles in the Butterfield Specific Plan are subject to review and approval of a Design Review by the Planning Commission.

44. **Community Entry Monument Program and Project/Tract Identification.** Consistent with the Butterfield 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 Butterfield 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 Butterfield 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.

45. **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.

46. **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.

47. **Commercial Sites.** Developer shall use its best efforts in planning for the development of the commercial sites within the Butterfield Specific Plan to include a big-box retailer such as Target or equivalent major tenant and as the commercial sites produce tax revenue to City and are important to alleviate the fiscal impact of the Project. Developer shall develop the commercial sites as more specifically described in the Development Agreement. In particular, Planning Areas 17 and 18 shall be developed for a big box user such as Target, Lowes, Costco, or equivalent, and shall be developed in the first phase of the Project per the Phasing Plan in the Development Agreement. The development on the commercial sites shall be subject to Design Review and approval by the Planning Commission.

48. **Multi-Family Sites.** Plans for the development of the multi-family sites shall be subject to review and approval by the Planning Commission through discretionary Design Review or other entitlement as necessary to comply with the Butterfield Specific Plan as approved and the City's Municipal Code as applicable.

49. **Active Adult Community.** Plans for the development of the active adult community within the Specific Plan shall be subject to review and approval by the Planning Commission in accordance with the approved Butterfield Specific Plan and the City's Municipal Code as applicable.

50. **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.
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.

51. **Window Treatments.** Per Sections 4.5.2.1 and 4.8.2 within the Specific Plan, building facades abutting a public street, tract boundary, or a downhill slope having an elevation change in excess of 20 feet shall provide elevation enhancements which could include window treatments such as shutters, awnings, or similar on the facades.

52. **Garage Door(s).** Garage Doors shall be provided with various door designs and colors that are compatible with the design of each home.

53. **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.

54. **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.

55. **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.

56. **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.

57. **Setbacks.** The minimum setbacks shall be as set forth in the Butterfield Specific Plan.

58. **Lighting for the Garages and Porches.** Light fixtures for the garage exteriors and porches shall be provided with decorative light fixtures.

59. **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**

60. **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.

61. **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.

62. **Review and Approval of Landscape Architecture Documents.** All landscape architecture documents shall be submitted to Community Development Department for review and approval.

63. **Recycled Water for the Golf Course Open Space and Common Landscaping Irrigation.** All common open space landscape irrigation shall use reclaimed or recycled water, where available. The golf course must use recycle water for general irrigation of the fairways. The greens may use potable water.
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 all laws. 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.

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.

Clear Sight Triangles. All vehicular sight line triangles shall be shown on the landscape construction planting plans.

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 Butterfield 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.

Landscape Inspection. All landscape inspections shall be requested at least 48 hours in advance.

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 Section 4.3.2 of the Butterfield Specific Plan dated November 21, 2011. All residential landscaping shall conform to Chapter 17.32, Landscape Standards of the Banning Municipal Code. 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 Section 4.6.2. If there are
conflicts between the landscaping requirements of the Banning Municipal Code versus the Butterfield Specific Plan, the requirements in the Butterfield Specific Plan shall prevail.

70. **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**

71. **Landscape Maintenance District ("LMD").** The City shall require the Developer to participate in a landscape and maintenance district for the maintenance of landscaping within public rights of way or easements in a form approved by City Attorney.

72. **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.

73. **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.

74. **Improvement Plans.** The following improvement plans shall be prepared by a Civil Engineer licensed by the State of California; and, submitted to the Engineering Division for review and approval. A separate set of plans shall be prepared for each line item listed below and for each phase of the Project area. Unless otherwise authorized in writing by the City Engineer, the plans shall utilize the minimum scale specified and shall be drawn on 24" x 36" Mylar film. Plans may be prepared at a larger scale if additional detail or plan clarity is desired (Note: the Developer may be required to prepare other improvement plans not listed here pursuant to improvements required by other agencies and utility purveyors).

- **Rough Grading Plans**  
  1" = 40' horizontal
  (All applicable conditions of approval shall be reproduced on last sheet of set)

- **Haul Route Plans**  
  1" = 40' horizontal

- **Clearing Plans**  
  1" = 50' horizontal
  (Include fuel modifications zones)

- **Erosion Control & Storm Water**  
  Pollution Prevention Plan (SWPPP)  
  1" = 40' horizontal
  (Note: a, b, c & d shall be reviewed and approved concurrently)
75. **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.

76. **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.

77. **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.

78. **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.

79. **Granting of Easements.** The Developer shall not grant any easements over any property subject to a requirement of dedication or irrevocable offer of dedication to the City of Banning or the Riverside County Flood Control and Water Conservation District (RCFCD) unless such easements are expressly made subordinate to the easements to be offered for dedication to the City or RCFCD. Prior to granting any of said easements, the Developer shall furnish a copy of the proposed easements to the City Engineer for review and approval.

80. **Transitions.** All street improvement design shall provide pavement and lane transitions per City standards for transition to existing street sections.

81. **Driveway Grades.** Driveway grades shall not exceed eight percent unless approved by the City Engineer.

82. **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.

83. **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 the Development Agreement.

84. **Recycled Water Usage.** All lots on final maps for common open space, parks, and golf courses shall be served by a recycled water system. Recycled water shall be used where available for the Project golf course, parks and common open space. Should recycled water become available from City sources, the proposed Project shall have the capability to connect to these facilities and
such connection shall be made within 90 days of request therefore by City. This condition shall be contained in the CC&Rs.

85. **School Site Grading.** Should the Banning and Beaumont Unified School Districts and the Project proponent come to an agreement on the conveyance of land within the Specific Plan to the Districts, the Developer shall cause that land to be rough-graded prior to conveyance and prior to issuance of the last building permit for the phase in which the site is located.

86. **Road Design.** Roadways shall be designed as depicted in the Specific Plan. The Developer shall be responsible for the acquisition of all necessary rights of way for streets within and adjacent to the Project, subject to Gov’t Code section 66462.5 and the Development Agreement. Additionally, the road specifications and exhibits in the Specific Plan shall be modified as follows, and these changes shall be deemed to apply to all other Project Approvals, as they were made by the Council at the public hearing on the approval of the Project:

A. **Highland Home Road Widening.** Notwithstanding that the Specific Plan outlines two potential cross sections for the roadway, Alternative B shall not be used and Highland Home Road shall be constructed to the specification shown in Alternative A on Exhibit 3.3B.

B. **Highland Home Road Extension and Connection to Highland Springs Road.** The Specific Plan suggests that Planning Area 43B might be annexed to Banning and that Highland Home Road might be extended and connect with Highland Springs Road at Brookside Ave. Such an alignment would require that the roadway cross the existing golf course of the Highland Springs Golf Club. The City does not want to interfere with the existing Golf Course, nor wish that right of way be acquired through the Golf Course. Either the extension of Highland Home Road must swing southerly below the Golf Course and connect with Highland Springs Road, or potentially a connection can be designed from the North Loop Collector through Planning Areas 41 or 42 and connecting with Highland Springs Road. This connection point will be North of F Street and South of City of Banning/County of Riverside boundary. The configuration shall be in a design recommended by the Directors of Community Development and Public Works, and approved by the City Manager, and meet all appropriate traffic circulation and design standards.

**ELECTRIC UTILITY DEPARTMENT**

87. **Electric Installations.** The Developer shall be responsible for all trenching, backfill, and compaction of electric installations in accordance with the phasing plan as provided in the Development Agreement.

**II. PRIOR TO THE ISSUANCE OF GRADING PERMITS**

**COMMUNITY DEVELOPMENT DEPARTMENT**

88. **Retaining Walls.** Plans for the construction of retaining wall plans shall be reviewed and approved by the Building and Safety and Planning divisions.

**PUBLIC WORKS DEPARTMENT**

89. **Flood Risks.** If any of the development’s lots are located within a mapped flood plain, the lots are subject to flood insurance rates (premiums) until such time that a map revision has been accomplished removing the lot from the flood plain.
90. **Construction Access.** The Developer shall submit a construction access plan and schedule for the development of the Project for Community Development Director and Public Works Director 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.

91. **Grading Standards.** Grading of the subject property shall be in accordance with the City of Banning grading standards, and accepted grading practices as reviewed and approved by the City Engineer. Final grading plans shall be in substantial conformance with the approved Specific Plan.

92. **Preconstruction Meetings.** A preconstruction meeting shall be held for all participating field personnel, including all appropriate City staff, prior to the commencement of construction activities.

93. **Soils/Geologic Reports.** Soils reports and geological reports shall be prepared by a qualified engineer and geologist, respectively, licensed by the State of California to perform such work. Said report shall be reviewed and approved by the City Engineer. The Developer shall be required to comply with all recommendations of said reports.

94. **Other Permitting Agencies.** Prior to the issuance of any grading, construction, or building permit by the City, the Developer shall obtain any necessary clearances and/or permits if required from the following agencies:

- Fire Marshal
- Public Works Department (Grading Permit, Improvement Permit)
- City Water, Sewer and Electric Departments
- Community Development Department
- Riverside Co. Flood Control and Water Conservation District
- Banning / Beaumont Unified School Districts
- California Water Quality Control Board (CWQCB)
- California Department of Fish and Game
- US Fish and Wildlife Service
- US Army Corps of Engineers
- SCAQMD

The Developer is responsible for all requirements of the permits and/or clearances from the above listed agencies. When the requirements include approval of improvement plans, the Developer shall furnish proof of such approvals when submitting those improvement plans for City approval.

95. **Utility Systems.** All utility systems including gas, electric, telephone, water, sewer, storm drain, and cable TV shall be provided underground, with easements provided as required, designed and submitted for review and approval. Said items shall be constructed in accordance with City codes and the utility provider. Telephone, cable TV, and/or security systems shall be pre-wired.

96. **Conferred Rights.** In accordance with the approved plans, the Developer shall acquire or confer property rights necessary for the construction or 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 emergency services, maintenance, utilities, storm drain facilities, or temporary construction purposes including the reconstruction of essential improvements. All agreements shall be in a form approved by the City Attorney. Dedications shall be made on the map or by recorded instrument prior to issuance of grading permits.
97. **Drainage Study.** The Developer shall submit a Drainage Study with hydrologic and hydraulic analysis for developed and undeveloped (existing) conditions to the Engineering Division for review and approval for each phase of the Project. The study and analysis shall be prepared by a civil engineer licensed by the State of California. Drainage design shall be in accordance with the Butterfield Specific Plan, the EIR Mitigation Measures, and the Banning Master Drainage Plan adopted by Riverside County Flood Control and Water Conservation District (RCFC), RCFC Hydrology Manual, and standard plans and specifications. The 10-year storm flow shall be contained within the street curbs, and the 100-year storm shall be contained within the street right-of-way; when this criteria is exceeded, additional drainage facilities shall be designed and constructed to the satisfaction of the Director.

98. **Flood Area.** Portions of the site are located in a Flood Area as identified in the current Flood Insurance Rate Map. The Developer is responsible for providing a certification by a registered professional engineer or architect demonstrating to the satisfaction of the Director that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

99. **Natural Drainage.** 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. The Project shall accept and convey storm flows from the adjacent property to the north and east. Drainage design shall be consistent with condition #97.

100. **Stormwater Management and Discharge Controls.** The Developer shall comply with Chapter 13.24 “Stormwater Management and Discharge Controls” of the Banning Municipal Code (BMC); California Building Code related to excavation and grading; and, the State Water Resources Control Board's orders, rules, and regulations.

101. 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 Developer 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.

102. **SWPPP.** The Developer's SWPPP shall include provisions for all of, including but not limited to, the following Best Management Practices ("BMPs"):
- Temporary Soil Stabilization (erosion control).
- Temporary Sediment Control.
- Wind Erosion Control.
- Tracking Control.
- Non-Storm Water Management.
- Waste Management and Materials Pollution Control.

103. **Erosion and Sediment Control BMPs.** All erosion and sediment control BMPs proposed by the Developer shall be approved by the City Engineer prior to any onsite or offsite grading, pursuant to this Project. The approved SWPPP and BMPs shall remain in effect for the entire duration of the Project construction until all improvements are completed and accepted by the City. The Developer 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.

104. **Grading and Excavations in the Public Right-of-Way.** 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. A grading permit shall be obtained prior to commencement of any grading activity. 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 California Regional Water Quality Control Board Colorado River Basin Region Order No. R7-2008-0001.

105. **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/bumps, 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**

106. **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.

107. **Electric Utility Backbone Infrastructure.** Prior to the issuance of grading permit, electric utility infrastructure backbone plans for this Project must be completed.

**III. PRIOR TO FILING FINAL MAPS**

**PUBLIC WORKS DEPARTMENT**

108. **Bordering Roadways.** Roadways bordering and fronting the specific plan area on one side shall be designed and constructed, with right-of-way dedication offered, a minimum half width in substantial conformance with the approved Butterfield Specific Plan, including Section 3.2, Circulation Plan, Exhibit 3.2, Vehicular Circulation Plan, Exhibits 3.3 A&B, Roadway Cross Sections, and Section 3.2.5, Circulation Plan Development Standards, as well as in conformance with City of Banning requirements and standards as determined by the Public Works Director or designee. These roadways include Highland Springs Avenue, Wilson Street, and Highland Home Road (between Wilson Street and Future “F” Street). Improvements shall include street lighting, curb and gutter, sidewalk, parkway landscaping, asphalt concrete paving, traffic signs and striping, medians, and landscaping where required, and any transitions. Developer’s geotechnical engineering shall provide the design of the pavement section based upon the Caltrans method. Prior to filing of the final subdivision maps, the Developer(s) will work with the City of Banning Public Works Department to identify phasing and timing requirements for the design and construction of all roadway improvements in substantial conformance with the Specific Plan and Phasing Plan per the Development Agreement as determined by the Public Works Director or designee. Roadways bordering the Specific Plan area shall be constructed at minimum half width in conjunction with adjacent development as it occurs in the Specific Plan area. City master planned roadway improvements that are part of a city improvement fee program or will serve other separate development that are designed and constructed by the
Butterfield Specific Plan Developer(s) shall be subject to reimbursements and fee credits in accordance with the provisions of the Development Agreement.

109. Internal Roadways. Roadways internal to the specific plan area shall be designed and constructed, with right-of-way dedication offered, full width in substantial conformance with the approved Butterfield Specific Plan, including Section 3.2, Circulation Plan, Exhibit 3.2, Vehicular Circulation Plan, Exhibits 3.3B, C & D Roadway Cross Sections, and Section 3.2.5, Circulation Plan Development Standards, as well as in conformance with City of Banning requirements and standards as determined by the Public Works Director or designee. Improvements shall include street lighting, curb and gutter, sidewalk, parkway landscaping, asphalt concrete paving, traffic signs and striping, medians, and landscaping where required, and any transitions. Developer’s geotechnical engineering shall provide the design of the pavement section based upon the Caltrans method. Prior to filing of the final subdivision maps, the Developer(s) will work with the City of Banning Public Works Department to identify phasing and timing requirements for the design and construction of all roadway improvements in substantial conformance with the Specific Plan and Phasing Plan per the Development Agreement as determined by the Public Works Director or designee. Roadways interior to the Specific Plan area shall be constructed full width in conjunction with adjacent development as it occurs in the Specific Plan area. City master planned roadway improvements that are part of a City improvement fee program or will serve other separate development that are designed and constructed by the Butterfield Specific Plan Developer(s) shall be subject to reimbursements and fee credits in accordance with the provisions of the Development Agreement. Prior to recordation of the first parcel or tract map, the Developer shall form, to the satisfaction of the City Engineer and the City Attorney, a homeowners’ association, assessment district, landscaping and lighting district, or other vehicle, for the maintenance of all common areas, including landscaped parkways within public rights of way, in perpetuity.

110. National Flood Insurance Program. A portion of the proposed Project is in a flood plain, therefore, in accordance with the requirements of the National Flood Insurance Program and related regulations and Riverside County regulations.

A. A flood study consisting of HEC-2 calculations, cross sections, maps and other data shall be prepared to the Satisfaction of the Federal Emergency Management Agency (FEMA) and the City of Banning for the purpose of recalculating the floodway and revising the effective Flood Insurance Rate Map(s) of the Specific Plan site. The submittal of the study shall be concurrent with the initial submittal of the related Project improvement plans. City approval of any final maps within the flood plain or unmapped area of Specific Plan shall not be given until a Conditional Letter of Map Revision (CLOMR) has been received.

B. Projects outside the established Flood Plain or unmapped area of the Specific Plan may be approved for development by the City, provided that studies required by Conditions of Approval for the Specific Plan or subsequent parcel/tract maps demonstrate to the satisfaction of the City Engineer and/or Riverside County Flood Control and Water Conservation District, that acceptable flood protection for said project(s) exist or will exist after installation of measures identified by the study. The Developer acknowledges that existing downstream drainage infrastructure is inadequate to accommodate additional flows and that additional flows shall be retained onsite.

111. Street Improvement Plans. Developer shall submit Street Improvement Plans, prepared by a licensed professional engineer, to the Engineering Division for review and approval. Construct street improvements, consisting of new A.C. pavement, landscaped areas within the parkway between the curb and property line and in any open spaces, sidewalks where required, curb,
gutter, driveway approaches, handicap access ramps, streetlights, traffic signs, striping, street name signs and roadway striping, etc. The Geotechnical Engineer shall determine the traffic index and R value for pavement design on all the streets.

112. **Water Improvement Plans.** Developer shall submit Water Improvement Plans to the Public Works Department for review and approval. Waterlines to be constructed to and across property boundaries of the Project per the City of Banning Standard Specifications. During phasing of the Project, all waterlines are to be looped for each phase (two points of connection).

113. **Hydraulic Analysis.** Developer shall submit a hydraulic analysis, prepared by a licensed Civil Engineer, showing that the Project or Project phase will meet all required water pressures and fire flows.

114. **Landscape Sprinklers.** Automatic sprinkler systems shall be installed within the landscaped parkway and median in the right of way on any street.

115. **Approval by City Engineer.** All public improvement plans shall be reviewed and approved by the City Engineer.

116. **City Easement Dedications.** Developer shall offer to dedicate to the City of Banning easements to maintain any slopes supporting public right-of-ways. Maintenance easements shall extend 10 feet beyond the toe of slope. All easements shall be in a form approved by the City Attorney.

117. **Potable Water.** A potable water system for the Specific Plan area shall be designed and constructed in substantial conformance with the approved Butterfield Specific Plan, including Section 3.5.1, Water Service Plan Description, Exhibit 3.8, Conceptual Potable Water Plan, and Section 3.5.5, Water Plan Standards, as well as in conformance with the City of Banning Water Master Plan, and other requirements and standards as determined by the Public Works Director or designee. Proposed tentative subdivision maps in the Specific Plan area shall include preliminary in-tract water system layouts. Prior to filing of final subdivision maps, the Developer(s) will 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 Specific Plan backbone master water system improvements, including required off-site improvements, in substantial conformance with the Specific Plan and Phasing Plan per the Development Agreement and as determined by the Public Works Director or designee. City master potable water system improvements designed and constructed by the Butterfield Specific Plan Developer(s) shall be subject to reimbursements and fee credits in accordance with the provisions of the Development Agreement.

118. **Recycled Water Distribution System.** A recycled water distribution system for the Specific Plan area shall be designed and constructed in substantial conformance with the approved Butterfield Specific Plan, including Section 3.5.2, Recycled Water Service Plan Description, Exhibit 3.9A, Conceptual Onsite Recycled Water Plan, and Section 3.5.5, Water and Sewer Plan Standards, as well as is in conformance with the City of Banning requirements and standards as determined by the Public Works Director or designee. Proposed tentative subdivision maps in the Specific Plan area shall include preliminary in-tract recycled water system layouts. Prior to filing of final subdivision maps, the Developer(s) will 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 master recycled water system improvements, necessary to serve the Specific Plan area in substantial conformance with the Specific Plan and Phasing Plan per the Development Agreement and as determined by the Public Works Director or designee. The source and supply of recycled water for the Butterfield Specific Plan, when available, and which may include the City’s proposed Main Treatment Plant Upgrade or a potential satellite treatment
plant, as well as required conveyance infrastructure, shall be determined by the Public Works Director or designee. City master recycled water system improvements designed and constructed by the Butterfield Specific Plan Developer(s) shall be subject to reimbursements and fee credits in accordance with the provisions if the Development Agreement.

119. **Sewer Collection System.** A sewer collection system for the Specific Plan area shall be designated and constructed in substantial conformance with the approved Butterfield Specific Plan, including Section 3.5.4, Sewer Service Plan Description, Exhibit 3.11A, Conceptual Onsite Sewer Plan, and Section 3.5.5, Water and Sewer Plan Standards, as well as in conformance with the City of Banning requirements and standards as determined by the Public Works Director or designee. Proposed tentative subdivision maps in the Specific Plan area shall include preliminary in-tract sewer system layouts. Prior to filling of final subdivision maps, the Developer(s) will work with the City of Banning Public Works and Wastewater Utilities Departments to identify phasing and timing requirements for the design and construction of all master sewer system improvements, including required off-site improvements, necessary to serve the Specific Plan Area in substantial conformance with the Specific Plan and City of Banning Master Sewer Plan and Phasing Plan per the Development Agreement, as determined by the Public Works Director or designee. City master sewer system improvements designed and constructed by the Butterfield Specific Plan Developer(s) shall be subject to reimbursements and fee credits in accordance with the provisions of the Development Agreement.

120. **Wastewater Treatment.** The ultimate treatment of wastewater (sewer) from the Butterfield Specific Plan area, as well as required conveyance infrastructure, shall be determined by the Public Works Director or designee. Wastewater treatment facilities may include the City’s Main Treatment Plant or a satellite treatment plant. Required wastewater infrastructure may include existing city systems and/or proposed new systems in substantial conformance to those described in the Specific Plan and the City of Banning Master Sewer Plan. City master sewer system improvement designed and constructed by the Butterfield Specific Plan Developer(s) shall be subject to reimbursement and fee credits in accordance with the provisions of the Development Agreement.

121. **Sewer Check Valves.** A sewer check valve shall be provided for each lot with a finished pad elevation lower than the rim elevation of the immediate up-stream sewer manhole.

122. **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.

A. 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.

EXHIBIT "A"
(to Ordinance 1450)
B. 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.

123. Driveways. Access drives to the public right-of-way shall be restricted to those approved by the City Engineer as shown on the approved plans.

124. Inspection Fees. Required Public Works Inspection fees shall be paid in accordance with the fee schedule in effect at time of time of scheduling and the Development Agreement; water and sewer connection fees including frontage fees and water meter installation charges shall be paid on a per lot basis at the time of building permit issuance in accordance with the fee schedule in effect at that time and the Development Agreement; a plan storage fee shall be paid for any engineering plans that may be required in accordance with the fee schedule in effect at the time the fee is paid; a traffic mitigation fee shall be paid in accordance with the Development Agreement; 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 if necessary for the proposed Project.

125. Government Code Section 66499. Security for the construction of public improvements including grading may be submitted in accordance with Government Code Section 66499 and shall be as follows:

- Faithful Performance Bond - 100% of estimated cost
- Labor and Material Bond - 100% of estimated cost
- Monumentation Bond - $7,500.00

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.

126. Right-of-Way Documents. Developer 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 final map approval.

127. Scale for Street Maps. Maps of the proposed subdivisions drawn at 1"=200' scale showing the outline of the streets including street names shall be submitted to the City to update the city atlas map.

128. Final Map Form. An original Mylar of the final map (after recordation) shall be provided to the City for the record files.

129. Monumentation Records. A record of all street centerline monument ties shall be submitted to the Engineering Division upon completion of improvements or prior to release of Monumentation Bond.

130. Right-of-Way Acquisitions. Right-of-way or easement acquisitions necessary to implement any portion of the maps, including public improvements, shall be obtained by the Developer at its sole expense prior to the City's consideration of the final map which encompasses the particular improvement. The Developer shall notify the City in writing no more than 120 days and no less than 60 days in advance of filing the final map related to the acquisition if City assistance is
needed to complete the acquisition pursuant to Government Code Section 66462.5 and shall document in writing all acquisition efforts. Funds in an amount of 100% of the estimated acquisition costs shall be deposited with the City in accordance with a deposit agreement to cover appraisal, right of way agent, and legal fees and costs incurred to secure the necessary property. Additional deposits will be made if needed and City will document the expenditure of all funds.

131. **Existing Plus Project Improvements.** If not constructed by the City or others, the Developer shall construct road improvements identified in Table 4.13-9, Summary of Future Improvements ("Existing plus Project" improvements in the City of Banning only), of the Butterfield Specific Plan Draft Environmental Impact Report (June 3, 2011) and as described in the Traffic Impact Analysis for the Butterfield Specific Plan, prepared by LSA Associates Inc. (September 15, 2010). These improvements include portions on Highland Springs Avenue in the City of Beaumont, between I-10 and Brookside, but exclude locations that are deemed by the affected jurisdiction(s) to be infeasible due to impacts of ROW acquisition. If constructed by the Developer, the cost of these improvements shall be credited against applicable City fees, and/or shall be eligible for reimbursement agreements with the City and/or third parties in accordance with the Development Agreement. The Improvements listed in DEIR Table 4.13-9 shall be consistent with the General Plan Circulation Element. (FEIR Mitigation Measure TRF-1). Improvements shall be constructed in accordance with the Phasing Plan in the Development Agreement.

132. **Validation Report.** As part of each Final Tract Map, or appropriate group of maps, the Developer shall prepare a TIA Validation Report (TVR) based on the criteria provided herein for review and approval by the City Engineer. Final Tract Map approvals resulting in less than 500 p.m. peak hour trips (Exempt Maps) shall not require a TVR unless the cumulative total of prior approved Exempt Maps exceeds 1,000 p.m. peak hour trips since the last TVR.

The TVR shall identify which of the Existing Plus Project improvements identified in Table 4.13-9 of the Butterfield Specific Plan Draft Environmental Impact Report (June 3, 2011) and the Traffic Impact Analysis for the Butterfield Specific Plan, prepared by LSA Associates Inc. (September 15, 2010), are required to be constructed for the respective Final Tract Map, to ensure adequate emergency access and satisfactory levels of service. "Existing plus Project" improvements in the City of Banning identified in an approved TVR shall be conditions of Final Tract Map approval. To the extent that any of the improvements mentioned above are included in a fee program, the cost for those improvements, if constructed by the Developer, will be eligible for fee credits in accordance with the Development Agreement.

The ongoing traffic impact assessment program will be based on the p.m. peak-hour trip threshold. The Final Tract Maps’ total number of p.m. peak hour trips will be established based on the trip generation listed in Table 4.13-7, Project Trip Generation, of the Butterfield Specific Plan Draft Environmental Impact Report (June 3, 2011). If a portion of commercial development and some residential development is included in the Final Tract Map, the total number of trips generated by each use (commercial and residential) will be calculated for the p.m. peak hour and compared to a predefined threshold.

Recognizing the variety of land use options, overlays and permitted or conditionally permitted uses, the TVR will also be used to verify, as the Project builds out, that the Project’s total peak hour trips are consistent with the assumptions in the Project TIA. (FEIR Mitigation Measure TRF-2).

133. **Offsite Traffic Improvement Plans.** Improvement plans shall be prepared for each Project-related offsite traffic improvement and approved by the City Engineer. Improvement plans shall incorporate the following considerations, as applicable:
- Obtain encroachment permit(s) from the applicable jurisdiction(s) for offsite improvements; Through creative design techniques, where determined appropriate and consistent with City policy, modify roadway geometry to reduce potential impacts to existing developed areas (such as reduced lane widths, reduced or eliminated medians, reduced turn lane transition zones, and/or shifting intersection approaches to widen intersection quadrants where associated impacts would be reduced);
- Maintain access for existing residences and businesses at all times;
- Replace landscaped areas within the affected parcel and along the parcel frontage wherever practical;
- Assist the affected property owner in re-stripping affected parking areas and/or reconfiguring affected driveways to avoid or offset improvement-related impacts;
- Follow applicable Project EIR mitigation measures related to biological resources (i.e., BIO-1 through BIO-5 of the Butterfield Specific Plan Environmental Impact Report), with respect to minimizing loss of native vegetation, replacement or relocation of mature trees, use of native and/or drought tolerant vegetation in new landscaped areas, and ensuring consistency with applicable MSHCP and regulatory agency permitting provisions; and
- Compensate the affected property owner based on fair market valuation of the acquired ROW in accordance with applicable local, State and federal regulations. (FEIR Mitigation Measure TRF-3).

134. **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 Butterfield Specific Plan Draft Environmental Impact Report (June 3, 2011). (FEIR Mitigation Measure TRF-4).

**IV. PRIOR TO THE ISSUANCE OF BUILDING PERMIT**

**COMMUNITY DEVELOPMENT DEPARTMENT**

135. **Alternative Street Accommodations.** If the City of Beaumont elects not to pursue the Highland Home Road connection to Brookside Avenue, or Riverside County does not approve, the Project Developer would be required to redistribute traffic via proposed F Street in the Butterfield Specific Plan area by constructing additional turning lanes at the intersections of Highland Springs Avenue/F Street and Highland Home Road/F Street (which are intersections located within the Project boundary to meet City LOS standards).

a) If requested by the City and after full discretionary review and approval, the developer will complete interim improvements to Highland Springs Avenue between Ramsey Street and the I-10 Freeway. These improvements may include synchronization of traffic signals along Highland Springs Avenue, relocation of traffic signals, closing and relocation of Joshua Palmer Way and the restriping and repaving of Highland Springs Avenue. The City will use its best efforts to coordinate with the City of Beaumont an agreement to reimburse a portion of the improvements either through the appropriate transportation fee credits or other mechanism.

136. **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. If Owner would like to propose architecture that is not depicted in or consistent with the Design Guidelines, the approval will be subject to both Planning Director and Planning Commission Approval.

137. 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 Highland Springs Avenue, Wilson Street, and Highland Home 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 Channel.

138. Walls & Fences. Prior to issuance of building permits, the Developer shall submit and obtain approval from the Community Development Department of block wall or vinyl fence plans. These plans shall be consistent with intent of the Butterfield Specific Plan.

139. 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. (See also Condition No. 19)

PUBLIC WORKS DEPARTMENT

140. Sewer Capacity. No building permits shall be issued unless the Public Works Director or designee determines that all on- and off-site sewer and water facilities exist with sufficient capacity necessary and reliably to serve the proposed construction are available or will be constructed as a part of the Project, and will continue to be available during the life of the Project.

141. Undergounding Utilities. All utility systems including gas, electric, telephone, water, sewer, and cable TV shall be provided for underground, with easements provided as required, and designed and constructed in accordance with City codes and the requirements of the utility provider. Telephone, cable TV, and/or security systems shall be pre-wired. All necessary easements shall be dedicated and granted to the necessary party with evidence provided to City.

142. Rough & Precise Grading Plans. Rough and precise grading plans shall be submitted to the City Engineer for review and approval. Precise grading plans shall include perimeter walls with top of walls 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.

143. Lot Pad Certification. The Developer shall provide to the City Engineer a lot pad certification stamped and signed by a qualified civil engineer or land surveyor. Each pad certification shall list the pad elevation as shown on the approved grading plan, the actual pad elevation and the differences between the two, if any. Such pad certification shall also list the relative compaction of the pad soil.

144. Water Conservation Plan. The Developer shall prepare a water conservation plan to reduce water consumption in the landscape environment in compliance with the City of Banning’s landscape standards in the Municipal Code and all applicable current city and state codes, 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 ground-cover, a low percentage of turf coverage (limited to 25% of the planted area), permeable paving and water conserving irrigation techniques and systems. A low water-using drought tolerant plant includes species suited to our climate, requiring less water in order to grow well.

145. **Fire Hydrants.** Fire hydrants shall be installed within and on the Project boundaries as per the approval plans, at a 250’ maximum spacing.

146. **Fire Flow Calculations.** The Developer shall provide fire flow calculations for the Project to the City and construct the necessary facilities to meet those flows for the Project to the satisfaction of that Director.

147. **Water Connection Fees.** Developer shall pay the current required Water Connection Fees. Fees shall be paid per EDU (EDU is based upon meter size required). Sewer Connection Fees shall be paid per EDU (EDU is based upon the estimated quality and quantity of discharge), and payment of current required Water Meter Installation Charges for each building pad in accordance with the fee schedule in effect at the time the fees are paid and the Development Agreement. Also, Developer shall pay all current water and sewer frontage fees and recycled/irrigation water fees, if applicable, and in accordance with the fee schedule in effect at the time the fees are submitted and the Development Agreement.

**ELECTRIC UTILITY DEPARTMENT**

148. **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.

149. **Electricity Easements.** Developer shall dedicate all easements for electric facilities installation/maintenance, etc.

150. **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.

**V. PRIOR TO THE ISSUANCE OF CERTIFICATE OF OCCUPANCY.**

**PUBLIC WORKS DEPARTMENT**

151. **Form of Plans.** The Developer shall furnish the City with reproducible record drawings on Mylar of all improvement plans that were approved by the City Engineer.

152. **Damaged Improvements.** Any public improvements damaged during the course of construction shall be replaced to the satisfaction of the City Engineer, or his/her designee.

153. **Testing.** All required public improvements for the Project shall be completed, tested, and approved by the Engineering Division.

154. **Landscape Sprinklers.** Automatic sprinkler systems and landscaping shall be installed within the street parkways. The systems shall include landscape controllers, separate water meters, and
electric meters, and plantings as approved by the Community Development Director. Landscaping plans and specifications shall be reviewed and approved by the City Engineer.

155. **Landscaping.** 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 Developer 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.

156. **Street Signs.** Street name signs and traffic control devices including traffic legends and traffic striping shall be installed, or relocated in accordance with Caltrans Standards and as shown on the approved plans, and/or as directed by the City Engineer.

157. **Intersection Improvements.** Developer shall construct required intersection improvements including traffic signals. The Developer may request a Reimbursement Agreement for the design and construction of the improvements in this condition. The Reimbursement Agreement is subject to prior review and approval by the City Attorney. The Developer shall bear the cost of the review.

158. **Monuments.** Monuments and center line ties shall be certified and submitted to the City Engineer for review and approval.

**ELECTRIC UTILITY DEPARTMENT**

159. **Electric Utility Materials.** The Developer shall provide install all conduits, vaults, and other materials associated with electric facility installations (except cables and their terminations).

160. **Streetlights.** The Developer shall install, complete and test streetlight poles and conduits.

161. **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.

162. **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.

163. **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.
CITY OF BANNING FIRE SERVICES
STANDARD CONDITIONS OF APPROVAL
As amended for the proposed Pardee Project located at Highland Springs/West Wilson Street

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.

FIRE DEPARTMENT DEVELOPER FEES:

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

CITY OF BANNING BUSINESS LICENSE AND PROOF OF INSURANCE:

All contractors, subcontractors etc. are required to obtain a City of Banning Business license prior to submitting plans or starting construction.

CODE COMPLIANCE:

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.

PLAN SUBMITTAL:

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.

SPRINKLER SYSTEMS REQUIRED:

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.

With the adoption of the 2010 codes, all residential homes shall be protected with fire sprinkler systems.

SPRINKLER AND ALARM 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.

SPRINKLER AND ALARM SYSTEM FEE SCHEDULE:

Inspections - Fire Department: per the current rate per hour, per person. (One-hour minimum)
Additional fees as charged by the designated Fire Protection Engineering Firm.
Plan Checks - Fire Department: per the current rate per hour, per person. (One-hour minimum) Additional fees as charged by the designated Fire Protection Engineering Firm.

**SPRINKLER SYSTEM UNDERGROUND:**

No fire sprinkler work shall be started prior to issuance of the permit.

The minimum size for water supply to the base of the riser shall be six (6) inches for commercial systems.

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.

The Water Department shall approve all plans involving water main service.

**FIRE HYDRANTS:**

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.

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.

Spacing of fire hydrants shall comply with CFC Appendix C and the City of Banning Public Works Standards. (Maximum 250 feet between hydrants)

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.

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.

**WATER SUPPLY:**

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)

**FIRE DEPARTMENT ACCESS:**

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.

Minimum clearances or widths may be increased when the minimum standards are not adequate for Fire Department access.

Surfaces shall be designed and maintained to support the imposed loads of fire apparatus (75,000gyw). 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.
Minimum unobstructed width shall be 20 feet.

Minimum unobstructed vertical clearance shall not be less than 13 feet 6 inches.

Minimum turning radius shall be 42 feet.

All dead-end access roads in excess of 150 feet shall have approved provisions for turning around of fire apparatus.

Maximum grade shall be established by the Banning Fire Marshal's office.

Vehicles shall not be parked or otherwise obstruct the required width of any fire apparatus access.

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 Butterfield Specific Plan.

The requirements for this segment are covered in CFC Chapter 5.

A "Knox" box will be required for fire department access and location approved by the Banning Fire Marshal's office.

**PREMISES IDENTIFICATION:**

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.

Commercial - 6" mm. Size

**INSPECTIONS:**

Inspections shall be requested a minimum of forty-eight (48) hours prior to the time the required inspection is needed.

The current fee for each inspection is $134.00 per hour per person, (One-hour minimum). If fees changed, the Developer shall pay the 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.

**HAZARDOUS MATERIALS:**

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.

Business Plans may be required per SB 2186 and 2187 including MSDS, HMMP and RMPP.
OTHER REQUIREMENTS:

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.

A fire alarm system, designed to NFPA 72 standards, will be required.

Doug Clarke  
Assistant Fire Marshal  
Banning Fire Services  
(951) 922-3210  
dclarke@ci.banning.ca.us
Attachment 6
Butterfield Specific Plan Development Agreement
DEVELOPMENT AGREEMENT

between

THE CITY OF BANNING

("City")

and

PARDEE HOMES

A California Corporation

("Developer")
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into on March 27, 2012, between the CITY OF BANNING (the "City"), a municipal corporation, and PARDEE HOMES (the "Developer"), a California corporation, 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."

RECITALS:

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. Concurrent with the approval of this Agreement, the City has approved the Specific Plan, which contemplates low, medium and high density residential development, to a maximum total of 5,387 dwelling units, 36 acres of commercial/retail development, schools, parks and supporting infrastructure on 1,543 acres, and a general plan amendment and a zone change and has certified a Final Environmental Impact Report, State Clearinghouse No. 2007091149, for the area described in Exhibit "A" (the "Developer's Property").

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(e) 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. In consideration of these benefits to the City and the public benefits of the development of the Developer's Property, 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.

E. **Public Benefits of the Project.** This Agreement provides assurances that the public benefits identified below in this Recital E will be achieved in accordance with the terms of this Agreement. 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. **Public Schools.** The Project will allow for the construction of elementary schools in both the Beaumont Unified School District and Banning Unified School District, which will benefit residents both within and outside the Project.

8. **Natural Open Space.** Over 56 acres of natural open space will be preserved in perpetuity.

9. **Parks and Recreation.** Park and recreation improvements include:
   a. 58.5 acres of community and neighborhood parks
   b. 8.0 acres devoted to private recreation centers.
   c. 254 acres of public golf course or active open space amenity
   d. 108.4 acres of other open space.
10. **Financial Impact Mitigation.** Based upon a study of financial impacts on the City, the Project will pay a Services Special Tax to alleviate negative financial impacts of the Project on the City.

F. **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 March 7, 2012, recommended, and the City Council, after making appropriate findings, certified, by Resolution No. 2012-24 adopted on March 27, 2012 a Final Environmental Impact Report for the Project, more specifically identified as the Final Environmental Impact Report for the Buxton Specific Plan, State Clearinghouse No. 2007091149, as having been prepared in compliance with CEQA. On March 7, 2012, 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 March 27, 2012, 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.

G. **Mutual Agreement.** Based on the foregoing and subject to the terms and conditions set forth herein, Developer and City desire to enter into this Agreement.

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 **Anniversary Date.** “Anniversary Date means the date of the anniversary of each year following the Effective Date established in Section 3.5.


1.4 **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.
1.5 Appraisal of Land Value. "Appraisal of Land Value" when referred to herein shall mean the determination by an experienced and independent MAI appraiser retained by City (Developer may veto any appraiser selected by City for good cause), in a written appraisal at fair market value based upon comparable sales of unimproved land, and serviced by the existing infrastructure, and with the development restrictions of the Specific Plan, and with the understanding that such value shall not exceed $80,000 per acre.

1.6 Assignment. "Assign" shall have the meaning set forth in § 14.1.1 below. All forms of use of the verb "assign" and the nouns "assignment" and "assignee" shall include all contexts of hypothecations, sales, conveyances, transfers, leases, and assignments.


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&R's. "CC&R's" shall have the meaning set forth in Section 14.4 below.

1.10 Certificate of Compliance. "Certificate of Compliance" shall have the meaning set forth in Section 12.2 below.

1.11 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.

1.12 CFD. "CFD" means a community facilities district for the Project allowed to be formed pursuant to the CFD Act by a Local Agency.

1.13 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, authorizing the imposition of special taxes to fund capital facilities and services.

1.14 City. "City" means the City of Banning, California.

1.15 City Council. The "City Council" means the governing body of the City.

1.16 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.

1.17 City Manager. "City Manager" means the City Manager of City.
1.18 **City Wide Traffic Improvements.** “City Wide Traffic Improvements” means those traffic improvements identified in the Traffic Impact Mitigation Fee established in Article 7.

1.19 **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.

1.20 **Dedicate or Dedication.** “Dedicate” or “Dedication” means to offer the subject land to the City.

1.21 **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.

1.22 **Developed Property.** “Developed Property” shall mean residential property for which a certificate of occupancy has been issued or a final inspection conducted.

1.23 **Development Goals.** “Development Goals” shall have the meaning set forth in Section 6.2 below.

1.24 **Developer’s Property.** “Developer’s Property” means the 1543 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.

1.25 **Development.** “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; 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.

1.26 **Development Agreement Statute.** “Development Agreement Statute” means §§ 65864 through 65869.5 of the Government Code as it exists on the Effective Date.

1.27 **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.

1.28 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 set forth in Exhibit B and being revised. Development Impact Fees do not include Processing Fees.

1.29 Development Plan. "Development Plan" means the Existing Development Approvals, Future Development Approvals and Existing Land Use Regulations.

1.30 Director. "Director" means the City's Director of Community Development or equivalent official.

1.31 Economically Distressed Year. "Economically Distressed Year" means any calendar year in which the number of building permits for single family dwelling units issued in Western Riverside County (includes all cities and unincorporated county territory) are less than 50% of the average number of building permits issued during the prior 25 years, based on the annual report of the California Construction Industry Research Board. For example, for the 25 year period from 1987 to 2011, inclusive, total permits issued were 235,455 and the annual average was 9418. In 2008, 2009, 2010 the total permits issued were 2794, 2717 and 3321, so all three years would have been declared "Economically Distressed" hereunder. If the number of building permits issued in any calendar year are not available from the California Construction Industry Research Board, then the City shall obtain them from any other reliable source measuring the same data over the period.

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 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. The development will be subject to all development and/or in lieu fees currently in the process of being studied by the City as identified in Section 7.22 so long as they are adopted prior to the issuance of building permits for specific portions of the development proposed herein. The amount of the fees shall be as required at the time of issuance of building permits.

1.35 Existing Development Approvals. "Existing Development Approvals" means only the Development Approvals which are listed on Exhibit "B."
1.36 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 Force Majeure. “Force Majeure” shall have the meaning set forth in Section 19.2 below.

1.39 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.

1.40 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 11-2501 approved by the City Council concurrently with this Agreement; and (ii) future amendments applicable to the Developer’s Property, if permitted, by Article 11.

1.41 Goals and Policies for Financing. “Goals and Policies for Financing” or “Goals and Policies” means the City’s goals and policies adopted in accordance with Section 5.2.1.

1.42 Golf Course/Active Open Space. “Golf Course/Active Open Space” means the area containing all of Planning Area 35 and Planning Area 39 as described in the Specific Plan and Sections 5.3 and 5.9.10 below.

1.43 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.

1.44 Improvement Area. “Improvement Area” shall have the meaning set forth in Section 5.1 below.

1.45 Innocent Owner. “Innocent Owner” shall have the meaning set forth in Section 13.6 below.

1.46 LAFCO. “LAFCO” means the Riverside County Local Agency Formation Commission.

1.47 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.

1.48 Legal or Equitable Interest. “Legal or Equitable Interest” means (i) an option or purchase agreement or (ii) fee title evidenced by appropriate title insurance issued in favor of the Developer.

1.49 LMD. “LMD” means the Landscape and Maintenance District established pursuant to Streets and Highways Code § 22500 et seq. to fund parks, parkways, City rights of way landscaping and common areas.

1.50 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.

1.51 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.

1.52 Master Tract Map. “Master Tract Map” (or “A Map”) means a large scale tract map covering one or more complete Planning Areas which will 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. The Master Tract Map may also be a financing map for purpose of financing the development of the Project or the conveyance of large lots and may not require the actual construction of improvements.

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 Mortgagor Successor. “Mortgagor 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 Mortgagor 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 Pardee Homes 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 **Phase.** "Phase" shall have the meaning set forth in Section 6.2 below.

1.61 **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 6.5 as a part of processing the Subdivision Maps.

1.62 **Planning Area.** "Planning Area" means each of the 75 planning areas described in the Specific Plan, and shown on Exhibit "A."

1.63 **Planning Commission.** "Planning Commission" means the City’s Planning Commission.

1.64 **Pre-Qualified Buyer.** "Pre-Qualified Buyer" means a publicly traded builder or developer or a privately held merchant builder with a minimum net financial worth of Five Million Dollars ($5,000,000) who has constructed at least 75 homes in California during the preceding five year period.

1.65 **Property Owner’s Association or POA.** "Property Owner’s Association" or "POA" means one or more association 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.

1.66 **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.
1.67 Project. "Project" means the Development of the Developer's Property, pursuant to this Agreement and the Existing Land Use Regulations, as depicted on Exhibit "B" attached hereto.

1.68 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.

1.69 Reimburse or Reimbursement. "Reimburse" or "Reimbursement" means the provision by the City of cash or credit in return for land, goods or services provided by Pardee Homes.

1.70 Reservations of Authority. "Reservation of Authority" shall have the meaning set forth in Article 11 below.

1.71 Services Special Tax. "Services Special Tax" shall mean the special tax authorized to be levied by the CFD(s) established over the Developer's Property to alleviate the negative fiscal impact of the Project on City services as established by the Fiscal Impact Analysis ("FIA") and as further described in Section 5.3 below.


1.73 Subdivision Map. "Subdivision Map" (or "B Map") means the subsidiary subdivision maps for the development of any Tract 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 including § 66473.7 (See 65876.5).


1.75 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.

1.76 Ten or 10th Year Anniversary Review. "Ten Year Anniversary Review" means the review performed upon each 10th anniversary of the Effective Date as provided in Section 6.6.

1.77 Term. "Term" means that period of time during which this Agreement shall be in effect and bind the Parties, as defined in Article 6.7 below.
1.78 **Traffic Control Facility Fee.** "Traffic Control Facility Fee" means the fee set forth in Exhibit "B" attached hereto.

1.79 **Transfer.** "Transfer" shall have the meaning set forth in Article 14 below.

1.80 **Trigger Percentages.** "Trigger Percentages" shall have the meaning set forth in Section 14.1.1 below.

1.81 **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.

1.82 **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. 11-3501, 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/Fee Studies
- Exhibit "C": Estoppel Certificate
- Exhibit "D": Development Impact Fees
- Exhibit "E": Additional Agreements Concerning Development
- Exhibit "F": Proposed Project Facilities
- Exhibit "G": Highland Springs Avenue Improvements
- Exhibit "H": Butterfield Project Financing Plan

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 forty (40) years, subject to review, as called for in Section 6.2 below, to determine whether the Development Goals have been met, and reduction in the Term of five (5) years for each time the Development Goals of a Phase are not met and extensions for Economic Distress, as provided in Sections 6.6.5 and 6.7 below.
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.

3.3 **Termination for Default.** This Agreement may be terminated due to the occurrence of any default in accordance with the procedures in Article 13.

3.4 **Extension of the Term.** The Term shall be extended by one (1) year for each Economically Distressed Year occurring during any Phase up to a maximum of three (3) years for any Phase.

3.5 **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 in the City’s favor, and the time for any further judicial review has run, 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 is not otherwise tolled for any other 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 5,387 units and approximately 36-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 subsequent Owners, upon the sale, transfer, or assignment of any portion of the Property, so long as such apportionment is consistent with the Existing Land Use Regulations and this Agreement.

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

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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 provided by State law.

4.7 Impact Fee Studies. As provided in Section 7.2, studies for certain Development Impact Fees, listed in Exhibit “D,” will be performed after the Effective Date of this Agreement and shall become a part of the Existing Development Approvals. Additionally, Development Impact Fees are subject to review and adjustment as a part of the 10 Year Anniversary Reviews, in accordance with Section 6.6. The cost of performing the studies may be included in the fees.

5. FINANCING AND THE CITY’S OBLIGATIONS.

5.1 Formation of CFD(s) and LMDs. Subject to the provisions of this Article 5, 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 H. Such CFD(s) shall, pursuant to Section 5.3, also be authorized to finance certain City public services costs (incurred as a result of Development of the Developer’s Property) through the levy of a special tax, in the not to exceed amount set forth in the Financing Plan, on each residential unit located within the boundaries of such CFD(s) (the
“Services Special Tax”). Additionally, landscape maintenance districts (“LMDs”) may be formed under Section 5.6.

5.1.1. **Procedures for Formation.** The City and the Developer shall cooperate in good faith to form one or more (i) CFDs and/or designate improvement areas therein (the “Improvement Areas”), (ii) LMDs and designate improvement areas therein (also “Improvement Areas”), and (iii) CFDs for the Special Services Tax (collectively referred to herein as the “Financing Districts”), 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 Financing Districts, 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, LMD 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 Financing District, 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 Financing District addressing the terms of construction, acquisition and financing of any of the Eligible Facilities to be funded by the Financing District (such agreement to be referred to herein as the “Acquisition Agreement”). Developer shall cooperate in the establishment of the levy over Developer’s Property and not exercise any rights of protest.

5.1.2. **Timing of Formation.** Developer shall prepare all studies and submit all documents necessary to form the Financing Districts within one year after the adoption of City’s Goals and Policies for Financing. After Developer has initiated formation of the Financing Districts, City shall form the Financing Districts consistent with the City’s adopted Goals and Policies for Financing and State Law. City shall complete formation proceedings within 180 days after Developer makes the necessary submission. The Developer shall indemnify the City and hold it harmless against Claims or Litigation brought in connection with the formation of the Financing Districts.

5.1.3. **Failure to Form Financing Districts.** If any of the contemplated Financing Districts are not formed, or formed but not in accordance with the terms of this Agreement, through the failure of one Party to perform its obligations pursuant to Section 5.1, the other Party shall have the right, but not the obligation, to terminate this Agreement upon providing 30 days written notice to the Party which has failed to perform prior to the actual termination date.

5.2 **Adoption of Goals and Policies for Financing.** Before the Developer undertakes development of any units, the City shall retain a financial advisor and prepare a City-wide policy for undertaking land based CFD and assessment financing. The draft policy will be reviewed with the Developer and the City shall in good faith consider any comments made by the Developer on the draft policy. The goals and policies for Financing shall be adopted within 180 days after the Effective Date and shall be consistent with Exhibit H, including the Financing Parameters described therein. The goals and policies shall be adopted by Council by resolution and thereafter be the Goals and Policies for Financing. The City may amend the Goals and
Polices for Financing from time to time, and will be a part of the Existing Land Use Regulations hereunder, but such amendment shall not apply to the Development unless they are consented to by Developer.

5.3 Services Special Tax. The final Fiscal Impact Analysis prepared by the City’s consultant, Willdan Financial Services, dated September 16, 2011, (the “FIA”) demonstrates an overall negative fiscal impact on certain City public service costs incurred as a result of Development of the Developer’s Property, including without limitation, the City’s costs for police and fire services. The FIA demonstrates that such negative fiscal impact can fully be mitigated by an annual Services Special Tax, implemented as required by this Section 5.3 and the Financing Plan set forth in Exhibit “H” attached hereto. The annual Services Special Tax shall not exceed $115 per dwelling unit of greater than 1820 square feet of habitable area and $92 per dwelling unit of 1820 or less square feet of habitable area in fiscal year 2013-14 and shall increase each fiscal year thereafter by 3%. The Services Special Tax may be levied in perpetuity and shall only be levied by the CFD(s) formed pursuant to Section 5.1 on residential parcels classified as Developed Property, but Developer shall cooperate in the establishment of the levy over Developer’s Property and not exercise any rights of protest.

5.4 Planning Area 19, 35, 39 and 71 Drainage Facilities. In the event that the Developer, in its sole and absolute discretion, determines that the Golf Course is financially infeasible, the flood control improvements within Planning Areas 35 and 39 shall be considered Proposed Project Facilities and may be funded through the CFD(s). If these occur, then portions of the land within Planning Areas 35 and 39 will be dedicated as public open space and the remaining portions dedicated to flood control appurtenances, to be transferred to the City or the Riverside County Flood Control District upon completion of the flood control facilities on such site and shall be improved to the Master Plan Standards of District. Plans for developing the necessary improvements shall be developed as a part of the Phasing Plans pursuant to Section 6.5, but improvements may not be required until the City Engineer determines that development will (i) intrude into the flood plan or (ii) cause the alteration of Smith Creek. The City Engineer may approve temporary improvements until the scale of the portion of the Project completed requires permanent structures. Upon transfer of the portions of the Planning Areas relating to the flood control facilities to the City or District, if the CFD(s) are formed or, as soon thereafter as the CFD(s) are formed, the City shall pay the agreed upon construction costs to the Developer from available CFD Proceeds in accordance with the Financing Plan. (Also see Sections 8.1.3. and 8.2.)

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, the City shall reimburse the Developer for all costs and expenses incurred by the Developer in constructing such improvements for that portion of the Dedications, public facilities and/or infrastructure that the City, pursuant to this Agreement, may require pursuant to the Existing Land Use Regulations. 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 reimbursement obligation on other properties which may be served or benefited by the oversized infrastructure or facilities. The terms of the Reimbursement Agreements shall otherwise be consistent with the City’s forms generally used with all other development projects of over 200 units. Such
reimbursement shall be paid to the Developer at the earliest opportunity out, and upon collection, of available fees from benefited developments so long as consistent with City's other contractual obligations. Repayment shall not extend beyond the Term of this Agreement.

5.6 Landscape Maintenance Districts. The City shall take, and Developer shall support, all steps necessary to establish LMD(s) or other maintenance districts, to fund maintenance of City parks, parkways, City rights of way landscaping, and common areas as provided in Section 5.1. The Developer shall make a deposit to pay the cost for review and approval of all agreements, studies, analysis and actions necessary for the establishment of the LMD(s).

5.7 Reimbursement for Pre-Approval Costs. The City shall provide fee credits to the applicable DIFs, as set forth below, for those residential units for which Commencement of Construction occurs by the twelfth anniversary of the Effective Date, but not more than for the first 1200 units. "Commencement of Construction" as used herein shall have the same meaning as under Section 6.3. The units eligible for fee credits for reimbursement shall be those of the 1200 which are not eligible for the incentive provided for in Section 6.8. If the incentive is taken in accordance with Section 6.8, then the amount of the credit for each unit for each fee shall be determined by taking the amount of cost to be reimbursed and dividing it by 1200 minus the number of units eligible for the incentive. As an example, if the total amount of the cost to be reimbursed is $227,500 and the number of units eligible for the incentive is 400, then the amount of the credit for each unit after the first 400 within the 12 years following the Effective Date will be $227,500/(1200-400) = $227,500/800 = $284 rounded to the nearest dollar. These fee reimbursements may be included in the subsequent fee studies performed pursuant to Section 7.2.2. [The per unit figure shown below assumes the credit is taken over 1200 units.]

5.7.1.1 A fee credit against updated Sewer Sanitary Fee and Recycled Water Fee of $227,500 or $189.60 per unit for the Corollo Study related to the sewer and recycled water master plans.

5.7.1.2 A fee credit against the updated Domestic Water Fee of $1,115,000 or $929.17 per unit for the consultant time related to the preparation of the City's 2010 Urban Water Management Plan.

5.7.1.3 A fee credit against the proposed revised Traffic Control Facility Fee of $105,000 or $875 per unit for the consultant time related to the preparation of the Traffic Impact Analysis and related traffic fee prepared documents.

5.7.1.4 A fee credit against the proposed revised Traffic Control Facility Fee of $45,000 or $375 per unit for the development of Citywide fees related to the Traffic Impact Fees study or other fee studies required as a result of entitlement activities.

5.7.1.5 A fee credit against the proposed revised Traffic Control Facility Fee or other appropriate fee of $550,000 or $462.50 per unit for the consultant time and plan preparation for required studies related to pre-project improvements to Highland Springs near the I-10 freeway.
5.7.1.6 A fee credit against the General Plan Fee of $187,500 or $156 per unit for the General Plan Traffic Circulation Element Amendment preparation.

5.8 Obligations of Developer Respecting Financing: No Speculation. 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 are not 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 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 6.5, 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 one or more Owners proceeds with any portion of the Project. The City acknowledges that the Project Phasing set forth in the Specific Plan does not require
that the Project be Developed in any specific order but, instead, are illustrative of how the Project may be Developed. The Project Phasing instead is controlled by this Agreement.

6.2 Development Goals. Notwithstanding the provisions of Section 6.1, the Developer must achieve certain goals and objectives in terms of Project development in order to keep the Agreement in place for the full term contemplated in Section 3.1. The development of the Project will be reviewed at each Ten Year Anniversary Review. The Development Goals are as follows:

| Phase I (10th Anniversary) | • Development will begin near the corner of Highland Springs and Wilson unless otherwise agreed  
|                           | • 1,200 Residential Units to be constructed  
|                           | • Commercial retail development per 6.2.4  
|                           | • Outlet for Smith Creek and other improvements in Section 6.2.3. |
| Phase II (20th Anniversary) | • 1,600 residential units to be constructed |
| Phase III (30th Anniversary) | • 1,400 residential units to be constructed |
| Phase IV (40th Anniversary) | • 1,187 residential units to be constructed |

6.2.1 Cumulative Measure of Units. The Development Goals for each Phase shall be cumulative, e.g., if the Developer has constructed 2000 Residential Units in Phase I and 1000 Residential Units in Phase II, then the Developer will have met the Development Goal for Phase II even though less than 1500 Residential Units were constructed during Phase II.

6.2.2. More Detailed Phasing Plans Developed. Within each Phase, as defined above, more detailed phasing plans for each subdivision shall be developed in accordance with Section 6.5, and are subject to the City’s review and approval as conditions of approval of the Tract or Subdivision Map and, as approved, shall become a part of the Existing Approvals.

6.2.3. Additional Phase I Development. In addition to the residential unit Development Goals, Phase I shall also include: (i) commercial development as specified in Section 6.2.4, (ii) the outlet for the Smith Creek flood control improvements at Wilson, (iii) the preparation and dedication of the Recreation/Emergency Center site described in Section 8.1.4, (iv) the satellite water treatment plant described in Section 8.3, (v) the water tanks described in Section 8.5; and (vi) such other Proposed Project Facilities as required by the Specific Plan and the Phasing Plans approved pursuant to Section 6.5. Notwithstanding the specification of timing as provided herein, with the approval of the City Manager, any public improvement required herein may be deferred for good cause.

6.2.4. Commercial Development. A minimum 23-acre retail-commercial site at the corner of Highland Springs and Wilson (Planning Area 18) will be prepared as a part of Phase I, and concurrently with the development undertaken pursuant to Section 6.8. Site preparation
shall require the grading of the Site, construction of surrounding streets, and bringing all necessary utilities and infrastructure for development. Developer shall also demonstrate a good faith effort undertaken over at least a five (5) year period to market the site for sale or lease to a suitable user. Additionally, Developer shall maintain the potential to expand the site to as much as 88 acres to permit a larger commercial development, provided that such expanded project obtains any necessary entitlements. Developer shall advise City within five (5) years of the Effective Date as to what interest there might be in the expanded project and the parties will mutually agree as to the scope of the project. The timely preparation and attempts to market this site is required for completion of Phase I and is subject to the same treatment as the residential units (i.e. phasing period can be prolonged for economic distress and the Term of Agreement can be shortened pursuant to Section 6.7). The goal of the City is to locate a significant sales tax generating “big box user” as the major tenant of the project. Accordingly, City retains the right to approve the major tenant in the project (tenants over 75,000 sq. ft), in accordance with the provisions in Article 14 as a transferee by lease or sale.

6.2.5. Extensions of Phases. The length of each Phase for the purposes of this Section 6.2 shall be extended by one (1) year for each Economically Distressed Year occurring during the Phase, up to a maximum of three (3) years as provided in Section 6.6.5.

6.3 Development Goals Satisfied By Commencement of Construction. The Development Goals for residential units specified above are satisfied if construction has commenced. “Commencement of Construction” of a residential unit means that building plans have been approved, that a building permit has been issued and that construction has commenced on the unit. The unit shall not be counted if the building permit expires without completion of the unit.

6.4 Public Improvements. The Parties understand and agree that the Specific Plan identifies the public infrastructure and though it contains phasing concepts, it does not specify precisely the phasing of the construction of public infrastructure. The development phasing will be consistent with the Specific Plan and this Agreement. The City desires that required public infrastructure generally be constructed in the early portion of the applicable phase of the development cycle subject to the guidelines specified below. In consideration of the foregoing, notwithstanding any provision herein to the contrary, the City shall retain the right to condition any Future Approvals to require Developer to dedicate necessary land, pay the development fees specified in Article 7, and/or to construct the required public infrastructure (“Exactions”), at such time as City shall determine in accordance with the process in Section 6.5 and subject to the following conditions:

A. The dedication, payment or construction must be to alleviate 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 the same manner and subject to the same construction standards as would be applicable to the City or such other public agency should it have undertaken such construction work. The Developer shall pay prevailing wages as required by law.

6.5 Development of Phasing Plans During Subdivision Map Approvals. The phasing and timing requirements for the construction of all development including public improvements shall generally be in accordance with the Development Approvals and applicable provisions of this Agreement (For example, Sections 6.2, 6.4, 6.5, 7.3, 8.0, 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. The Phasing Plan will be developed over time in accordance with the following process:

6.5.1. Master Phase Tract Map. Each Phase shall have a Master Tract Map which shall be submitted for financing and conveyance purposes only and no improvements may be constructed nor shall development be permitted pursuant to such approved Tract Map except through submission and approval of tentative and final Subdivision Maps. Concurrently with processing of the Master Tract Map, all tentative Subdivision Maps for the Tract shall be submitted and processed.

6.5.2. Subdivision Maps. Each Master Tract Map shall designate future subdivisions within the Tract and the order of subdivision development to the extent that the need for development of public infrastructure dictates the logical progression of subdivision development. Each Subdivision Map 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. Generally all streets, lighting, curbs and gutters, sidewalks, parkway landscaping, asphalt concrete paving, traffic signs and stripping, medians, landscaping, drainage facilities, storm drains, water lines, sewer lines, utility lines, trails and other facilities within the subdivision must be completed before release of any occupancy permits within the subdivision. 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 provision of suitable security, prior to the approval and recordation of the Subdivision Map.

6.5.3. Proposed Project Facilities. Attached as Exhibit “F” are diagrams showing Proposed Project Facilities and depicting the major public infrastructure of the development, including roadways, detention basins, water lines, sewer lines, recycle water lines, utilities, storm drains and drainage facilities, treatment plants, power substations, community parks, community centers, fire stations, and other infrastructure serving area-wide populations. The Proposed Project Facilities serve multiple subdivisions, and may need to be constructed in the initial phase of a particular Tract, or even before certain Tracts can be developed. The
detailed phasing of construction will be provided through the Master Tract and Subdivision Phasing Plans, and subject to Section 6.4.

6.5.4. **Time for Map Submission.** The Developer shall submit all applications for tentative, or vesting tentative, Master Tract Maps and, concurrently with each application for a Master Tract Map, the applications for tentative, or vesting tentative, Subdivision Maps thereof within five (5) years of the Effective Date for the City’s review and approval.

6.6 **Ten Year Anniversary Review.**

6.6.1. **Generally.** On or about each Tenth Anniversary of the Effective Date as provided herein, the City shall conduct the Ten Year Anniversary Review”) the City and the Developer review to shall review the performance of this Agreement, and the development of the Project to see if the Development Goals have been met. The cost of the Annual Review shall be borne by the Developer and the Developer shall pay a reasonable deposit in an amount requested by City to pay for such review.

As part of each Ten Year Anniversary Review, sixty (60) days before each tenth 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) indentifying any needed consultants and studies, (iv) the adequacy of current DIFs and any anticipated need for changes, (v) any adjustments to needed public infrastructure, (vi) the estimated deposit needed to pay the City’s costs of performing the review, and (vii) 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’s submittal shall include a written explanation of any reasons why the Development Goals were or were not met, and any request for the modification of future Development Goals in the next 10 year period, and the reasons therefore.

The Developer shall submit its report on or before the Tenth 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 Council shall be made within 45 days of the anniversary, and a public hearing shall be held thereon.

6.6.2. **Adjustment to DIFs.** As provided in Section 7.2.2, all Development Impact Fees are subject to adjustment as put of the Ten Year Anniversary Review provided (i) the adjustment is based on the preparation 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. The Development Impact Fees shall not contain any escalators but the studies justifying the fees may use cost numbers which recognize the ten year horizon of each study.

6.6.3. Parties Can Alter Development Goals Objectives. The Development Goals for the next Ten Year Anniversary Review period as set forth in Section 6.2 may be modified with the mutual agreement of the Parties at the time of the hearing set forth in Section 6.6.1. Unless the Parties reach agreement for modification, the Development Goals will remain as provided therein.

6.6.4. No Other Changes to Development Plan. Other than the Development Impact Fee adjustments provided in Section 6.6.2 which may be unilaterally approved by City subject to performing the required studies, 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 Article 11.

6.6.5. Extensions Due to Economic Distress.

6.6.5.1 Determination of Distress. As provided in Section 6.2.4, the Phases can be extended up to three (3) years due to the occurrence of an Economically Distressed Year(s). In any year in which Developer believes conditions exist to warrant Declaration of an Economically Distressed Year, within 30 days following the Anniversary Date, Developer shall submit his request therefor. Additionally, in support thereof, Developer shall provide City with a Report including the following: (i) a written analysis of County-wide data supporting the Declaration; (ii) publicly available reports concerning general market conditions affecting home building; (iii) analysis as to how general market conditions have affected the Project including demand, costs and financing; and (iv) forecasts concerning the next three (3) years. The Report is for informational purposes only and City shall not be permitted to disapprove the Declaration of Economic Distress if the data submitted meets the definition in Section 1.31. Within 30 days the City Manager shall review the Declaration and Report and determine if the data supports the declaration of an Economically Distressed Year. The City Manager’s determination is appealable to the Council under Section 13.6.3, but not as a default thereunder.

6.6.5.2 Effect of Determination on 10-Year Review. Generally the effect of the declaration of an Economically Distressed Year shall also toll the performance of the 10 Year Anniversary Review. For example, if during any 10 year cycle, two years had been declared Economically Distressed, then the 10 Year Anniversary Review would be performed on or about the Anniversary Date of the 12th year, as otherwise provided in Section 6.6. The City, however, retains the right to elect to perform the DIF adjustments in accordance with Section 6.6.2 on the 10 Year Anniversary, or to defer the studies and do them in accordance with the general 10 Year Anniversary Review performed on the date to which the Phase has been extended due to the extensions for Economically Distressed Years pursuant to Section 6.2.4.

6.7 Failure to Satisfy Phasing Goals and Objectives. For reasons stated in Section 6.1, failure to achieve the Development Goals in any ten year period shall not be a default hereunder, but it shall cause the term of the Agreement to be shortened five (5) years.
Accordingly, a failure at the first Ten Year Anniversary Review shall cause the term of the Agreement in Section 3.1 to be reduced to 35 years, while a failure at the second review in year 20 (to achieve 3000 units) shall cause the Agreement to be shortened another five (5) years to 30 years (subject to any extension of the Term due to the occurrence of Economically Distressed Years as set forth in Section 3.4), but once the Term has been reduced, the lost time is not reinstated due to production of excess units in later phases.

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.

6.8 Developer Incentives for Expedited Development.

6.8.1. Incentive for Early Development. The City wishes to establish new communities in the City and to encourage the early development of the Project, which, in light of current economic conditions, may require economic incentives to be provided to the Developer. Accordingly, the Developer shall be given a credit so that DIFs do not have to be paid for up to 500 residential units, if Commencement of Construction, as that term is defined in Section 6.3, occurs on or before the production dates in Section 6.8.4.

6.8.2. Conditions for Receipt of Credits. To receive the credits, the following conditions must be satisfied: (i) the units must be in Planning Areas 1 and 2 provided that, for good cause, City may approve building the units in alternative Planning Areas, (ii) each Tract containing residential units needs to be developed as a single unit with appropriate entry design features including walls, fountains, landscaping, signage and other features approved by City, (iii) the preparation of the commercial site in Planning Area 18 shall take place pursuant to Section 6.2.4, unless waived by City.

6.8.3. Fees Eligible for Credit. The DIFs eligible for credit are those identified as eligible in Exhibit "D."

6.8.4. Schedule. The credit shall be given for all units for which the Commencement of Construction, as that term is defined in Section 6.3, occurs within five (5) years after the Effective Date.

6.9 City Provided Assistance. 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. Except for those fees expressly set forth in Sections 7.3 and 7.5 below, and for the reservations of authority in Article 11, the City shall charge and impose only those Exactions, mitigation measures and conditions, including, without limitation, dedications as are set forth in the Existing Land Use Regulations, and those fees relating to the Development of the Developer’s Property as are expressly set forth in Exhibit “D” attached hereto, and no others. Per Section 7.4 below, Park Fees shall not be imposed during the life of this Agreement. The Developer shall pay the stated amount of all other fees shown in Exhibit “D” for the first 10 years of the Term, and subsequently adjusted amounts determined in accordance with Section 6.6.2.

7.2.2. Development Impact Fees to be Established Based on Studies. The City will study and establish DIFs within one year of the effective Date for the following: revised City Traffic Control Facility Fee, revised Domestic Water Fee, new Recycled Water Fee and revised Sanitary Sewer Fee. The Developer shall be obligated to pay the revised fees and the revised DIFs shall be considered part of the Existing Land Use Regulations. The initial DIFs shall be established in accordance with fee studies meeting the requirements of Section 6.6.2.

7.2.3. Adjustment at 10 Year Anniversary Review. The Developer shall pay increased fees after the Ten Year Anniversary Review if those fees are adopted on a City wide basis after the preparation of, and are justified by, a suitable analysis demonstrating the basis for the increase in accordance with Section 6.6.2. The City shall be entitled to repeat the process of increasing the fees thereafter upon the same terms, during the Ten Year Anniversary Review in accordance with Section 6.6.2, throughout the Term of this Agreement.

7.2.4. Payment of Development Impact Fees. 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 issuance of the Certificate of Occupancy for each building. Unless otherwise specified herein, all other fees, including Processing Fees shall be paid when at issuance of building permits or otherwise when required by code.

7.3 Wastewater, Domestic and Reclaimed Water Facilities Development Impact Fees.

7.3.1. Wastewater Fees. The City levies two capital facilities fees related to wastewater: (i) a sewer collection fee; and (ii) a sewer frontage fee, but collectively such fees are referred to herein as sewer collection fees. The sewer collection fee shall be fixed in accordance with Section 7.2.1 above.

7.3.2. Construction of Wastewater Collection Infrastructure in Lieu of Fees. If any additions, improvements and/or upgrades to the City’s wastewater collection system outside or within the boundaries of the Developer’s Property are required in
connection with any Development of the Project, then with the mutual agreement of the parties, the Developer shall have the option to elect to construct some or all of such additions, improvements and/or upgrades at its sole cost and expense. The City shall develop the project specifications and shall undertake a design process to develop project plans and drawings meeting the City’s specifications. The City may utilize the Developer to develop the plans and drawings if the design costs are competitive and Developer has retained competent design professionals who can timely perform the services. If, thereafter, the Developer wishes to construct the improvements, the Developer shall give City a fixed budget and construction schedule, while City obtains competitive bids. City may award the contract to the most competitive entity, considering price, financing, schedule and ability to perform. The contract may include liquidated damages provisions and other requirements to assure the timely and satisfactory completion of the project within budget. If performed by Developer, upon completion of such works of improvement, the Developer shall be entitled to offset the actual costs approved by City and incurred by it for the design, permitting, construction and installation of such works of improvement against any wastewater collection-related Development Impact Fees that may otherwise be payable in connection with future Development of the portion of the Developer’s Property owned by the Developer.

7.3.3. **Wastewater Treatment Capacity.** The City shall use its best efforts to obtain the required permits and to construct the needed improvements to the City’s wastewater treatment facilities in order to serve the Project as the need for additional facilities arises. The Developer shall include the construction of the wastewater treatment plant within the phasing plan developed pursuant to Section 6.5. The City estimates that a four year lead time is required with one year for design and one year for permitting with the remaining period needed for construction.

7.3.4. **Wastewater, Domestic and Reclaimed Water Facilities and Fees.** If any additions, improvements and/or upgrades to the City’s water system, either domestic or reclaimed, outside or within the boundaries of the Developer’s Property are required in connection with any Development of the Project, then with the City’s approval, they may be undertaken by the Developer in accordance with the procedures in Section 7.3.2. Without limiting the generality of the foregoing, this includes the water tanks, pipelines and appurtenant facilities described in Section 8.5.

7.3.5. **Recycled and Domestic Water Fees.** Recycled and domestic water developer impact fees shall be established in accordance with Section 7.2.1 above. City does not currently have Development Impact Fees for reclaimed water facilities or for domestic water facilities for the Project. Within a year after the Effective Date, the City shall conduct a study to determine the reasonable charge and the Developer’s pro rata share of the cost of such improvements. When adopted by the Council, the fees shall be considered incorporated herein as Existing Land Use Regulations, and shall be subject to further review at the Ten Year Anniversary Review as provided in Section 6.2.2.

7.4 **Park Fees.**

7.4.1. **Construction of Facilities.** The Developer will be constructing, installing and improving 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 POA, the Developer, the City, the Golf Course operator or such other entity as 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, the Project shall not be subject to the imposition of Park Fees by the City. The City acknowledges that the value of the land and improvements for the park, recreation and open space land and facilities exceeds the aggregate of all park fees which may be charged by the City pursuant to the Municipal Code in connection with the proposed Development of the entire Project. The Developer shall construct and install within the Project’s boundaries the following park and recreation facilities:

7.4.1.1 254-acre Golf Course or Active Open Space, as set forth in Sections 5.3 above and 8.1.3 below;

7.4.1.2 22 publicly accessible parks (each ranging in size from approximately less than 1 acre to over 16 acres), equipped by Developer with typical neighborhood 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;

7.4.1.3 Two private recreation centers, totaling approximately eight acres, which will be gated and accessible only to the residents of the Project. These centers may, but are not required to, include clubhouse facilities, restrooms, and other amenities as further defined in the Specific Plan; and

7.4.1.4 108.4 acres of additional open space as described in the Specific Plan.

7.4.2. Community Recreation Center. The City shall also be entitled to construct a community recreation center in Planning Areas 35 or 39, on any park or open space site or on any site identified for a public facility, such as a fire station or waste water treatment plant, if that site is not used for the public facility. Once the site has been identified, the Developer shall grade it and stub utilities to site. The Developer’s obligations are further described in Section 8.1.4.

7.5 Traffic Impact Mitigation.

7.5.1. Fees to be Established. The City has established a Development Impact Fee for the purpose of collecting funds to pay for the cost of constructing localized transportation improvements. At the request of the City, the Developer may initiate a study to expand upon the existing Traffic Control Facility Fee to include additional improvements not currently covered in the fee. The fee includes signal costs and minor roadway improvements. The Developer shall pay the applicable Traffic Control Facility Fee established by the City in effect on the Effective Date or at the time that the new revised fee is established, pursuant to Section 7.2.1 above.
7.5.2. **Highland Springs Interim Improvement Project.** The Developer has initiated and will complete interim improvements to Highland Springs Avenue between Ramsey Street and the I-10 Freeway. These improvements include, but are not limited to, the synchronization of traffic signals along Highland Springs Avenue, relocation of traffic signals, closings and relocation of Joshua Palmer Way and the restriping and repaving of Highland Springs Avenue. The City believes that the current traffic impacts are caused by the Developer’s earlier project in Beaumont. The City shall use its best efforts to coordinate with the City of Beaumont an agreement to reimburse a portion of the improvements either through the appropriate transportation fees credits or other mechanism.

7.5.3. **The Developer to Construct Traffic Improvements In Lieu of Paying City Fair Share Fees.** In the event the Developer is required to construct traffic improvements in lieu of paying the City’s fair share fees, City shall reimburse the Developer for the cost of the completed improvements through Reimbursement Agreements mandating that any project larger than 20 dwelling units pay a prorated share for benefits associated with completion of the Project.

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 Commissions. The Developer shall complete the construction of neighborhood parks, Planning Areas 22 through 34, 62, 64 through 67 and 72, and the parks in the SCE easement, Planning Areas 36 through 38, no later than the issuance of the final Certificate of Occupancy for residential units within the adjacent subdivisions. Active use park improvements may not be placed in the SCE easement parks if the Director and Commissions believe there are issues of public health with electro magnetic radiation. A subdivision separated from a park by a street shall not be considered to be adjacent to the park. The Parties shall, mutually, determine what constitutes the adjacent subdivision if a park adjoins more than one subdivision. Upon completion of each neighborhood park, the City shall after the 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.

8.1.2. **POA Recreation Centers.** The POA Recreation centers identified in Planning Areas 21 and 63 shall be constructed by the Developer in accordance with the Tract Phasing Plan pursuant to Section 6.5.
8.1.3. **Golf Course/Active Open Space.** The Golf Course shall be constructed at the sole and absolute discretion of the Developer. The determination to construct the Golf Course will take place within the first phase of Phase I of development due to the need to construct of the flood control improvements for Smith Creek. The Golf Course will be maintained by a Developer selected operator and open to the public. The operator may sell annual play memberships. If, as described in Section 5.4 above, the Golf Course is determined to be financially infeasible, the Developer shall notify the Planning Department in writing and the open space and drainage provisions described in the Specific Plan shall dictate the uses allowed on Planning Areas 35 and 39. The revised use of Planning Areas 35 and 39 shall be approved by both the Planning Commission (as the recommending body) and City Council prior to construction. The revised plan shall incorporate active recreational use including biking and pedestrian trails, turnouts for exercise, viewing and educational facilities, all linkable to other tracts, parks and open space, landscaping and providing full public access.

8.1.4. **Community Recreation/Emergency Center.** The City’s Parks Master Plan identifies the need in the Project for a community recreation center, and this is even more necessary if the Golf Course is not developed. This Center would be on an approximately six (6) acre parcel in Planning Area 39 in lieu of the golf clubhouse, or alternatively could be located as a part of a community park or other available site including in Planning Area 71, or in lieu of the waste water treatment plant site in Planning Area 11. Depending on the site selected, the six (6) acres may be reduced so as to not adversely affect the development area of adjacent parcels from the development areas shown in the Specific Plan. The Center is contemplated as a 30,000 sq. foot facility. The plan for the Center shall be included in the Park Master Plan and the site plan shall be processed at the time the chosen Planning Area is developed, subject to the Phasing Plans approved pursuant to Section 6.5, and provided that if the City chooses to put the Center in Planning Area 11, it may be developed as part of Phase I provided that Developer shall satisfy the Phase I obligation by providing a developed Site, and need not fund the construction of the improvements if there are insufficient DIF’s for credit. The Developer shall dedicate the site to City without charge. If developed as part of a park it shall be developed at the time required for parks in Section 8.1.1. The Center may include emergency operations and shelter components, and will also include appropriate landscaped grounds and facilities as specified in the Master Plan. The Center may be developed and constructed by Developer in the same manner as for the waste water treatment plant in Section 7.3.2, except as provided above.

8.2 **Drainage Facilities.** Planning Areas 19 and 71 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 19 will consist of water quality basins, habitat restoration and flood conveyance facilities as well as the head works for the culvert underneath Wilson Street. This Planning Area may be ultimately transferred to the Flood Control District or City 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. Planning Area 71 may be constructed in Phase I of the Project if required for the realignment of Smith Creek. This Planning Area may also consist of a large open reservoir, detention basin and recharge facility that may ultimately be transferred to the City or other appropriate body for acceptance and maintenance. The City shall have no obligation to accept
the facilities if they primarily benefit the Project and are for flood control purposes but City may do so if the recharge facility and reservoir facility is designed for water recharge purposes and City determines in its sole and absolute discretion that they are needed to enhance the City’s water supply.

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 11 for the onsite treatment of Project-related and other localized wastewater flows. The City shall have an Appraisal of Land Value determined within one (1) year of the signing of this Agreement. The City shall grant a credit equal to the fair market value determined by the appraisal to the City’s waste water impact fee, when that fee is established, which credit may be used by the Developer on a unit by unit basis. Title to the site shall be transferred to the City after the site has been graded by the Developer and utilities are stubbed to the site.

8.4 Fire Station Site. The Specific Plan has identified a site in Planning Area 60 as the possible site for a fire station. The City shall have the an Appraisal of Land Value performed for a site of up to two (2) acres within one (1) year of the signing of this Agreement. The City shall grant a credit equal to the fair market value determined by the appraisal to the City’s Fire Facilities Development Fee which credit may be used by the Developer on a unit by unit basis. Title to the site shall be transferred to the City after the site has been graded by the Developer and utilities are stubbed to the site.

8.5 Water Tanks. 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 and must be located at specific locations and elevations to make the water system function correctly and maintain public health and safety. The water tanks shall be developed as follows:

A. A 500,000 gallon tank in Planning Area 73 at an high water elevation line of 3237 feet.

B. A 1.4 million gallon tank in Planning Area 73 at an high water elevation line of 3070 feet.

C. A 1.6 million gallon tank Planning Area 68 or 50 at an high water elevation line of 2822 feet.

Each tank will require a parcel from 1 to 1.5 acres in area and additional area for access, and shall be dedicated to City without charge after the site has been graded and stubbed out by Developer. The Developer may construct the improvements in accordance with Section 7.3.2 and receive fee credits to the water development impact fee on a unit per unit basis for the construction costs. The water tanks are considered part of the Proposed Project Facilities and shall be constructed in accordance with the Phasing Plans developed in accordance with Section 6.5 provided that the tanks in paragraph C above must be in Phase I.
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.” Notwithstanding the foregoing, nothing contained herein shall be construed to require City to process Developer’s Applications ahead of other projects in process in the City and City’s obligations hereunder shall be subject to the City’s workload and staffing at any given time.

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 additional consulting services to receive expedited processing by the City, the Developer shall pay all such overtime costs, charges or fees incurred by City for such expedited processing.

9.3 General Time Periods for Processing.

9.3.1 General Plan Review and Approval. The City shall provide comments within two weeks for all plan checks for required infrastructure, building, grading, both mass and finished, architectural, erosion control or any other required plan submittal and will not unduly extend amount of plan checks beyond three submittals provided that Developer’s consultants are responsive. In the event that consensus between the City and the Developer regarding the content of the plans after the 3rd submittal can not be made, a meeting will be scheduled 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 maximum two-week review of the entire plan set for each submittal for a maximum of three plan check reviews to ensure that they conform to the guidelines set forth in Specific Plan provided that Developer’s consultants are responsive. In the event that consensus can not 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. This review is a ministerial action. 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 Financing and Conveyance Maps: The Developer may have a Master Tract 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 and as provided in Section 6.5.1. 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 nor within its sphere of influence 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. With the exception of land within Planning
Area 43B, 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 shall not require
modification of this Agreement.

10.4.2. **Non-Substantive Changes.** A modification will be deemed
non-substantive and/or procedural if it does not result in a material change in fees, maximum
residential density, maximum intensity of use, permitted uses, the maximum height and size of
buildings, the reservation or dedication of land for public purposes, or the improvement and
construction standards and specifications for the Project, including density transfers between
phases. A “material change” is generally one which does not change the standard by ten percent
(10%) or more. For example, for a height limit of 20 feet, a change of less than two feet is
deemed non-material.
10.4.3. 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. Where 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 codes and are based on recommendations of a multi-state professional organization and become applicable throughout the City, such as, but not limited to, the Uniform Building, Electrical, Plumbing, Mechanical, or Fire Codes.

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 the only reasonable means to correct or avoid such injurious or detrimental condition.
11.1.3.3 Adoption Automatic Regarding Regional Programs. This Agreement shall not prevent the City from adopting Future Land Use Regulations or amending Existing Regulations which are regional codes and are based on recommendations of a county or regional organization and become applicable throughout the region, such as Western Riverside Council of Governments.

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.

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 cost of the Annual Review shall be borne by Developer and Developer shall pay a reasonable 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 Certificate of Compliance. 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 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 over-all 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 40 year 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 the City has exceeded its authority, and similar remedies, other than recovery of monetary damages, to enforce their rights under this Agreement. 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 actions, whether monetary or through the provision of land, goods or services, are imposed 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 the actions, if any, required by the Defaulting Party 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 or ten (10) days for monetary defaults (or such lesser time as may be specifically provided in this Agreement).
However, if such non-monetary Default cannot be cured within such thirty (30) day period, and if and, as long as the Defaulting Party does each of the following:

1. Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;

2. Notifies the Non-Defaulting Party of the Defaulting Party’s proposed cause of action to cure the default;

3. Promptly commences to cure the default within the thirty (30) day period;

4. Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure;

5. Diligently prosecutes such cure to completion, and

Then the Defaulting Party shall not be deemed in breach of this Agreement.

Notwithstanding the foregoing, the Defaulting Party shall be deemed in default under this Agreement if the breach or failure involves the payment of money but the Defaulting Party has failed to completely cure the monetary default within ten (10) days (or such lesser time as may be specifically provided in this Agreement) after the date of such notice.

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 Nondefaulting 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 Nondefaulting 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 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 the 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 the Superior Court of Riverside County.

14. ASSIGNMENT.

14.1 Right to Assign.

14.1.1 General. Neither Party shall assign (as hereinafter defined) or transfer (as hereinafter defined) its interests, rights or obligations under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. The term "assignment" as used in this Agreement shall include successors-in-interest to the City that may be created by operation of law. Notwithstanding the foregoing, the City shall have the right to sell, assign or transfer its interest in any real property dedicated or transferred to the City pursuant to the terms of this Agreement or to another public agency.

As used in this Section, the term "transfer" shall include the transfer to any person or group of persons acting in concert of more than seventy percent (70%) of the present equity ownership and/or more than fifty percent (50%) of the voting control of the Developer (jointly and severally referred to herein as the "Trigger Percentages") or any general partner of the Developer in the aggregate, taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family. A transfer of interests (on a cumulative basis) in the equity ownership and/or voting control of the Developer in amounts less than the Trigger Percentages shall not constitute a transfer subject to the restrictions set forth herein. In the event the Developer or any general partner of the Developer or its successor is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of the Developer, or of beneficial interests of such trust; in the event that Developer or any general partner of the Developer is a limited or general partnership, such transfer shall refer to the transfer of more than the Trigger Percentages in the limited or general partnership interest; in the event that the Developer or any general partner is a joint venture, such transfer shall refer to the transfer of more than the Trigger Percentages of such joint venture partner, taking all transfers into account on a cumulative basis.

The Developer shall not transfer this Agreement or any of the Developer's rights hereunder, or any interest in the Developer's Property or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, and if so purported to be transferred, the same shall be null and void. In considering whether it will grant approval to any transfer by Developer, which transfer requires City approval, City shall consider factors such as (i) the financial strength and capability of the
proposed transferee to perform the obligations hereunder; and (ii) the proposed transferee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects. In no event shall the City's approval of any transfer be unreasonably withheld or delayed.

In addition, no attempted assignment of any of the Developer's obligations hereunder shall be effective unless and until the successor party signs and delivers to the City an assumption agreement, in a form approved by the City, assuming such obligations. No consent or approval by City of any transfer requiring the City's approval shall constitute a further waiver of the provision of this Section 14.1.1 and, furthermore, the City's consent to a transfer shall not be deemed to release the Developer of liability for performance under this Agreement unless such release is specific and in writing executed by City. In no event shall the City's release of the Developer from liability under this Agreement upon a transfer be unreasonably withheld or delayed.

Notwithstanding any provision of this Agreement to the contrary, City approval of a Transfer or Assignment of any portion of the Developer's Property under this Agreement shall not be required in connection with any of the following provided that such person or entity transferee or assignee assumes in writing all of the Developer's obligations under this Agreement and notifies the City in writing of the same:

A. Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing and any resulting foreclosure therefrom.

B. The granting of easements or dedications to any appropriate governmental agency or utility or permits to facilitate the development of the Developer's Property.

C. A sale or transfer resulting from, or in connection with, a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

D. A sale or transfer of less than the Trigger Percentages between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of immediate family members of the trustor or transfers to a corporation or partnership in which the immediate family members or shareholders of the transferor who owns at least ten percent (10%) of the present equity ownership and/or at least fifty percent (50%) of the voting control of Developer.

E. A transfer of common areas to a POA.

F. Any transfer to an entity or entities in which the Developer retains a minimum of 51% of the ownership or beneficial interest and retains management and control of the transferee entity or entities.

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G. Any transfer of interests in Owner for estate planning purposes to the heirs of Owner, provided that the heirs retain a minimum of 51% of the ownership or beneficial interest of the transferor entity and retain management and control of the transeree entity.

H. Any transfer of interest to a Pre-Qualified Buyer.

14.1.2. 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 14.1.1 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.

14.1.3. Release of Developer. Upon the written consent of the City to the complete assignment of this Agreement or the transfer of a portion of the Developer’s Property and the express written assumption of the assigned obligations of the Developer under this Agreement by the assignee, the Developer shall be relieved of its legal duty from the assigned obligations under this Agreement with respect to the portion of the Developer’s Property transferred, except to the extent the Developer is in default under the terms of this Agreement prior to the transfer.

14.1.4. No Approval of Terms of Loan by City. Notwithstanding anything to the contrary set forth herein with regards to the approval by the City of hypothecation, encumbrances or mortgages, the City shall only have the right to approve the identity of the Developer’s lender, which approval will not be unreasonably withheld, taking into consideration such lender’s financial strength, reputation, and other relevant factors. The City shall not have any right to approve any of the terms or conditions of the Developer’s financing arrangements with third party lenders.

14.2 Sale to Pre-Qualified Buyer. Nothing herein shall prevent the Developer from selling a portion of the Developer’s Property for residential development subject to any approved final subdivision map to a Pre-Qualified Buyer for construction of houses in accordance with the terms of this Agreement provided that the transeree must enter into appropriate agreements with the City to assure that all Development restrictions hereunder will be met.

14.3 Termination of Agreement With Respect to Individual Parcels Upon Sale to Public. Notwithstanding any provisions of this Agreement to the contrary, this Agreement shall terminate as to any Lot which has been finally subdivided and improved with all required public improvements and which is individually (and not in “bulk”) sold 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; provided, however, that CC&R’s are placed of record in accordance with Section 14.4 below.

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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 Development 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 this Agreement and the development agreement approved in 1993, and 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 this Agreement and the development agreement approved in 1993, and 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 General Plan and Development Approvals meets 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, the 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.

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 1.10) 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.

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 any one 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 or 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 Run 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 assure 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.** 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 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;
(3) 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

(4) 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 successor 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, addressed as follows:

Pardee Homes,
10880 Wilshire Boulevard, Suite 1900
Los Angeles, CA 90024
Attention: Legal department

With a copy to:

Kenneth B. Bley, Esq.,
Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, CA 90067-3284

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, addressed as follows:

City of Banning
99 E. Ramsey Street
Banning, CA 92220
Attention: Planning Director

With a copy to:

David J. Aleshire, Esq., City Attorney
Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 400
Irvine, California 92612

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 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 **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.

19.13 **Execution.**

19.13.1 **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.

19.13.2 **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.

19.13.3. Authority to Execute. The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to sign and deliver this Agreement on behalf of the Party he or she represents, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, (iv) the entering into of this Agreement does not violate any provision of any other Agreement to which the Party is bound and (v) there is no litigation or legal proceeding which would prevent the Parties from entering into this Agreement.

(SIGNATURES ON THE NEXT PAGE.)
IN WITNESS WHEREOF, the City and the Developer have executed this Agreement on the date first above written.

CITY OF BANNING

BY: Don Robinson, Mayor

ATTEST:

Marie Calderon, City Clerk

Approved as to form:
ALESHIRE & WYNDER, LLP

David J. Aleshire, City Attorney

“DEVELOPER”

PARDEE HOMES, a California corporation

BY: Michael V. McGee
President and Chief Executive Officer

BY: Amy Glad
Senior Vice President-Governmental Affairs
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California
County of Los Angeles

On April 24, 2012, before me, Nancy Trojan, Notary Public personally appeared Michael V. McGee, President and Chief Executive Officer and Amy Glad, Senior Vice President-Governmental Affairs who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entities upon behalf of which the persons 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

Nancy Trojan
Notary Public in and for said State.

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document: Development Agreement – City of Banning

Signers are Representing: Pardee Homes

Signer(s) other than named above:

CAPACITY CLAIMED BY SIGNER

Name of Signer: Michael V. McGee and Amy Glad
Corporate Officers Title: President and Chief Executive Officer and Senior Vice President-Governmental Affairs
EXHIBIT "A"
MAP AND LEGAL DESCRIPTION OF DEVELOPER'S PROPERTY

LEGAL DESCRIPTION

Those certain parcels of land situated in the City of Banning, County of Riverside, State of California, being Lots 1 through 20 of Tract No. 34330 as shown on a map thereof filed in Book 429, Pages 84 through 103 of Maps in the Office of the County Recorder of said Riverside County.
EXHIBIT "B"
EXISTING DEVELOPMENT APPROVALS/FEE STUDIES

A. EXISTING DEVELOPMENT APPROVALS (DA Section 1.35)

1. General Plan Amendment No. 11-2501
2. Zone Change No. 11-3501
3. Butterfield Specific Plan
4. Development Agreement

B. DEVELOPMENT FEE STUDIES IN PROCESS (DA Sections 1.28, 4.7)

Studies being prepared in accordance with Section 7.2.

1. General Facilities Fee*
2. Fire Facilities Fee*
3. Police Facilities Fee*
4. Traffic Control Fee*
5. Park Land Fee
6. Road and Bridge Fee
7. Recycled Water Fee
8. Water Connection*
9. Waste Water Connection* (Collection Fee)
10. Waste Water Frontage Fee
11. Emergency Shelter Fee

* Also included in Exhibit D and are subject to Developer Incentive Credit under Section 6.8.
EXHIBIT “C”
ESTOPPEL CERTIFICATE

Date Requested: ____________________________

Date of Certificate: ____________________________

On ____________________________, 2012, the City of Banning approved the Development Agreement between Pardee Homes, a California corporation and the City of Banning (the “Development Agreement”).

This Estoppel Certificate certifies that, as of the Date of Certificate set forth above:

[CHECK WHERE APPLICABLE]

___ 1. The Development Agreement remains binding and effective.

___ 2. The Development has not been amended.

___ 3. The Development Agreement has been amended in the following aspects: ____________________________________________________________

___ 4. To the best of our knowledge, neither Developer nor any of its successors is in default under the Development Agreement.

___ 5. The following defaults exist under the Development Agreement: ____________________________________________________________

This Estoppel Certificate may be relied upon by an transferee or mortgagee of any interest in the property which is the subject of the Development Agreement.

CITY OF BANNING

BY: ________________________________________________
            PLANNING DIRECTOR
## EXHIBIT "D"
### DEVELOPMENT IMPACT FEES

**EXHIBIT "D"
CITY OF BANNING**

**SCHEDULE OF FEES**

**DEVELOPMENT IMPACT FEES**

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<td>Commercial/Cir 100,001 - 200,000 SF</td>
<td>$450.00</td>
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<tr>
<td>Warehousing</td>
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<td>Res. 2006-05</td>
<td>8/1/2006</td>
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<tr>
<td><strong>Police Facilities</strong></td>
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<td>Mobile Home</td>
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<td>per unit</td>
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<td>8/1/2006</td>
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<td>Commercial/Cir 50,000 SF or less</td>
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<td>per 1,000 SF</td>
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<td>Hospital</td>
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<td>Business Park</td>
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<td>Light Industrial</td>
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<td>8/1/2006</td>
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<tr>
<td>Manufacturing</td>
<td>$40.00</td>
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<td>Warehousing</td>
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<td>8/1/2006</td>
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<td>$152.00</td>
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<td>Res. 2006-05</td>
<td>8/1/2006</td>
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1 of 3
### EXHIBIT "D"

**CITY OF BANNING**

**SCHEDULE OF FEES**

**DEVELOPMENT IMPACT FEES**

<table>
<thead>
<tr>
<th>Service</th>
<th>Current Fee</th>
<th>Unit</th>
<th>Resolution</th>
<th>Effective Date</th>
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</thead>
<tbody>
<tr>
<td>Lodging</td>
<td>$95.00</td>
<td>per room</td>
<td>Reso. 2007-075</td>
<td>9/8/2006</td>
</tr>
<tr>
<td>Day Care</td>
<td>$47.00</td>
<td>per student</td>
<td>Reso. 2006-075</td>
<td>9/8/2006</td>
</tr>
<tr>
<td>Nursing Home</td>
<td>$34.00</td>
<td>per bed</td>
<td>Reso. 2006-075</td>
<td>9/8/2006</td>
</tr>
</tbody>
</table>

#### Traffic Control Facilities

**Residential**

- Single Family Detached: $250.00 per unit (Reso. 2006-075)
- Townhouse/Duplex: $153.00 per unit (Reso. 2006-075)
- Multi-Family: $172.00 per unit (Reso. 2006-075)
- Mobile Home: $130.00 per unit (Reso. 2006-075)

**Nonresidential**

- Core/Shopping Ctr 50,000 SF or less: $1,176.00 per 1,000 SF (Reso. 2006-075)
- Core/Shopping Ctr 50,001 - 100,000 SF: $1,029.00 per 1,000 SF (Reso. 2006-075)
- Core/Shopping Ctr 100,001 - 200,000 SF: $891.00 per 1,000 SF (Reso. 2006-075)
- Core/Shopping Ctr over 200,001 SF: $764.00 per 1,000 SF (Reso. 2006-075)
- Office/Inst 25,000 SF or less: $479.00 per 1,000 SF (Reso. 2006-075)
- Office/Inst 25,001 - 50,000 SF: $469.00 per 1,000 SF (Reso. 2006-075)
- Office/Inst 50,001 - 100,000 SF: $349.00 per 1,000 SF (Reso. 2006-075)
- Medical/Dental Office: $944.00 per 1,000 SF (Reso. 2006-075)
- Hospital: $459.00 per 1,000 SF (Reso. 2006-075)
- Business Park: $333.00 per 1,000 SF (Reso. 2006-075)
- Light Industrial: $182.00 per 1,000 SF (Reso. 2006-075)
- Warehousing: $130.00 per 1,000 SF (Reso. 2006-075)
- Elementary School: $379.00 per 1,000 SF (Reso. 2006-075)

**Other Nonresidential**

- Lodging: $238.00 per room (Reso. 2006-075)
- Day Care: $117.00 per student (Reso. 2006-075)
- Nursing Home: $62.00 per bed (Reso. 2006-075)

#### Parklands

**Residential**

- Single Family Detached: $1,975.00 per unit (Reso. 2006-075)
- Townhouse/Duplex: $1,445.00 per unit (Reso. 2006-075)
- Multi-Family: $2,148.00 per unit (Reso. 2006-075)
- Mobile Home: $1,147.00 per unit (Reso. 2006-075)
- Commercial/Industrial: $1,233.00 per acre (Reso. 2005-075)

#### General City Facilities

**Residential**

- Single Family Detached: $478.00 per unit (Reso. 2006-075)
- Townhouse/Duplex: $369.00 per unit (Reso. 2006-075)
- Multi-Family: $530.00 per unit (Reso. 2006-075)
- Mobile Home: $349.00 per unit (Reso. 2006-075)

**Nonresidential**

- Core/Shopping Ctr 50,000 SF or less: $208.00 per 1,000 SF (Reso. 2006-075)
- Core/Shopping Ctr 50,001 - 100,000 SF: $182.00 per 1,000 SF (Reso. 2006-075)
- Core/Shopping Ctr 100,001 - 200,000 SF: $162.00 per 1,000 SF (Reso. 2006-075)

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Exhibit D – Page 2

A0012/108862.12

![Page Image]
EXHIBIT "D"
CITY OF BANNING
SCHEDULE OF FEES
DEVELOPMENT IMPACT FEES

<table>
<thead>
<tr>
<th>DESCRIPTION OF FACILITY</th>
<th>CURRENT FEE</th>
<th>UNIT</th>
<th>RESOLUTION</th>
<th>EFFECTIVE DATE</th>
</tr>
</thead>
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<tr>
<td>Comm/Shopping Ctr over 700,001 SF</td>
<td>$ 146.00</td>
<td>per 1,000 SF</td>
<td>Reso. 2006-075</td>
<td>8/8/2006</td>
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<tr>
<td>Office/Inst 25,000 SF or less</td>
<td>$ 302.00</td>
<td>per 1,000 SF</td>
<td>Reso. 2006-075</td>
<td>8/8/2006</td>
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<td>$ 265.00</td>
<td>per 1,000 SF</td>
<td>Reso. 2006-075</td>
<td>8/8/2006</td>
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<td>Reso. 2006-075</td>
<td>8/8/2006</td>
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<tr>
<td>Medical - Dental Office</td>
<td>$ 205.00</td>
<td>per 1,000 SF</td>
<td>Reso. 2006-075</td>
<td>8/8/2006</td>
</tr>
<tr>
<td>Hospital</td>
<td>$ 246.00</td>
<td>per 1,000 SF</td>
<td>Reso. 2006-075</td>
<td>8/8/2006</td>
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<tr>
<td>Business Park</td>
<td>$ 130.00</td>
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<td>Reso. 2006-075</td>
<td>8/8/2006</td>
</tr>
<tr>
<td>Light Industrial</td>
<td>$ 108.00</td>
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<td>Reso. 2006-075</td>
<td>8/8/2006</td>
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<td>per 1,000 SF</td>
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<td>8/8/2006</td>
</tr>
<tr>
<td>Warehousing</td>
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</tr>
<tr>
<td>Lodging</td>
<td>$ 52.00</td>
<td>per room</td>
<td>Reso. 2006-075</td>
<td>8/8/2006</td>
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<tr>
<td>Day Care</td>
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<td>Nursing Home</td>
<td>$ 36.00</td>
<td>per bed</td>
<td>Reso. 2006-075</td>
<td>8/8/2006</td>
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</tbody>
</table>

Water Connection

Water system connection fee | $ 7,232.00 | per equivalent dwelling unit | Ord. # 1320 | 12/14/2004 |

Wastewater Connection

Wastewater connection fee | $ 2,786.00 | per equivalent dwelling unit | Ord. # 1321 | 1/13/2005 |

* Fee shall be revised annually based on the average percentage change over the previous calendar year set forth in the Construction Price Index for the Los Angeles metropolitan area.
EXHIBIT “E”
ADDITIONAL AGREEMENTS CONCERNING DEVELOPMENT

In addition to the other terms and conditions concerning the City’s assistance to the Project, the City shall accommodate and expedite the development of the Developer’s Property as follows:

1.0 CONSTRUCTION CONDITIONS

1.1 Provision of Utility Connections. The City shall provide, at the Developer’s expense, any necessary temporary and permanent utility connections requested by the Developer for power, water service and sewer service prior to recordation of final map.

1.2 Allowance of Transformers. The City shall allow the setting of transformers without requiring adjacent streets to be fully paved. It is anticipated that 6’ feet of curb and gutter will be placed adjacent to the transformer to ensure correct elevation of the transformer pad. In the event that the location or elevation change, the Developer shall incur the full costs of relocation of both the curb and transformer.

1.3 Temporary Water Pipes. Temporary above ground pipes for construction water and temporary fire hydrants will be acceptable for model and production homes prior to the first certificate of occupancy in the construction phase being developed.

1.4 Provision of Construction Water. The City shall provide “jumpers” or temporary construction water at the City’s normal rate.

1.5 Temporary Use of City Sewer System. The City shall allow the temporary connection of construction trailers to the permanent City sewer system.

1.6 Temporary Use of City Water System. The City shall allow temporary connection of construction trailers to the permanent City water system, provided that all required backflow devices are installed to protect the integrity of the system.

2.0 MAINTAINENCE

2.1 Maintenance of Construction Activities. The Developer shall contract directly for all work required for the maintenance of construction related activities, including but not limited to recycling of construction materials, erosion control, temporary fence installation, and temporary power installation. The selection and retention of the contractor, subcontractor or other person or entity to do such work shall be made by the Developer in its sole and absolute discretion. Trash removal will be coordinated directly with City franchisee. In regards to recycled materials, the Developer will produce for the City, at its request, a manifest to confirm the location, type and amount of materials recycled.

Exhibit E – Page 1
3.0 STREETS

3.1 Timing of Street Paving. The Developer shall be allowed to begin construction of model and production homes without first paving streets. Paved streets shall be required as a condition for the issuance of the certificate of occupancy for the first production home in each construction phase. The Developer shall install all-weather access for construction and emergency personnel, which, during dry months, may, include maintained dirt roads.

3.1 Final Lift of Pavement. The City shall allow the installation of the final 1” of asphalt pavement through coordination with the Developer and the City’s Public Works officials. If the final 1” of pavement is installed early in the Development of specific in-tract or on backbone streets, and if no structural failures have occurred within the street system, the City may require a fog coat seal prior to exoneration of any outstanding bonds.

4.0 GRADING/DRAINAGE

4.1 At Risk Grading. After the first plan check comments on either the rough or mass grading plans are received by the Developer, the City shall allow the Developer to begin grading operations for the area that is the subject of the plan check. The Developer acknowledges that any changes that may be required by the City will be made at the sole expense of the Developer.

4.2 Erosion Control. The Developer shall Develop the Developer’s Property in such a way as to confine all storm water within the Project and shall, do so in a manner which adequately protects all construction within the Project. The Developer shall prepare an erosion control plan that will demonstrate methods that may be incorporated in the Development of the Project to protect downstream watersheds. The Developer shall manage and determine when erosion control measures need to be installed and maintained, but Developer shall comply with any order of City.

4.3 Drainage. Reverse lot drainage on lots that back up to open space, the Golf Course or parks shall be allowed provided that these areas are privately maintained by the Property Owners Association.

5.0 DEVELOPMENT CONDITIONS

5.1 Lot Line Adjustments. In the event that lot line adjustments are required for model complexes or adjustments to open space lots after the recordation of a final map, the City shall review the requested adjustment over the counter with City Engineering staff and the Developer or the Developer’s representative. This will not be allowed for the construction of regular production homes.

5.2 Rear Residential Slopes. The Developer shall stabilize according to the City Grading and Landscape Ordinance the rear slope of all residential Lots prior to issuance of a Certificate of Occupancy but shall not be required to landscape and/or irrigate the slopes. It is the intention that rear yard landscaping will be required and installed within the time specified in the CCC & R’s by the homeowner.

Exhibit E – Page 2
5.3 Use of Joint Trenches. The City shall allow the Developer, to utilize joint trenches if it deems it necessary for Internet capabilities and/or telecommunication purposes.

5.4 Curbs. The construction of wedge, rolled curb, or mountable curbs within residential and multifamily zoned Planning Areas shall be permitted at the Developer’s sole and absolute discretion.

6.0 GOLF COURSE

6.1 Golf Course/Active Open Space Drainage Facilities. It is the Developer’s intention that the flood control facilities proposed within this area will be constructed consistent with all applicable design standards for such facilities with their maintenance being the responsibility of the either the POA, the operator of the Golf Course, the Developer or the City and not the responsibility of the Riverside County Flood Control District (the “RCFCD”) unless the facility has been identified as a Drainage Master Plan Facility by RCFCD.

6.2 Golf Course Water. The financial viability of the Golf Course will be dependent upon the costs to operate and maintain the Golf Course. The City shall provide water to the Project at a per unit rate not to exceed the cost highest tiered rate for irrigation water for the Golf Course for the Term of this Agreement.

7.0 PERMITTING

7.1 Fire Sprinkler Inspections. The City’s Building and Safety Division shall serve as Special Fire Marshall for this project. Building and Safety shall be responsible for enforcing the then applicable provisions of the California Fire Code, and the California Building Standards Codes.

7.2 Bond Exoneration. Upon request by the Developer, the City shall generate a one-time punch list of items required for the full or partial exoneration of all Project-related improvement bonds, for improvements both within and outside of the Property. The City shall, within 5 days of receipt of a written request from the Developer, provide an inspector to determine if the punch list items have been corrected. Once it has been determined that they have been corrected, the City shall expeditiously exonerate the bonds, partially or fully, as applicable. No additional punch lists shall be generated once an improvement has been inspected and a punch list generated.

7.3 Building Permit Refunds. If a Building Permit has expired without construction having started on the structure for which the Building Permit was issued, the Developer shall be entitled to a refund of the building permit fee less 20% for an administrative fee. No refund will be provided if the request for the refund has not been provided to the City within 30 days of the Building Permit’s expiration.
8.0 PREVAILING WAGES

The Developer shall pay prevailing wages in connection with the construction of the Project as required by law. To the extent that it is determined that Developer has not paid, or does not pay, prevailing wages required by law for any portion of the Project, Developer shall defend and hold the City harmless from and against any and all increase in construction costs, or other liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of any action or determination that the Developer failed to pay prevailing wages in connection with the construction of the Project.

Developer acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations ("DIR"), require Developer or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law, then Developer shall indemnify, defend, and hold City harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law. The City makes no representation that any construction or Site uses to be undertaken by Developer are or are not subject to Prevailing Wage Law.

9.0 COST OF DEVELOPMENT AGREEMENT

Developer has previously deposited approximately $200,000 with the City to pay all the City's outside consulting costs, costs of the environmental and legal review, and costs to process and obtain the Development Approvals, including this Agreement. As of March 1, such costs in aggregate exceed the amount deposited by $20,000, and additional costs are anticipated by the end of the approval process. Accordingly, before this Development Agreement shall be executed by the City, the Finance Director shall prepare a final written statement of costs incurred by City in the processing and approval of the Project, and Developer shall pay such amount in good money to City.
EXHIBIT “H”
BUTTERFIELD PROJECT 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 in connection with the Project and to levy the Services Special Tax. Capitalized terms not otherwise defined in this Financing Plan shall be defined as provided in the Development Agreement.

1. Goals and Policies for Financing. The City will adopt general Goals and Policies for establishing CFDs. The Goals and Policies for Financing shall apply on a City-wide basis and may be amended from time to time. This Financing Plan shall be consistent with the City’s 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 (i) the Facilities Special Tax (defined below) within each CFD or Improvement Area to pay directly for Eligible Facilities and to secure the issuance of bonds of each CFD or Improvement Area secured by and payable from the Facilities Special Tax in order to finance the Eligible Facilities (“Bonds”) and (ii) the Services Special Tax.

   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 Proceeding Costs”). City agrees that all such advances for Formation Proceeding Costs so long as the costs are reasonable and not due to the actions of developer, incurred in connection with the formation of such CFD 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.

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 City’s adopted Goals and Policies for Financing, and review by Bond Counsel, conditions set forth in the following paragraph, City may 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 be 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 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.

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V
Attachment 7
Butterfield Specific Plan Settlement Agreement
SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into by and between PARDEE HOMES ("Pardee"), the CITY OF BANNING ("City"), the HIGHLAND SPRINGS RESORT ("Resort"), and CHERRY VALLEY PASS ACRES AND NEIGHBORS and CHERRY VALLEY ENVIRONMENTAL PLANNING GROUP ("CVEPG") (collectively, "CVAN"). The Resort and CVAN may be referred to collectively as "Petitioners." Pardee, City, Resort, and CVAN may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

A. Pardee filed an application with the City for: General Plan Amendment No. 11-2510; Zone Change No. 11-3501; approval of the Butterfield Specific Plan (SCH No. 2007091149), dated November 21, 2011, which amends and supersedes the Deutsch Property Specific Plan, which was approved and adopted by the City in 1993; and approval of the development agreement for the Butterfield Specific Plan, which amends and supersedes the development agreement for the Deutsche Property Specific Plan. The Butterfield Specific Plan provides for the development of a master planned community consisting of up to 5,387 dwelling units, a golf course and open space, parks and other open space, two school sites, an existing utilities substation, a fire station site, and backbone roadways, among other things.

B. Pursuant to the California Environmental Quality Act ("CEQA"), the City prepared an Environmental Impact Report entitled "Environmental Impact Report for Butterfield Specific Plan" (SCH No. 2007091149).

C. On March 27, 2012, the City passed, approved and adopted Resolution No. 2012-24, certifying the Final Environmental Impact Report for the Butterfield Specific Plan.

D. On April 10, 2012, the City passed, approved and adopted Resolution No. 1450, amending the Deutsch Specific Plan and superseding it with the Butterfield Specific Plan ("Specific Plan"), as well as adopting conditions of approval ("Conditions of Approval") and making certain findings in support thereof. Also on April 10, 2012, the City passed, approved, and adopted Resolution No. 1451, adopting the development agreement for the Specific Plan ("Development Agreement").

E. Together, the General Plan Amendment No. 11-2510, Zone Change No. 11-3501, the Development Agreement, and the Specific Plan, as approved and adopted by the City, are hereinafter referred to collectively as the "Project."

F. On April 26, 2012, the Resort filed a Petition for Writ of Mandate in Riverside County Superior Court (Case No. 1206246) ("Resort Action"), alleging that the City had violated CEQA when it approved the Project. Pardee is named as a real party in interest in the Resort Petition. On April 26, 2012, CVAN filed a Petition for Writ of Mandate in Riverside County Superior Court (Case No. 1206271) ("CVAN Action"), alleging that the City had violated CEQA when it approved the Project. Pardee is named as a real party in interest in the CVAN Action. On May 9, 2012, the Resort and CVAN each filed a Notice of Related Cases. On June 28, 2012, the Parties agreed and stipulated to
consolidate the actions for purposes of trial into a single matter under Riverside County Superior Court Case No. 1206246, which is the lower numbered case. On July 5, 2012, the Court ordered the matters consolidated, and ordered the Resort and CVAN to prepare one administrative record for the consolidated case. The consolidated Resort Action and CVAN Action are hereinafter collectively referred to as the “Action.” On September 20, 2013, and again on December 13, 2013, the Court heard oral argument in the Action and took the matter under submission. On December 23, 2013, the Court issued a Statement of Decision. On January 13, 2014, the Parties filed a Stipulation to Stay the Action and Entry of Judgment to allow the Parties adequate time to informally resolve the Action and avoid further litigation.

G. For the purpose of compromising and settling the claims raised in the Action and avoiding the time and expense of further litigation, including but not limited to appeal, the Parties have agreed to settle the Action on the terms described below.

H. Nothing in this Settlement is construed to require an amendment to the Specific Plan, the Development Agreement or any of the associated approvals.

NOW, THEREFORE, in consideration of the mutual covenants, promises, releases representations and warranties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**Agreement**

1. **Request to Delete Cherry Valley Boulevard Road Extension.**

   1.1 Pardee agrees not to request an extension of Cherry Valley Boulevard from any agency at any time. Pardee agrees to join Petitioners in a comment letter to the County of Riverside which requests the deletion of the Cherry Valley Boulevard road extension from the County’s 2014 General Plan Update (County of Riverside General Plan Amendment No. 960) and any other applicable County plans. A copy of the comment letter regarding the General Plan, which is currently being amended by the County, is attached as Exhibit “A” to this Agreement.

   1.2 Pardee agrees to request that the City amend its General Plan to delete the extensions of Brookside Avenue and Cherry Valley Boulevard. Pardee shall apply for the amendment. Because however, the Resort owns some of the property, it acknowledges that it shall cooperate in the processing of the amendment, including but not limited to completing a certified letter of authorization, and any other document required by the City to complete the processing of the amendment. Pardee and Resort agree to share the costs of the application equally and each Party shall bear its own attorneys’ fees associated with the development and processing of the application.

   1.3 The City further agrees that the City Council will consider Pardee’s request for a General Plan Amendment within 365 days of execution of this Agreement. However, the Parties acknowledge that the City’s decision about whether to approve the requested General Plan Amendment must comply with all applicable notice and public hearing requirements of the City’s planning and zoning laws, the outcome of which cannot be guaranteed. By approving this Agreement, the City does not prejudge the General Plan Amendment and remains free to take whatever action it deems appropriate without liability thereof. In the event the City Council does
not approve the General Plan Amendment despite the Parties’ best efforts, Pardee shall not be responsible for re-submitting or taking any further action.

2. **Planning Areas 60 and 61.**

2.1 Pardee shall not develop Specific Plan Planning Area (“PA”) 60 (which includes 205 dwelling units) and PA 61 (which includes 207 dwelling units). PA 60 and 61 shall be preserved in an open space condition, except for utility infrastructure (water, sewer, gas, and power) and associated access roads; water tanks; a potential fire station; landscaping, including irrigation; and drainage debris/detention basins and related storm drain appurtenances. Within 90 days of the City’s approval of any final map to be recorded for the Project, Pardee shall submit for recording a land use restriction that runs with the land evidencing these development restrictions. Exhibit “B” to this Agreement includes the form of the restrictive covenant to be recorded on Lot 13 of recorded Tract No. 34330, which encompasses PA 60, 61 and 73, but excluding the north half of the proposed extension of Highland Home Road. This form has been approved by the Banning City Attorney.

2.2 The Resort and CVAN acknowledge that standard utilities, including water, sewer, gas, as well as road access, are needed to serve the water tanks and fire station, and that existing power lines may need to be relocated and new, above-ground power lines erected to serve the tanks and fire station. Pardee and the City agree to use their best efforts to locate the water tanks at the approximate latitude of 33.96 north and longitude of 116.93 west, provided that this location meets the City’s engineering requirements for the adequate functioning of the water tanks, which determination is subject to confirmation by the City’s engineers. In the event that either regulations, geologic features or other limiting factors prohibit placing the water tanks in the identified location, the City will locate the water tanks in the closest feasible location. If more than one alternative location is feasible, preference shall be given to the site that is the farthest north, provided that the costs for construction and operation of the tanks do not significantly exceed that of a site located elsewhere. The City retains authority to make the final decision on tank siting which may be based on factors of utility for the intended purpose and cost.

2.3 Within 120 days of the City’s approval of any final map to be recorded for the Project, Pardee or successor(s) or assignee(s) shall convey to the Resort its successor(s) or assignee(s) by recorded deed the land which is the northerly 44 acres more or less of Lot 13 as described in Exhibit “C” and conceptually shown on Exhibit “D”. Such conveyance shall be subject to all existing easements and a land use restriction that runs with the land to preserve the land in a primarily natural state limited to passive use recreational amenities. Exhibit “B” to this Agreement includes the form of the restrictive covenant to be recorded on the land conveyed to the Resort its successor(s) or assign(s). Upon transfer of ownership of the land described in Exhibit “C”, the Revocable License Agreement set forth in paragraph 3 of this Agreement shall terminate. In the event the final map is challenged, performance is stayed with regard to the deed restriction and property transfer pending final judicial approval of the map.

(a) Within 180 days of recording the grant deed and to the extent allowed under the existing Southern California Edison easement and by the underlying easement holder, Pardee agrees to construct a wood split rail fence along the southern boundary of the land described in Exhibit “C”. 
3. **Temporary Grant of Hiking Area.** Pardee agrees to grant to the Resort, for the benefit of the Resort, a revocable license for hiking, walking and non-motorized bicycle use and the transport of equipment to the eastern portion of the Resort’s property for security, maintenance and farming purposes over land described in Exhibit “C” and conceptually shown on Exhibit “D”. Exhibit “E” to this Agreement includes the form of the grant of a revocable license which will be recorded within 90 days of entry of judgment dismissing this Action. The Revocable License Agreement shall terminate, if not sooner, upon the recording of a deed transferring ownership of the land described in Exhibit “C” to the Resort or its successor(s) and/or assign(s), subject to the restrictive covenant set forth in Section 2.1, above, and all existing easements. During the term of the license, trail access and use shall not be impaired by the installation of infrastructure within Lot 13 of recorded Tract No. 34330. The Resort and Pardee may agree to an alternative trail alignment if necessary to accommodate allowed infrastructure. In the event the Revocable License Agreement is revoked, Pardee shall have no obligation to provide continuing access or a tie-in trail point.

4. **Planning Area 43B.** Pardee agrees not to purchase or pursue development of PA 43B at any time.

5. **Veteran’s Tree.** Pardee agrees to relocate the “Veteran’s tree” to a prominent location within the Project and near its current location, subject to the City’s review of, and agreement to, the proposed location, which will be done simultaneously with the submittal of plans for the road widening necessary for Highland Springs Avenue. Pardee shall utilize the services of a professional arborist for the relocation. If the Veteran’s tree does not survive for at least 180 days after relocation and replanting, Pardee agrees to replace it with an oak tree contained in a minimum of a 60-inch box, using the services of a professional arborist.

6. **Homeowner-Provided Landscaping.** Pardee and the City agree to impose Covenants, Conditions and Restrictions (“CC&Rs”) on all residential units within the Project, requiring them to comply with Banning Code section 13.16.030 (inclusive of all subsections), as it may be amended from time to time, notwithstanding the fact that section 13.16.030 does not otherwise apply to homeowner-provided landscaping at single-family and multi-family residences. As is required by the Conditions of Approval and Development Agreement, the form of the CC&Rs is subject to approval by the Banning City Attorney within 30 days of submission by Pardee, and shall be enforceable by City.

7. **Non-Potable Project-Related Water Infrastructure.** In conformance with the City’s requirements, Pardee will fund or construct all Project-related infrastructure and facilities required to allow the Project’s use of non-potable water supplies when the City makes non-potable water available to the Project.

8. **Availability of Non-Potable Water.** Pardee agrees that issuance of building permits for any portion or phase of the Project shall be contingent upon the availability of non-potable water supplies to serve any non-potable demands within the City in an amount greater than or equal to the non-potable demands of the portion of the Project for which building permits are requested. For example, if the portion of the Project to be constructed has a non-potable demand of 250 acre-feet per year (AFY), at least 250 AFY of non-potable supply must first be available to serve non-potable demand somewhere within the City.
9. **Elimination of Golf Course.** As permitted by the Development Agreement, the Specific Plan, and the Conditions of Approval, Pardee agrees to eliminate the golf course use from the Project. In the previously defined golf course area (PA 35 and PA 39), Pardee will create a recreational area including parks and natural open space and other uses permitted by the Specific Plan and approved by City. This area may also include areas for flood control, drainage and Project-related groundwater recharge.

10. **Plumbing.** Pardee agrees to install ultra-low flow toilets at 1.28 gallons/flush throughout the Project.

11. **Maximum Number of Dwelling Units.** Pardee agrees that the Project’s total number of dwelling units shall not exceed 4,882.

12. **Solar Voltaic Systems.** Pardee agrees to install solar voltaic systems (or the equivalent renewable energy generating technology) for multi-family residential developments of 18 units per acre or more with a common wall, throughout the Project consistent with City regulations. Such installation shall occur before a certificate of occupancy is issued for any such multi-family residential development.

13. **Electric Vehicle Charging.** Pardee agrees to install electric car charging stations in at least 3% of the parking spaces designated for commercial units and multi-family residential units throughout the Project consistent with City regulations. Pardee also agrees to install “plug slots” suitable for electric vehicle charging in the garages of all single-family residential units consistent with City regulations. Such installation shall occur before a certificate of occupancy is issued for any such multi-family residential units and commercial units.

14. **Efficiency Standards.** Pardee agrees that all developer-installed appliances throughout the Project shall be rated to meet or exceed Energy Star efficiency standards.

15. **Ride Sharing Lot Request.** Pardee agrees to request a ride sharing lot subject to the approval of the responsible transportation agencies including City. Pardee agrees to request a ride sharing lot within the Project before 1,000 units are built. Pardee will coordinate with the responsible transportation agencies, including seeking the necessary City approvals, if any, to determine the appropriate location, size and number of parking spaces and design for the ride sharing lot.

16. **Transportation Coordination.** Pardee agrees to coordinate with the Banning Pass Transit Agency, the Riverside Transit Agency, and the City for service within the Specific Plan area on future bus routes and scheduled bus service, which are based upon demand.

17. **Resort’s and CVAN’s Non-Opposition to the Project.**

17.1 Both the Resort and CVAN, including their principals and officers and agents, agree to all of the following:

(a) Not to object to or oppose, or to assist any other Party to object to or oppose: (1) the Project; (2) any application or request for any further Project approval, including but not limited to: tentative and final maps, verification of an adequate water supply, substantial conformance review, any additional regulatory approval, and any further review of the Project
under CEQA ("Project Approval"); (3) any minor modification or any non-substantive change to the Project ("Minor Modification"); and (4) any amendment of the Development Agreement or Specific Plan, as long as the land uses and development standards included in the amendment substantially conform to the Development Agreement and Specific Plan. Pardee shall provide Resort and CVAN with notice of any amendment to the Development Agreement, Specific Plan or Mitigation and Monitoring Program.

(b) Not to file, participate in, cooperate in (including transmittal of any concepts, legal theories or work product) or contribute money to any legal claim or action challenging the Project, any Project Approval, or any Minor Project Amendment, or otherwise to seek any other form of judicial relief regarding the Project.

17.2 As used in this Section, "Minor Modification" shall have the same definition as used in Section 10.4 of the Development Agreement. As used in this section, "substantially conforms" means that the changes to the Project would not include industrial uses; an increase in the height limit; allow any uses identified as prohibited in the Butterfield Specific Plan or Development Agreement; or eliminate mitigation measures included in the mitigation monitoring and reporting program.

17.3 Resort and CVAN’s right to object, oppose, or challenge any amendment to the Development Agreement or Specific Plan shall be limited to objecting to, opposing, or challenging only that feature or element of the change that does not substantially conform with the Project or is not a Minor Modification. In no event shall the Project, a Project Approval or Minor Modification give Petitioners any right to object to, oppose, or challenge any element or feature of the Project that falls within the approved Project.

17.4 In the event that any person or entity, in any forum, identifies themselves as a member of, representative of, or otherwise is known to be affiliated with the Resort or CVAN, and also objects to, opposes, or files any legal claim or action challenging the Project, contrary to this section (the "objector"), the Party with whom the objector identifies themselves, or with whom the objector is known to a member of, representative of, or otherwise affiliated with, shall, within 5 business days following a request from Pardee or the City, make their best effort to provide a written disclaimer that such objector’s objection, opposition or challenge is not representative of the Party’s position. Failure to provide such disclaimer within 30 days after a request from Pardee or the City, to the extent it is required, shall constitute a breach of this Agreement.

17.5 The Resort and CVAN further agree each to file a letter of non-opposition to the Project with the Riverside County Superior Court which will have continuing jurisdiction over the Action, as provided in Sections 25-26 of this Agreement. The non-opposition letters will be signed by the Authorized Representative for the Resort and CVAN, respectively, as that term is defined in Section 23 of this Agreement. A copy of the form of both non-opposition letters is attached as Exhibit "F" to this Agreement.

17.6 Resort and CVAN agree to use their best efforts to remove from their websites and any social media pages or systems established or sponsored by them any existing objections or opposition to the Project, with the exception of archived press releases and other contemporaneous communications regarding the Project. In the event material(s) cannot be readily removed, Resort and CVAN will agree to post on their websites that they are no longer
opposed to the Project. Resort and CVAN further, agree not to post or add objections to the Project, Project Approvals or Minor Project Amendments to their websites and any social media pages or systems established or sponsored by Petitioners.

17.7 Pardee shall be entitled to enforce this Section 17 by specific performance. Any claim for breach of this provision shall be reviewable in Riverside County Superior Court for a determination of liability and damages and/or reformation of the Agreement which shall include: the right of Pardee and the City to forego any further performance of the terms to this Agreement not yet accomplished, immediate rescission of the Revocable License Agreement for access to portion of Lot 13 of recorded Tract No. 34330, removing the land use restriction on Lot 13 of recorded Tract No. 34330, and such other remedies as may be necessary and appropriate, including without limitation, injunctive and equitable relief. This provision will only apply if the breach is a contributing factor in substantially delaying or preventing future Project approvals, which shall include but not be limited to federal and state approvals, tentative and final map approvals, and infrastructure plans.

17.8 The Parties further acknowledge and agree that at the time that this Agreement is being entered into, it is difficult to ascertain the actual damages in the event of a breach. Because damages related to a breach of the non-opposition provision may be extremely difficult, if not entirely impractical, to calculate, the Parties have agreed that there should be a liquidated damages amount that they believe would act as a minimum amount of awardable damages should a breach of the non-opposition provisions of this Agreement occur. The agreed to amount of liquidated damages is $1,000 per occurrence. For purposes of calculating an occurrence, each day that a breach of the non-opposition provision continues, after notice of a breach is given and if it is not eliminated within 7 business days, it shall be counted as a new occurrence each and every following day thereafter. The Parties agree that this minimum amount of liquidated damages represents a reasonable endeavor by the Parties to ascertain what the actual damages would be. No actual damages need to be proved in order to recover liquidated damages.

17.9 Notwithstanding the foregoing, this section shall not prohibit the Resort or CVAN from taking such action as necessary to enforce the terms of this Agreement.

18. Confidentiality.

18.1 Except as provided herein, the Resort and CVAN, including their principals and officers, agree to keep confidential all written copies of this Agreement, including all negotiations leading thereto, all term sheets, and all prior drafts and versions of this Agreement. The Resort and CVAN further agree not to disseminate this Agreement or post it on their respective websites in any manner, whether in writing, or electronically (including, but not limited to internet/social media) by or through any agent, attorney, or other representative, including any attorney work product.

18.2 If a court order compels the production of this Agreement, the Parties agree to request that the Agreement be produced to the court only for in camera review and that it not made a public court record of any kind.
18.3 The Resort and CVAN further agree to expressly forbid, permanently and irrevocably, their counsel from commenting on the terms and contents of this Agreement and the negotiations leading thereto. The Resort and CVAN will require their counsel to maintain this Agreement, and the terms therein, completely confidential and will not permit their counsel to publicize or disclose the conditions, terms, or contents of this Agreement in any manner, whether in writing, electronically (including, but not limited to internet/social media) or orally, to any person (other than their representatives), unless compelled to do so by law provided that (i) the Party to whom any such legal process is directed promptly (and in no event later than 10 business days after receipt of such legal process) provides written notice and a copy of such legal process to the other parties and to their counsel in accordance with Section 29.10 below; and (ii) prior to the date established by such legal process for the requested disclosure or production, none of the Parties to this Agreement obtains an order from a court or other appropriate entity of competent jurisdiction which forbids all or a portion of the disclosure or production requested by such legal process or except as necessary to effectuate the terms of this Agreement.

18.4 If any third party or media entity inquires as to the existence of this Agreement, or its terms, conditions or contents, the Resort and CVAN shall respond only that the “matters have been resolved.”

18.5 Pardee shall be entitled to enforce this Section 18 by specific performance. Any claim for breach of this provision shall be reviewable in Riverside County Superior Court for a determination of liability and damages. The Parties further acknowledge and agree that at the time that this Agreement is being entered into, it is difficult to ascertain the actual damages in the event of a breach. Because damages related to a breach of the confidentiality provision may be extremely difficult to calculate, if not entirely impracticable to calculate, the Parties have agreed that there should be a liquidated damages amount that they believe would act as a minimum amount of awardable damages should a breach of the confidentiality provision of this agreement occur. The agreed to amount of liquidated damages is $500 per occurrence. For purposes of calculating an occurrence, each day that a breach of the confidentiality provision continues, after notice of a breach is given and if it is not eliminated within 7 business days of the notice to the party alleged to be in breach, it shall be counted as a new occurrence each and every following day thereafter. The Parties agree that this minimum amount of liquidated damages represents a reasonable endeavor by the Parties to ascertain what the actual damages would be. No actual damages need to be proved in order to recover liquidated damages.

19. **City Approval.** The City shall approve this Agreement by way of an agenda item on a public agenda at a regularly noticed City Council meeting in accordance with the Brown Act (Gov. Code, §§ 54950 et seq.), and shall provide copies of the Agreement in accordance therewith, and to persons requesting the Agreement in accordance with the California Public Records Act (Gov. Code, §§ 6250 et seq.)

20. **Mutual Release of Claims.**

20.1 Each Party to this Agreement hereby now and forever expressly releases and discharges the other Parties, their agents, servants, elected and appointed officials, employees, representatives, predecessors, successors, assigns, assignors, attorneys, and independent contractors, from any and all claims, demands, disputes, controversies, causes of action, damages, rights, liabilities, obligations, costs, and expenses, if any, of whatever character and nature arising under federal, state or local laws, regulations, or ordinances, or arising in equity,
known or unknown, suspected or unsuspected, arising out of or related to the Action ("Release"). The Release set forth above in this section is a release of ALL claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are described in the Release and is intended to encompass all known and unknown, foreseen and unforeseen claims which the Parties may have as a result of the Action, except for any claims which may arise from the terms of this Agreement and any default occurring after the Effective Date (defined below). Nothing herein shall be construed as waiving or limiting any Party’s right to enforce the terms of this Agreement occurring on or after the Effective Date.

20.2 Said Release does not include claims arising from Project build out for any alleged physical property damage, wrongful death or any other personal injury or harm, loss of business or business profits, or emotional distress.

21. Effect of Release: Unknown Claim. The foregoing mutual releases shall be self-executing upon execution of this Agreement and shall extend to all claims, including those that the Parties do not presently know or suspect exist related to the Action. Thus, with respect to the claims that are the subject of the mutual releases set forth in this Agreement, the Parties expressly waive their rights under California Civil Code section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

The Parties having read and understood Civil Code section 1542, expressly waive and relinquish all rights and benefits afforded by Civil Code section 1542 as it relates to the matters raised in the Action only and do so understanding and acknowledging the significance of this specific waiver.

22. Principals or Officers. To the Parties’ enforcement of the terms and conditions of this Agreement, Pardee, the Resort, and CVAN each shall provide the names of each Party’s principals or officers and such persons shall be listed in Exhibit “G” to this Agreement. In the event there is a change in Pardee’s, the Resort’s, or CVAN’s principals or officers, such Party shall provide written notification of any new principal or officer to all other Parties within 30 days of a written request by a Party to do so.

23. Authorized Representative. Each Party shall designate a person who is authorized to represent that Party for all purposes under this Agreement ("Authorized Representative"), and Exhibit “H” to this Agreement shall include the name, mailing address, email address, and telephone number of each Party’s Authorized Representative. The Resort’s Authorized Representative may be one of the persons identified on Exhibit “G”. In the event the designated person is no longer authorized to represent the Party, the Party shall provide written notification of a new designee to all other Parties within 30 days of any change pursuant to Section 29.10 of this Agreement.
24. **Dispute Resolution.** Any controversies, disputes or claims relating to the interpretation or enforcement of any material provision or respective rights, duties or obligations of the Parties under this Agreement shall be subject to written notification to the Party or Parties alleged to have breached this Agreement. The Party in alleged breach shall have 90 days to cure or address the alleged issue. If, at the end of the 90-day period, the Party claiming a breach does not believe the issue or issues are resolved, the Parties shall have the right to extend the cure period. Alternatively, if there is no agreement to extend this period, the aggrieved Party may seek to resolve the matter through mediation using an agreed upon mediator. If, after 120 days, the Parties are unable to resolve the dispute, only then may the aggrieved Party seek judicial relief. A waiver of a breach, failure of condition, or any right or remedy contained in or granted by the provisions of this Agreement is effective only if it is in writing and signed by the Party waiving the breach, failure, right, or remedy.

25. **Stipulated Judgment (Dismissal of the Action).**

25.1 The Parties agree that the terms of this Agreement, and only the terms of this Agreement, shall constitute the terms of a Stipulated Judgment to be entered in the Action. Within 10 days of the Effective Date, as defined in Section 28 below, the Parties further agree to petition the Riverside County Superior Court jointly for entry of a Stipulated Judgment that is substantially in conformity with the [Proposed] Stipulated Judgment and Order attached as Exhibit "I" to this Agreement. The Stipulated Judgment shall provide that the Action be dismissed with prejudice, and shall provide for the continuing and exclusive jurisdiction of the presiding trial court judge in the Action, Riverside Superior Court Judge Daniel A. Ottolia, with respect to the future performance of the terms of this Agreement pursuant to Code of Civil Procedure section 664.6. (Wacken v. Malis (2002) 97 Cal.App.4th 429, 439-440.) In the event Judge Ottolia is unavailable, the Court shall appoint another Riverside County Superior Court judge who has been appointed to preside over CEQA cases. Counsel for Pardee will coordinate the filing of the [Proposed] Stipulated Judgment and Order and will make available conformed copies to the Resort and CVAN within 3 days of filing. If the court does not enter a stipulated judgment dismissing the Action in substantial conformity with this Agreement, this Agreement shall have no force and effect.

25.2 No Party shall be entitled to file a motion in the Resort Action or CVAN Action pursuant to Code of Civil Procedure section 664.6, except to seek enforcement of the Stipulated Judgment and only after the Party has complied with the dispute resolution provisions provided in Section 24 of this Agreement.

26. **Judicial Enforcement of Judgment.** The Riverside County Superior Court shall retain jurisdiction to enforce this Agreement under Code of Civil Procedure section 664.6.

27. **Compliance with All Laws.** Nothing in this Agreement shall be construed to constrain or limit the City’s ability to comply with the law, including but not limited to the California Public Records Act.

28. **Effective Date.** This Agreement is conditioned upon and will take effect only upon approval by each of the Parties, demonstrated by their respective signatures to this Agreement. The date the last of these events occurs constitutes the “Effective Date” of this Agreement.
29. **General Provisions.**

29.1 **Ambiguity.** The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the Parties, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

29.2 **Assistance of Counsel.** The Parties each specifically represent that they have consulted to their satisfaction with and received independent advice from their respective counsel prior to executing this Agreement concerning its terms and conditions.

29.3 **Authority to Sign.** The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized by law and existing; (ii) the signatories are duly authorized to execute and deliver this Agreement on behalf of said Party and to bind that Party, including its directors, officers, members, managers, agents, successors and assigns; (iii) by so executing this Agreement, such Party is formally bound to its provisions; and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

29.4 **Counterparts.** This Agreement may be executed in counterparts, including the execution of facsimile, or e-mail portable document format ("PDF") copies, and the exchange of signatures by facsimile, or e-mail PDF, with the same effect as if all original signatures were placed on one document, and which, when taken together, will constitute one original agreement.

29.5 **Enforcement Costs.** Should any legal action be required to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that Party may be entitled. As used herein, the "prevailing party" shall be the party determined as such by a court of law pursuant to the definition in Code of Civil Procedure section 1032 (a)(4), as it may be subsequently amended.

29.6 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties that have executed it, and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the Parties to this Agreement for the Action. The Parties to this Agreement each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or by anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this Agreement, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this Agreement shall be valid or binding, unless executed in writing by all of the Parties to this Agreement.

29.7 **Governing Law and Venue.** This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said state without giving effect to conflicts of laws principles. Venue for any action to enforce any claim under this Agreement shall lie solely and exclusively in Riverside County Superior Court, located at 4050 Main Street in Riverside, California.
29.8 **Headings.** Headings at the beginning of each numbered section of this Agreement are solely for the convenience of the Parties and are not a substantive part of this Agreement.

29.9 **Non-Admission of Liability.** The Parties acknowledge and agree that this Agreement is a settlement of disputed claims. Neither the fact that the Parties have settled nor the terms of this Agreement shall be construed in any manner as an admission of any liability by any Party hereto, or any of its employees, or an affiliated person(s) or entity(ies).

29.10 **Notices.** Any notice, demand, request, document, consent, approval, or communication that any Party to this Agreement desires or is required to give to the other Parties or any other person or entity regarding this Agreement shall be in writing and either served personally or sent by prepaid, certified first-class mail, with the exception that attorneys may be notified by electronic mail as indicated below to:

**To:** PARDEE

Mike Taylor  
Division President of Inland Empire  
Pardee Homes  
2120 Park Place, Suite 120  
El Segundo, CA 90245  
mike.taylor@pardeehomes.com

**With a copy to:**  
Chris Hallman, General Counsel  
Pardee Homes  
2120 Park Place, Suite 120  
El Segundo, CA 90245  chris.hallman@pardeehomes.com

**To:** CVAN

Cherry Valley Pass Acres & Neighbors  
P.O. Box 3257  
Beaumont, CA 92223-1204  
ATTN: Ms. Patsy Reeley

**With a copy to:**  
Robert C. Goodman, Esq.  
D. Kevin Shipp, Esq.  
ROGERS JOSEPH O’DONNELL  
311 California Street, 10th Floor  
San Francisco, CA 94104  
grgoodman@rio.com  
kshipp@rio.com

**To:** CITY

City Manager  
City of Banning  
99 E. Ramsey Street  
Banning, CA 92220

**With a copy to:**  
David J. Alesshire, Esq.  
Alesshire & Wynder, LLP  
18881 Von Karman Avenue, Suite 1700  
Irvine, CA 92612  
daleshire@awattorneys.com

**To:** RESORT

Tina Kummerle  
President, Highland Springs Resort  
10600 Highland Springs Avenue  
Beaumont, CA 92223  
tina.k@hsresort.com

**With a copy to:**  
Douglas P. Carstens, Esq.  
Amy Minteer, Esq.  
CHATTHEN-BROWN & CARSTENS  
2200 Pacific Coast Highway, Suite 318  
Hermosa Beach, CA 90254  
aem@cbcearthlaw.com  
dpc@cbcearthlaw.com
To: CVEPG

Cherry Valley Environmental Planning Group
10065 Frontier Trail
Cherry Valley, CA 92223
ATTN: Mr. Patrick Doherty

With a copy to:

Robert C. Goodman, Esq.
D. Kevin Shipp, Esq.
ROGERS JOSEPH O’DONNELL
311 California Street, 10th Floor
San Francisco, CA 94104
rgoodman@rjo.com
kshipp@rjo.com

29.11 Recitals. The Recitals set forth in the beginning of this Agreement are hereby incorporated into the terms of the Agreement as though set forth in full herein.

29.12 Severability. Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

29.13 Singular and Plural. Whenever required by the context, as used in this Agreement, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and the feminine gender shall include the masculine and the neuter.

29.14 Successors and Assigns. This Agreement and all terms and provisions shall inure to the benefit of and be binding upon the heirs, legal representatives, successors, assignees and delegees of the parties hereto. Any heir, legal representative, successor, assignee or delegee shall be fully bound by each and every applicable term and condition of this Agreement, as though a signatory thereto.

29.15 Waiver. Failure to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.
List of Attachments:

A:  Parties' Letter in Support of County Amending General Plan
B:  Restrictive Covenant on Lot 13 of recorded Tract No. 34330
C:  Proposed Resort Deed - Legal Description
D:  Proposed Resort Deed - Graphic Depiction
E:  Revocable License Agreement
F:  Letter of Non-Opposition from the Resort, CVAN and CVPEG to the Court
G:  Parties' Officers or Principals
H:  Authorized Representatives and Contact Information
I:  [Proposed] Stipulated Judgment

[SIGNATURE PAGES FOLLOW]
PARDEE HOMES

Date: ________________

By: [Signature]

Name: Mike Taylor
Title: Division President of Inland Empire

CITY OF BANNING

Date: ________________

By: [Signature]

Name: [Signature]
Title: [Position]

HIGHLAND SPRINGS RESORT

Date: ________________

By: [Signature]

Name: Tina Kummerle
Title: President

CHERRY VALLEY PASS ACRES AND NEIGHBORS

Date: ________________

By: [Signature]

Name: Patsy Reeley
Title: President

CHERRY VALLEY ENVIRONMENTAL PLANNING GROUP

Date: ________________

By: [Signature]

Name: Patrick Doherty
Title: President
PARDEE HOMES

Date: _______________________

By: _______________________

Name: Mike Taylor
Title: Division President of Inland Empire

CITY OF BANNING

Date: _______________________

By: _______________________

Name: _______________________
Title: _______________________

HIGHLAND SPRINGS RESORT

Date: _______________________

By: _______________________

Name: Tina Kummerle
Title: President

CHERRY VALLEY PASS ACRES AND NEIGHBORS

Date: _______________________

By: _______________________

Name: Patsy Reeley
Title: President

CHERRY VALLEY ENVIRONMENTAL PLANNING GROUP

Date: _______________________

By: _______________________

Name: Patrick Doherty
Title: President
PARDEE HOMES

Date: 

By: 
Name: Mike Taylor
Title: Division President of Inland Empire

CITY OF BANNING

Date: 

By: 
Name: 
Title: 

HIGHLAND SPRINGS RESORT

Date: 

By: 
Name: Tina Kummerle
Title: President

CHERRY VALLEY PASS ACRES AND NEIGHBORS

Date: November 3, 2014

By: 
Name: Patsy Reese
Title: President

CHERRY VALLEY ENVIRONMENTAL PLANNING GROUP

Date: November 3, 2014

By: 
Name: Patrick Doherty
Title: President
EXHIBIT A

Parties' Letter in Support of County Amending General Plan
November ____ , 2014

Via U.S. Mail and E-mail (klovelad@rcitma.org)

Kristi Lovelady, Principal Planner
County of Riverside
4080 Lemon Street, 12th Floor
Riverside, CA 92501

Re: General Plan Amendment No. 960
    Removal of Extension Cherry Valley Boulevard from Circulation Element

Dear Ms. Lovelady,

On behalf of the Highland Springs Resort, Cherry Valley Pass Acres and Neighbors, the Cherry Valley Environmental Planning Group, and Pardee Homes, we submit these comments on General Plan Amendment No. 960 to request the removal of the extension of Cherry Valley Boulevard east of Highland Springs Avenue to Wilson Street from the Circulation Element of the County General Plan.

The Highland Springs Resort is located in the community of Cherry Valley, within the Pass Area of the County’s General Plan. The resort is “a popular conference retreat with a picturesque lodge and convenient connections to surrounding natural features via trail systems.” (General Plan Amendment No. 690, Pass Area Plan, p. 9.) Cherry Valley Acres and Neighbors and the Cherry Valley Environmental Planning Group are citizens groups dedicated to preserving the environmental values and unique character of Cherry Valley. As described in the Pass Area Plan, Cherry Valley is a rural community characterized by charming orchards, large-lot residential, agricultural and animal-keeping uses. (General Plan Amendment No. 690, Pass Area Plan, pp. 8-9.) To retain the rural charm, the County LAFCO has designated Cherry Valley as an unincorporated community.

On March 27, 2012, the City of Banning approved Pardee Homes’ application for the Butterfield Specific Plan. The Butterfield Specific Plan authorizes 5,387 new residences, parks, schools, commercial uses, and open space on 1,522 acres of undeveloped land located in the northern portion of the City of Banning, east of Highland Springs Avenue. The Specific Plan area is adjacent to the community of Cherry Valley and the Resort’s property. The environmental review conducted for the Specific Plan determined that the circulation system approved by the City would satisfy City and County traffic standards, without requiring the future extension of Cherry Valley Boulevard depicted in the Circulation Element. Since its 2012 approval, Pardee Homes has agreed to reduce the number of dwelling units planned for this site to 4,862 units, and remove the proposed golf course from
Ms. Kristi Lovelady  
November ____, 2014  
Page 2

the project. Given that the City's traffic analyses had already determined that the future extension of Cherry Valley Boulevard was unnecessary, even with 5,387 homes and the golf course, these reductions ensure that the Specific Plan area will be adequately served without the need for extension of Cherry Valley Boulevard. Further, the circulation system and development plan that was approved for the Specific Plan eliminated the Highland Home Road extension to Brookside Avenue, and re-configured traffic through the center of the Specific Plan area, making the extension of Cherry Valley Boulevard unnecessary to the Butterfield Specific Plan development.

In addition, further development in the area is constrained by land use restrictions, agricultural casements, and the San Bernardino National Forest. Accordingly, the Highland Springs Resort, Cherry Valley Acres and Neighbors, Cherry Valley Environmental Planning Group, and Pardee Homes all respectfully request that the County remove the future extension of Cherry Valley Boulevard between Highland Springs Avenue and Wilson Street from the Circulation Element of the Riverside County General Plan.

Sincerely,

Tina Kummerle  
President  
Highland Springs Resort

Mike Taylor  
Division President of Inland Empire  
Pardee Homes

Patrick Doherty  
President  
Cherry Valley Environmental Planning Group

Patsy Reelley  
President  
Cherry Valley Pass Acres and Neighbors
EXHIBIT B

Restrictive Covenant on Lot 13 of recorded Tract No. 34330
RECORDING REQUESTED BY
Brownstein Hyatt Farber Schreck, LLP

AND WHEN RECORDED, RETURN TO:
Diane De Felice, Esq.
Brownstein Hyatt Farber Schreck, LLP
2049 Century Park East, Suite 3550
Los Angeles, CA 90067-3007
Telephone (310) 500-4600

RESTRICTIVE COVENANT

This RESTRICTIVE COVENANT (this Covenant) is made this _____ day of _______ by Pardee Homes, a California corporation (the Grantor), in favor of Highland Springs Resort, a corporation organized under the laws of the State of California. The legal name of the entity is Highland Springs Conference and Training Center, which is doing business as (dba) "Highland Springs Resort," "123 Farm," and "Highland Springs Conference and Training Center" (hereinafter the Grantee).

RECITALS

WHEREAS, Grantor received approval from the City of Banning (the City) for a master planned community with residential and commercial development situated on a total of approximately 1,543 acres in the City of Banning, State of California which is sometimes known and referred to as the Butterfield Specific Plan Area and is described with specificity in attached Exhibit A and is depicted graphically in attached Exhibit B (the Development).

WHEREAS, Grantee owns a commercial resort operation on approximately 2,400 acres of land, some of which are adjacent to and adjoin the Development, and is described with specificity in attached Exhibit C and is depicted graphically in attached Exhibit D (the Resort).

WHEREAS, Grantee filed a lawsuit against the City [Highland Springs Resort v. City of Banning, et al. (Riverside County Superior Court Case No RIC1206246, Consolidated with Case No. RIC 1206271)] challenging the City's approval of the Development on the grounds that the Environmental Impact Report for the Development failed to consider and address certain significant adverse impacts as required by the California Environmental Quality Act (the CEQA Litigation).
WHEREAS, rather than engaging in protracted adversarial proceedings, Grantor and Grantee agreed to settle the CEQA Litigation by, among other things, Grantor's grant of this Covenant over certain portions of the Development, which areas are described with specificity in attached Exhibit E and are depicted graphically in attached Exhibit F (the Restricted Property).

WHEREAS, this Covenant is Grantor's agreement to have no structural development on the Restricted Property except as provided in the terms hereinafter.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor covenants and agrees and Grantee accepts as follows:

1. **Covenant.** Except as otherwise provided in Paragraph 4 below, Grantor covenants and agrees to maintain the Restricted Property in an open, natural and scenic condition with passive use recreational amenities (the Property Attributes). This Covenant is intended to be a covenant running with the land under California Civil Code section 1460 et seq.

2. **Reserved Rights.** Grantor reserves to itself, and to its successors and assigns, all rights accruing from its ownership of the Restricted Property, including the right to perform any act not specifically prohibited or limited by this Covenant and including the right to use the Restricted Property to meet any open space or similar requirements imposed on Grantor by the County, provided such acts do not substantially diminish or impair the Property Attributes of the Restricted Property. Further, Grantor specifically reserves the right to construct certain utility infrastructure and other appurtenances as specifically set forth in Paragraph 4. Grantor's reserved ownership rights which include, but are not limited to, the right to exclude any member of the public from trespassing on the Restricted Property, the right to honor existing easements across the Restricted Property, the right to grant underground utility easements and the right to engage in or permit or invite others to engage in all uses of the Restricted Property that are not expressly prohibited or restricted herein and that do not substantially diminish or impair the Restricted Property's Property Attributes. Without limiting the generality of the foregoing, Grantor also reserves the right to engage in all activities which a landowner is entitled, including its' interest in underlying mineral and water rights, and oil, gas, and other hydrocarbon substances, as well as any recreational activities, all of which are to be enjoyed solely by the Grantor, its successors and assigns and their licensees and permittees, so long as they are undertaken in compliance with applicable state and federal laws and regulations and pursued in a manner that does not substantially diminish or impair the Property Attributes of the Restricted Property. Grantor hereby reserves the right to transfer development rights from the Restricted Property to any other portion of the Development (other than the Restricted Property). Additionally, the Restricted Property may be used for the purpose of calculating permissible development density and/or open space/recreational use credits for the Development generally.
3. **Prohibited Acts.** Any activity on or use of the Restricted Property inconsistent with the purpose of this Covenant, subject to the provisions of Paragraph 4 below, is expressly prohibited.

4. **Permitted Acts.** Notwithstanding anything herein to the contrary, Grantor may make the following uses of and improvements to the Restricted Property:

   (a) **Water Storage Tanks.** Grantor may construct on the Restricted Property water storage tanks and public utility facilities as described in the Butterfield Specific Plan. In the event of any contradiction between the terms and provisions of this Covenant and the Butterfield Specific Plan as to public utility and/or infrastructure improvements that exist or to be constructed in the Restricted Property, the terms and provisions of the Butterfield Specific Plan shall supersede and control. Grantor shall use its best efforts to locate the water tanks at the approximate latitude of 33.98 north and longitude of 116.93 west, provided that this location meets the City's engineering requirements for the adequate functioning of the water tanks, which determination is subject to confirmation by the City's engineers. In the event that either regulations, geologic features or other limiting factors prohibit placing the water tanks in the identified location, Grantor shall locate the water tanks in the closest feasible location. If more than one alternative location is feasible, preference shall be given to the site that is the farthest north, provided that the costs for construction and operation of the tanks do not significantly exceed that of a site located elsewhere. The City retains authority to make the final decision on tank siting which may be based on factors of utility for the intended purpose and cost.

   (b) **Fire Station.** Grantor may construct a fire station at the southeast corner of the Restricted Property as contemplated under the Butterfield Specific Plan.

   (c) **Service Roads.** Grantor may construct and/or reconstruct service roads in and across the Restricted Property as necessary or appropriate to access the water storage tanks and public utility facilities, the exact location of which shall be at Grantor's sole discretion.

   (d) **Utilities.** Standard utilities, including water, sewer, gas, as well as road access, are needed to serve the water tanks and fire station.

   (e) **Power Lines.** The existing power transmission lines that cross the Restricted Property may remain and/or be relocated on the Restricted Property. New, above-ground power lines may be erected to serve the tanks and fire station.

   (f) **Drainage Facilities.** Grantor may construct detention basins and other drainage and debris facilities on the Restricted Property as contemplated under the Butterfield Specific Plan.

   (g) **Landscaping/Irrigation.** Grantor anticipates infrastructure will include surrounding landscaping which will include irrigation facilities, and other necessary irrigation as contemplated under the Butterfield Specific Plan.
5. **Rights of Grantee.** To accomplish the purpose of this Covenant, the following rights are hereby conveyed to Grantee:

   (a) To enforce the terms of this Covenant to preserve and protect the Property Attributes of the Restricted Property;

   (b) To enter upon the Restricted Property at reasonable times in order to monitor Grantor’s compliance with and otherwise enforce the terms of this Covenant; provided that, except in cases of emergency, such entry shall be upon not less than five (5) day prior written notice to Grantor, in which event Grantee shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Restricted Property; and

   (c) To prevent any activity on or use of the Restricted Property that is inconsistent with the purpose of this Covenant.

6. **Enforcement.** If Grantee believes a violation of this Covenant has occurred, Grantee shall notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either: (a) diligently work to restore the Restricted Property to its condition prior to the violation; or (b) provide a written explanation to Grantee of the reason why the alleged violation should be permitted. If clause (b) above is applicable, the Parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting or within ninety (90) days of written notification of a potential violation, the parties agree to meet with a mediator to attempt to resolve the dispute pursuant to Paragraph 7 of this Covenant below.

   (a) **Costs.** Should any legal action be required to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees and costs in addition to any other relief to which that party may be entitled. As used herein, the “prevailing party” shall be the party determined as such by a court of law pursuant to the definition in Code of Civil Procedure section 1032 (a)(4), as it may be subsequently amended.

   (b) **Acts Beyond Grantor’s Control.** Nothing contained in this Covenant shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Restricted Property resulting from causes beyond Grantor’s control or force majeure events, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Restricted Property or to any person resulting from such causes.

7. **Dispute Resolution.** Any controversies, disputes or claims relating to the interpretation or enforcement of any material provision or respective rights, duties or obligations of the Parties under this Agreement shall be subject to written notification to the party or parties alleged to have breached this Agreement. The party in alleged breach shall have ninety (90) days to cure or address the alleged issue. If, at the end of the 90-day period, the party claiming a breach does not believe the issue or issues are
resolved, the parties shall have the right to extend the cure period. Alternatively, if there is no agreement to extend this period, the aggrieved party may seek to resolve the matter through mediation using an agreed upon mediator. The parties will split the costs for mediation services. If, after one hundred and twenty (120) days, the parties are unable to resolve the dispute, only then may the aggrieved party seek judicial relief. A waiver of a breach, failure of condition, or any right or remedy contained in or granted by the provisions of this Agreement is effective only if it is in writing and signed by the party waiving the breach, failure, right, or remedy.

8. **Transfer of Restricted Property.** Grantor shall have the right to convey the Restricted Property subject to the terms of this Covenant and assign its rights and obligations under this Covenant to such transferee, provided such transferee expressly agrees to assume the responsibility imposed on Grantor by this Covenant.

9. **Perpetual Duration.** The restrictions and obligations created by this Covenant shall be a servitude running with the Restricted Property in perpetuity. Every provision of this Covenant that applies to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear; provided, however, (i) that either party’s rights and obligations under this Covenant shall terminate (as to such party, but not as to such party’s successor, who shall be bound as provided herein) upon a transfer of such party’s entire interest in this Covenant or the Restricted Property, except that liability of such transferring party for act or omissions occurring prior to such transfer shall survive the transfer; and (ii) Grantee’s rights hereunder are indivisible and may only be assigned to a single person, entity or association, and in no event shall Grantor be responsible and/or liable hereunder to more than one person, entity or association.

10. **Notices.** Any notices required by this Covenant shall be in writing and shall be personally delivered to or sent by certified mail, return receipt requested, to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address:

**Grantor:**
Pardee Homes  
Attention: Chris Hallman, General Counsel  
2120 Park Place, Suite 120  
El Segundo, CA 90245

With a copy to:
Brownstein Hyatt Farber Schreck, LLP  
Attention: Diane C. De Felice, Esq.  
2049 Century Park East, Suite 3550  
Los Angeles, CA 90067-3007  
ddefelice@bhfs.com
Grantee: 
Highland Springs Resort 
Attention: Tina Kummerle, President 
Highland Springs Resort 
10600 Highland Springs Avenue 
Beaumont, CA 92223 

With a copy to: 
Douglas P. Carstens, Esq. 
Amy Minteer, Esq. 
CHATLEN-BROWN & CARSTENS 
2200 Pacific Coast Highway, Suite 318 
Hermosa Beach, CA 90254 
acm@cbcearthlaw.com 
dpc@cbcearthlaw.com 

11. **Recording.** This Covenant shall be recorded by Grantor in the Official Records of the County of Riverside, State of California.

12. **Acceptance.** Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Covenant.

13. **General Provisions.**

   (a) **Ambiguity.** The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the Parties, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

   (b) **Amendment.** If the circumstances arise under which an amendment to or modification of this Covenant would be appropriate, Grantor and Grantee are free to jointly amend this Covenant. Any amendment must be in writing, signed by both parties, and recorded in the Official Records of the Recorder of Riverside County, California.

   (c) **Assistance of Counsel.** The Parties each specifically represent that they have consulted to their satisfaction with and received independent advice from their respective counsel prior to executing this Agreement concerning its terms and conditions.

   (d) **Authority to Sign.** The persons executing this Agreement on behalf of the Parties hereof warrant that (i) such party is duly organized by law and existing; (ii) the signatories are duly authorized to execute and deliver this Agreement on behalf of said party and to bind that party, including its directors, officers, members, managers, agents, successors and assigns; (iii) by so executing this Agreement, such party is
formally bound to its provisions; and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

(e) **Captions.** The captions in this Instrument have been inserted solely for convenience of reference and are not a part of this Instrument and shall have no effect upon construction or interpretation.

(f) **Change of Conditions.** A change in the potential economic value of any use that is prohibited by or inconsistent with this Covenant, or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions that makes it impossible or impractical for continued use of the Restricted Property for open space purposes and shall not constitute grounds for terminating the Covenant.

(g) **Counterparts.** This Agreement may be executed in counterparts, including the execution of facsimile, or e-mail portable document format ("PDF") copies, and the exchange of signatures by facsimile, or e-mail PDF, with the same effect as if all original signatures were placed on one document, and which, when taken together, will constitute one original agreement.

(h) **Governing Law and Venue.** This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said state without giving effect to conflicts of laws principles. Venue for any action to enforce any claim under this Agreement shall lie solely and exclusively in Riverside County Superior Court, located at 4050 Main Street in Riverside, California.

(i) **Joint Obligations.** If more than one owner owns the Restricted Property at any time, the obligations imposed by this Covenant upon Grantor shall be joint and several.

(j) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(k) **Non-Merger.** No merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Covenant or the Restricted Property.

(l) **Recitals.** The Recitals set forth in the beginning of this Agreement are hereby incorporated into the terms of the Agreement as though set forth in full herein.

(m) **Severability.** Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.
(n) Successors. The covenants, terms, conditions, and restrictions of this Covenant shall be binding upon, and inure to the benefit of, the parties hereto, and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Restricted Property.

(o) Termination of Rights and Obligations. Although this Covenant shall survive any transfer of the Restricted Property, a party's rights and obligations under this Covenant terminate upon transfer of the party's interest in the Covenant or Restricted Property, except for liability for acts or omissions occurring prior to transfer shall survive transfer.

IN WITNESS WHEREOF, Grantor, intending to legally bind itself, has set its hand on the date first written above.

GRANTOR:
Pardee Homes

By: ____________________________
Name: __________________________
Title: __________________________

GRANTEE:
Highland Springs Resort

By: ____________________________
Name: __________________________
Title: __________________________

ATTACHMENTS:

Exhibit A – Butterfield Specific Plan Area – Legal Description
Exhibit B – Butterfield Specific Plan Area – Graphic Depiction
Exhibit C – Highland Springs Resort – Legal Description
Exhibit D – Highland Springs Resort – Graphic Depiction
Exhibit E – Restricted Property – Legal Description
Exhibit F – Restricted Property– Graphic Depiction
(n) Successors. The covenants, terms, conditions, and restrictions of this Covenant shall be binding upon, and inure to the benefit of, the parties hereto, and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Restricted Property.

(o) Termination of Rights and Obligations. Although this Covenant shall survive any transfer of the Restricted Property, a party’s rights and obligations under this Covenant terminate upon transfer of the party’s interest in the Covenant or Restricted Property, except for liability for acts or omissions occurring prior to transfer shall survive transfer.

IN WITNESS WHEREOF, Grantor, intending to legally bind itself, has set its hand on the date first written above.

GRANTOR:  GRANTEE:

Pardee Homes  Highland Springs Resort

By:  By:
Name:  Name:
Title:  Title:
  
ATTACHMENTS:

Exhibit A – Butterfield Specific Plan Area – Legal Description
Exhibit B – Butterfield Specific Plan Area – Graphic Depiction
Exhibit C – Highland Springs Resort – Legal Description
Exhibit D – Highland Springs Resort – Graphic Depiction
Exhibit E – Restricted Property – Legal Description
Exhibit F – Restricted Property – Graphic Depiction
(n) **Successors.** The covenants, terms, conditions, and restrictions of this Covenant shall be binding upon, and inure to the benefit of, the parties hereto, and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Restricted Property.

(e) **Termination of Rights and Obligations.** Although this Covenant shall survive any transfer of the Restricted Property, a party’s rights and obligations under this Covenant terminate upon transfer of the party’s interest in the Covenant or Restricted Property, except for liability for acts or omissions occurring prior to transfer shall survive transfer.

**IN WITNESS WHEREOF,** Grantor, intending to legally bind itself, has set its hand on the date first written above.

**GRANTOR:**

Pardee Homes

**GRANTEE:**

Highland Springs Resort

By: ________________________________
Name: ______________________________
Title: ______________________________

By: ________________________________
Name: ______________________________
Title: ______________________________

**ATTACHMENTS:**

- Exhibit A – Butterfield Specific Plan Area – Legal Description
- Exhibit B – Butterfield Specific Plan Area – Graphic Depiction
- Exhibit C – Highland Springs Resort – Legal Description
- Exhibit D – Highland Springs Resort – Graphic Depiction
- Exhibit E – Restricted Property – Legal Description
- Exhibit F – Restricted Property – Graphic Depiction
EXHIBIT "A"

LEGAL DESCRIPTION

BUTTERFIELD SPECIFIC PLAN AREA

ALL OF TRACT NO. 34330 IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF
CALIFORNIA AS SHOWN ON THE MAP FILED IN BOOK 429, PAGES 84 THROUGH 103,
INCLUSIVE, OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID RIVERSIDE
COUNTY, CALIFORNIA.
EXHIBIT B
EXHIBIT "C"

LEGAL DESCRIPTION

HIGHLAND SPRINGS RESORT:

PARCEL 1:

THOSE PORTIONS OF LOTS 10 AND 20 OF GLEN EYRIE HEIGHTS, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 8, PAGE 76 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING SOUTHEASTERLY OF THE SOUTHEASTERLY LINE OF OVERLAND TRAIL (LOT J) NORTHEASTERLY OF THE NORTHEASTERLY LINE OF CHERRY VALLEY BLVD. (LOT S), AS SHOWN BY MAP OF TRACT NO. 4636-1 ON FILE IN BOOK 77, PAGES 90 THROUGH 98 THEREOF, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2:

LOTS 25, 26, 27, 28, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62 OF GLEN EYRIE HEIGHTS, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 8, PAGE 76 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION OF LOTS 25 AND 26 LYING WITHIN TRACT 14209-1 AS PER MAP RECORDED IN BOOK 133, PAGES 33 THROUGH 38 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THAT PORTION OF LOTS 27, 28, 39, 40 AND 41 LYING SOUTHWEST OF THE FOLLOWING DESCRIBED LINE.

BEGINNING AT THE CENTERLINE INTERSECTION OF CHERRY VALLEY BOULEVARD AND HIGHLAND SPRINGS AVENUE AS SHOWN ON MAP OF TRACT 4636-1 IN BOOK 11, PAGES 90 TO 98 INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

THENCE SOUTH 46°25′52″ EAST, 1,781.43 FEET TO A POINT ON THE EAST LINE OF LOT 39 IN SAID GLEN EYRIE TRACT, SAID POINT BEING THE SOUTHEAST TERMINUS OF SAID LINE BEING DESCRIBED.

PARCEL 3:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS;

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 25;

THENCE NORTH 89°42′00″ EAST, 543.90 FEET ON THE EAST AND WEST CENTERLINE OF SAID SECTION, SAID LINE BEING THE NORTH LINE OF LOT 25 OF GLEN EYRIE HEIGHTS, AS PER MAP RECORDED IN BOOK 8, PAGE 78 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER TO THE SOUTHWEST CORNER OF THAT CERTAIN UN-NUMBERED LOT LYING NORTH AND WEST OF LOT 61 OF SAID GLEN EYRIE HEIGHTS;
THENCE NORTH 28°43'00" EAST, 385.03 FEET ON THE WEST LINE OF SAID UN-NUMBERED LOT TO AN ANGLE POINT THEREON;

THENCE SOUTH 39°00'00" WEST 0.98 FEET;

THENCE SOUTH 89°42'00" WEST, 812.20 FEET TO THE WEST LINE OF SAID SECTION 25;

THENCE SOUTH 01°53'00" WEST, 330.00 FEET ON SAID WEST LINE TO THE POINT OF BEGINNING.

PARCEL 4:

THAT PORTION OF GLEN EYRIE HEIGHTS IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK B, PAGE 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTH AND WEST OF LOT 61 OF SAID GLEN EYRIE HEIGHTS AND SHOWN AS AN UN-NUMBERED LOT.

EXCEPT THAT PORTION DESCRIBED BY DEED TO THE GLEN EYRIE MUTUAL WATER COMPANY, A CORPORATION, RECORDED JULY 30, 1934 IN BOOK 181, PAGE 407 OF OFFICIAL RECORDS.

PARCEL 5:

THAT PORTION OF THAT CERTAIN UNNUMBERED LOT LYING NORTH OF LOT 61 OF GLEN EYRIE HEIGHTS, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK B, PAGE 16 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND THAT PORTION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, DESCRIBED AS FOLLOWS:

THENCE SOUTH 52°38'10" EAST 140.00 FEET;

THENCE SOUTH 37°21'50" WEST, 100.00 FEET;

THENCE SOUTH 81°40'00" EAST, 90.14 FEET;

THENCE NORTH 02°00'00" WEST, 89.92 FEET;

THENCE NORTH 52°38'10" WEST, 85.00 FEET;

THENCE NORTH 37°21'50" EAST, 95.00 FEET;

THENCE SOUTH 52°38'10" EAST, 85.00 FEET TO THE POINT OF BEGINNING.

PARCEL 6:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT ANY PORTION INCLUDED WITHIN THE BOUNDARIES OF GLEN EYRIE HEIGHTS AS PER MAP RECORDED IN BOOK 8, PAGE 78 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
ALSO EXCEPT THAT PORTION DESCRIBED BY DEED TO THE GLEN EYRIE MUTUAL WATER COMPANY, A CORPORATION, RECORDED JULY 30, 1934 IN BOOK 181, PAGE 407 OF OFFICIAL RECORDS.

PARCEL 7:

GOVERNMENT LOTS 1, 2, 3 AND 4 IN THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 8:

EXHIBIT D
EXHIBIT E
EXHIBIT “E”

LEGAL DESCRIPTION
RESTRICTED PROPERTY

In the City of Banning, County of Riverside, State of California, being Lot 13 of Tract No. 34330 as shown on the map recorded in Book 429, Pages 84 through 103, inclusive of Maps in the Office of the County Recorder of said Riverside County, California and lying within Sections 25 and 36, Township 2 South, Range 1 West, San Bernardino Meridian.

EXCEPTING therefrom the southerly 50.00 feet.

CONTAINING: 180.96 acres, more or less.

EXHIBIT “F” attached hereto and by this reference made a part hereof.

This description was prepared by me or under my direction.

[Signature]
Thomas E. Verloop, PLS 5348

Date: 10/23/2014

[Seal]
Thomas E. Verloop
L.S. 5348

STATE OF CALIFORNIA

LICENSED LAND SURVEYOR

RBF Consulting
3300 East Guasti Road, Suite 100
Ontario, CA 91761

October 20, 2014

JN 135094

Page 1 of 1

RESTRICTIVE COVENANT
EXHIBIT C

Proposed Resort Deed – Legal Description
EXHIBIT "C"

LEGAL DESCRIPTION
PROPOSED RESORT DEED

In the City of Banning, County of Riverside, State of California, being that portion of Lot 13 of Tract No. 34330 as shown on the map recorded in Book 429, Pages 84 through 103, Inclusive of Maps in the Office of the County Recorder of said Riverside County, California and lying within Sections 25 and 36, Township 2 South, Range 1 West, San Bernardino Meridian, more particularly described as follows:

BEGINNING at the northwest corner of said Lot 13;

Thence along the westerly line of said Parcel 13 South 00°05'41" East 396.35 feet;

Thence leaving said westerly line South 79°46'43" East 325.04 feet to the beginning of a tangent curve concave southwesterly and having a radius of 2790.00 feet;

thence along said curve easterly 315.45 feet through a central angle of 06°28'41";

thence tangent from said curve South 73°18'02" East 493.27 feet to the beginning of a tangent curve concave southwesterly and having a radius of 990.00 feet;

thence along said curve easterly 18.74 feet through a central angle of 01°05'05";

thence tangent from said curve South 72°12'57" East 382.93 feet to the beginning of a tangent curve concave northeasterly and having a radius of 1210.00 feet;

thence along said curve easterly 207.25 feet through a central angle of 09°48'49" to a point of reverse curvature with a curve concave southwesterly and having a radius of 30.00 feet, a radial line of said curve from said point bears South 07°58'14" West;

thence along said curve southeasterly 35.02 feet through central angle of 66°53'01";

thence tangent from said curve South 15°08'45" East 26.41 feet to the beginning of a tangent curve concave northeasterly and having a radius of 55.00 feet;

thence along said curve southeasterly 45.69 feet through a central angle of 47°36'00";

thence tangent from said curve South 62°44'45" East 108.45 feet to the beginning of a tangent curve concave southwesterly and having a radius of 80.00 feet;

thence along said curve southeasterly 57.78 feet through a central angle of 41°22'58";

thence non-tangent from said curve South 89°35'54" East 766.52 feet to the easterly line of said Lot 13;

RBF Consulting
3300 East Guasti Road, Suite 100
Ontario, CA 91761

October 20, 2014

JN 138094
Page 1 of 2
thence along said easterly line North 00°24'08" East 965.58 feet to the northerly line of said Lot 13;

thence along said northerly line North 89°22'01" West 2649.36 feet to the POINT OF BEGINNING.

CONTAINING: 44.35 acres, more or less.

EXHIBIT "D" attached hereto and by this reference made a part hereof.

This description was prepared by me or under my direction.

Thomas E. Verloop, PLS 6348

Date: 10/23/2014
EXHIBIT D

Proposed Resort Deed – Graphic Depiction
EXHIBIT E

Revocable License Agreement
REVOCABLE LICENSE AGREEMENT

(For Hiking Area Use)

THIS REVOCABLE LICENSE AGREEMENT (the Agreement) is made and entered into this ___ day of __________, 2014, by and between Pardess Homes, a California corporation (the Licensor), and Highland Springs Resort (the Licensee). Licensor and Licensee are sometimes in this Agreement referred to individually as a Party and together as the Parties.

RECITALS

WHEREAS, Licensor received approval from the City of Banning (the City) for a master planned community with residential and commercial development situated on a total of approximately 1,543 acres in the City of Banning, State of California, which is sometimes known and referred to as the Butterfield Specific Plan Area and is described with specificity in attached Exhibit A and is depicted graphically in attached Exhibit B (the Development).

WHEREAS, Licensee owns a commercial resort operation on approximately 2,400 acres of land, some of which are adjacent to and adjoin the Development, and is described with specificity in attached Exhibit C and is depicted graphically in attached Exhibit D (the Resort).

WHEREAS, Licensee filed a lawsuit against the City [Highland Springs Resort v. City of Banning, et al. (Riverside County Superior Court Case No RIC1206246, Consolidated with Case No. RIC 1206271)] challenging the City's approval of the Development on the grounds that the Environmental Impact Report for the Development failed to consider and address certain significant adverse impacts as required by the California Environmental Quality Act (the CEQA Litigation).

WHEREAS, rather than engaging in protracted adversarial proceedings, Licensor and Licensee agreed to settle the CEQA Litigation by, among other things, Licensor's grant of this Agreement over certain portions of Lot 13 of recorded Tract No. 34330, including an existing dirt road that is in line with portions of a realigned fifty (50)-foot wide unimproved access easement appurtenant to Southern California Edison's (SCE) easement for public utility purposes and maintenance access. For reference purposes only, the easement area is described with specificity in attached Exhibit E and depicted graphically in attached Exhibit F (the Easement Area). However, while the hiking area includes portions of the Easement Area, the license is limited to the Hiking Area (defined below).
WHEREAS, Licensee desires to obtain permission from Licensor to use portions of the Development and portions of the Easement Area for passive recreational uses, limited to hiking, walking, non-motorized bicycle use and the transport of equipment (the Hiking Area) as described with specificity in attached Exhibit G and as depicted graphically in attached Exhibit H, and Licensor desires to grant such permission to use the Hiking Area pursuant to the terms of this Agreement.

NOW, THEREFORE, for valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Grant of License.** All recitals are incorporated into this Agreement. Licensor grants to Licensee, and Licensee's employees, agents, guests and invitees, a non-exclusive revocable license pursuant to this Agreement to use the Hiking Area for passive recreational uses, limited to hiking, walking and non-motorized bicycle use and the transport of equipment to the eastern portion of the Licensee's property for security, maintenance and farming purposes. During the term of this Agreement, Licensee shall not install and/or construct any physical improvements, including fencing, landscaping, lighting and/or signage, within the Hiking Area, nor shall it be surfaced or paved.

2. **Licensee's Agreement to Indemnify Licensor.** During the term of this Agreement, Licensee shall indemnify and hold Licensor harmless from any and all costs, loss, damages or expenses, of any kind or nature, arising out of or resulting directly or indirectly from use of the Hiking Area, the entry and/or the activities within or about the Hiking Area by Licensee and/or Licensee's employees, agents, guests and invitees, consistent with California Civil Code 846 which reads as follows:

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites. [Per this Agreement, Hiking Area uses within the Easement Area are limited to hiking, walking, non-motorized bicycle use and the transport of equipment].

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose; or (b)
constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed; or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

2.1 In the event the Resort obtains releases from its guests, invitees, employees, or agents for activities taking place on either the Resort Property or Hiking Area, the Resort agrees to include Pardee Homes and SCE, successor in interest to Southern Sierras Powers Company, as named entities being released from any and all liability in the event of any injury, damage, and/or destruction of property.

3. Acceptance. Licensee hereby accepts without reservation the rights and responsibilities conveyed by this Agreement.

4. Termination/Revocability. Although this Agreement shall survive Licensor’s transfer of that portion of the Development containing the Hiking Area to a third party, the Agreement shall terminate on the first to occur: (i) Licensee’s material breach of this Agreement (defined in section 4.1); (ii) transfer of Licensee’s ownership interest in the Resort without the transferee agreeing in a writing delivered to Licensor prior to the date of the transfer, to be unconditionally bound by all of the provisions of this Agreement; or (iii) Licensor’s transfer of the northern portion of Lot 13 of recorded Tract No. 34330 underlying the Hiking Area by recorded deed to Licensee as set forth in section 2.3 of the Settlement Agreement approved by the parties.

4.1 A breach of this Agreement shall be any act derived from use of the Hiking Area by Licensee and/or Licensee’s employees, agents, guests or invitees, which causes or is alleged to cause the personal injury or property damage of another, results in any claim against Pardee for damages or equitable relief, which includes interference with the development of the Project or interference with the existing SCE easement. This provision will only apply if the breach is a contributing factor in substantially delaying or preventing future Project approvals, which shall include but not be limited to federal and state approvals, tentative and final map approvals, and infrastructure plans. (See Settlement Agreement sections 3 and 17.)
5. **Permissive Use.** The right of Licensee, or any person claiming under Licensee who is an employee of Licensee, a documented guest of Licensee or a contractor of Licensee, to make any use whatsoever of the Hiking Area, or any portion thereof (including any uses which are in addition to or other than the use described herein), shall be deemed with permission from, and subject to control of, Licensor.

6. **Miscellaneous Provisions.**

6.1 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

6.2 **Heading and Titles.** The captions of the articles or sections of this Agreement are only to assist the parties in reading this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

6.3 **Agreement Binding of Successors.** The terms and conditions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto, and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Hiking Area.

6.4 **Interpretation.** Whenever required by the context of this Agreement, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the obligations, conduct, acts or omissions of Licensor or Licensee, the terms "Licensor" or "Licensee" shall include Licensor's or Licensee's officers, agents, employees, contractors, successors, subtenants or assigns. This Agreement shall be construed as though mutually drafted by Licensor and Licensee.

6.5 **Severability.** If any term or provision of this Agreement shall be held invalid or unenforceable to any extent under any applicable law by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

6.6 **Integration and Amendment.** This instrument constitutes the entire agreement between Licensor and Licensee relative to the use of the Hiking Area for recreational uses. This Agreement supersedes any prior agreements, negotiations and communications, verbal or written, between Licensor and Licensee pertaining to the issues herein and extinguishes any claim to prescriptive rights over the use of the Hiking Area. This instrument may be amended only by an instrument in writing signed by both Licensor and Licensee.

6.7 **Incorporation of Recitals.** The introductory recitals set forth above from the material part of this Agreement are incorporated by reference.
6.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.9 Exhibits. All exhibits attached to this Agreement are incorporated by reference as though fully set forth herein.

6.10 Jurisdiction and Venue. All Parties to this Agreement hereby agree that, unless the other Party consents to or chooses another forum, the state with jurisdiction over any disputes arising out of or relating to this Agreement shall be California, and the sole location for proper venue shall be in Riverside County, California.

6.11 Dispute Resolution – Mandatory Mediation as the Initial Forum. The Parties agree to mediate any and all disputes or claims arising between them relating to this Agreement before resorting to arbitration or court action. The Parties shall mutually agree upon the mediator, who shall be a retired judge, attorney or real estate broker with knowledge and experience in real estate and land use matters. The mediation shall be for a minimum period of eight (8) hours. Mediation fees, if any, shall be divided equally between the Parties. If the mediation is not successful, either of the Parties may pursue legal remedies or, if both Parties agree, binding arbitration. If, for any dispute or claim to which this paragraph applies, any Party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorneys’ fees or legal fees, pursuant to Section 6.12, or otherwise, even if such attorneys’ fees or legal fees would otherwise be available to that Party in any such action.

6.12 Attorneys’ Fees and Costs. If either Party to this Agreement shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorney fees incurred in bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys’ fees and costs incurred in enforcing such judgment. For the purposes of this section, attorneys’ fees shall include, without limitation, attorneys’ fees and paralegal fees, costs, and expenses incurred in good faith (regardless of the size of the judgment) incurred in the following: (1) post judgment motions; (2) contempt proceedings; (3) garnishment, levy, and debtor and third party examinations; (4) discovery; and (5) bankruptcy litigation.

6.13 Notices. Any notices required by this Agreement shall be in writing and shall be personally delivered to or sent by certified mail, return receipt requested, to Licensor and Licensee respectively at the following addresses, unless a Party has been notified by the other of a change of address:
To Licensor:

Pardee Homes  
Attention: Christopher J. Hallman  
Legal Department  
2120 Park Place, Suite 120  
El Segundo, CA 90245

With a copy to:

Brownstein Hyatt Farber Schreck, LLP  
Attn: Diane C. De Felice, Esq.  
2049 Century Park East, Suite 3550  
Los Angeles, CA 90067-3007  
ddefelice@bhfs.com

To Licensee:

Highland Springs Resort  
Attention: Tina Kummerle, President  
10600 Highland Springs Avenue  
Cherry Valley, CA 92223

With a copy to:

Douglas P. Carstens, Esq.  
Amy Mintser, Esq.  
CHATTEN-BROWN & CARSTENS  
2200 Pacific Coast Highway, Suite 318  
Hermosa Beach, CA 90254  
acm@cbcearthlaw.com  
dpc@cbcearthlaw.com

Notice of change of address shall be given by written notice in the manner detailed in this section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first above written.

Pardee Homes

By: 
Name: 
Title: 

Highland Springs Resort

By: 
Name: 
Title: 

Attachments:

Exhibit A – Butterfield Specific Plan Area – Legal Description
Exhibit B – Butterfield Specific Plan Area – Graphic Depiction
Exhibit C – Highland Springs Resort – Legal Description
Exhibit D – Highland Springs Resort – Graphic Depiction
Exhibit E – Easement Area – Legal Description
Exhibit F – Easement Area – Graphic Depiction
Exhibit G – Hiking Area – Legal Description
Exhibit H – Hiking Area – Graphic Depiction

041328000511242007.19
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first above written.

Pardee Homes

By: __________________________
Name: _________________________
Title: _________________________

Highland Springs Resort

By: __________________________
Name: Tina Kummerle
Title: President

Attachments:

- Exhibit A – Butterfield Specific Plan Area – Legal Description
- Exhibit B – Butterfield Specific Plan Area – Graphic Depiction
- Exhibit C – Highland Springs Resort – Legal Description
- Exhibit D – Highland Springs Resort – Graphic Depiction
- Exhibit E – Easement Area – Legal Description
- Exhibit F – Easement Area – Graphic Depiction
- Exhibit G – Hiking Area – Legal Description
- Exhibit H – Hiking Area – Graphic Depiction

041320090511242007.19
EXHIBIT “A”

LEGAL DESCRIPTION

BUTTERFIELD SPECIFIC PLAN AREA

ALL OF TRACT NO. 34330 IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA AS SHOWN ON THE MAP FILED IN BOOK 429, PAGES 84 THROUGH 103, INCLUSIVE, OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID RIVERSIDE COUNTY, CALIFORNIA.
EXHIBIT "C"

LEGAL DESCRIPTION
HIGHLAND SPRINGS RESORT

PARCEL 1:

THOSE PORTIONS OF LOTS 18 AND 20 OF GLEN EYRIE HEIGHTS, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 8, PAGE 76 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING SOUTHEASTERLY OF THE SOUTHEASTERLY LINE OF OVERLAND TRAIL (LOT J) NORTHEASTERLY OF THE NORTHEASTERLY LINE OF CHERRY VALLEY BLVD. (LOT S), AS SHOWN BY MAP OF TRACT NO. 4636-1 ON FILE IN BOOK 77, PAGES 60 THROUGH 98 THEREOF, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2:

LOTS 25, 26, 27, 28, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 AND 62 OF GLEN EYRIE HEIGHTS, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 8, PAGE 76 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION OF LOTS 25 AND 26 LYING WITHIN TRACT 14209-1 AS PER MAP RECORDED IN BOOK 133, PAGES 33 THROUGH 38 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THAT PORTION OF LOTS 27, 28, 39, 40 AND 41 LYING SOUTHWEST OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE CENTERLINE INTERSECTION OF CHERRY VALLEY BOULEVARD AND HIGHLAND SPRINGS AVENUE AS SHOWN ON MAP OF TRACT 4636-1 IN BOOK 11, PAGES 90 TO 98 INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

THENCE SOUTH 48°25'52" EAST, 1,781.43 FEET TO A POINT ON THE EAST LINE OF LOT 39 IN SAID GLEN EYRIE TRACT, SAID POINT BEING THE SOUTHEAST TERMINUS OF SAID LINE BEING DESCRIBED.

PARCEL 3:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS;

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 26;

THENCE NORTH 89°42'00" EAST, 543.90 FEET ON THE EAST AND WEST CENTERLINE OF SAID SECTION, SAID LINE BEING THE NORTH LINE OF LOT 25 OF GLEN EYRIE HEIGHTS, AS PER MAP RECORDED IN BOOK 8, PAGE 76 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER TO THE SOUTHWEST CORNER OF THAT CERTAIN UN-NUMBERED LOT LYING NORTH AND WEST OF LOT 61 OF SAID GLEN EYRIE HEIGHTS;
THENCE NORTH 28°43'00" EAST, 385.93 FEET ON THE WEST LINE OF SAID UN-NUMBERED LOT TO AN ANGLE POINT THEREON;

THENCE SOUTH 39°00'00" WEST 9.98 FEET;

THENCE SOUTH 89°42'00" WEST, 812.20 FEET TO THE WEST LINE OF SAID SECTION 25;

THENCE SOUTH 01°53'00" WEST, 330.00 FEET ON SAID WEST LINE TO THE POINT OF BEGINNING.

PARCEL 4:

THAT PORTION OF GLEN EYRIE HEIGHTS IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECOROED IN BOOK 8, PAGE 76 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTH AND WEST OF LOT 61 OF SAID GLEN EYRIE HEIGHTS AND SHOWN AS AN UN-NUMBERED LOT.

EXCEPT THAT PORTION DESCRIBED BY DEED TO THE GLEN EYRIE MUTUAL WATER COMPANY, A CORPORATION, RECOROED JULY 30, 1934 IN BOOK 181, PAGE 407 OF OFFICIAL RECORDS.

PARCEL 5:

THAT PORTION OF THAT CERTAIN UNNUMBERED LOT LYING NORTH OF LOT 61 OF GLEN EYRIE HEIGHTS, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECOROED IN BOOK 8, PAGE 16 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND THAT PORTION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, DESCRIBED AS FOLLOWS:

THENCE SOUTH 52°38'10" EAST 140.00 FEET;

THENCE SOUTH 37°21'50" WEST, 100.00 FEET;

THENCE SOUTH 81°40'00" EAST, 90.14 FEET;

THENCE NORTH 02°00'00" WEST, 89.92 FEET;

THENCE NORTH 52°38'10" WEST, 85.00 FEET;

THENCE NORTH 37°21'50" EAST, 95.00 FEET;

THENCE SOUTH 52°38'10" EAST, 85.00 FEET TO THE POINT OF BEGINNING.

PARCEL 6:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT ANY PORTION INCLUDED WITHIN THE BOUNDARIES OF GLEN EYRIE HEIGHTS AS PER MAP RECOROED IN BOOK 8, PAGE 76 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
ALSO EXCEPT THAT PORTION DESCRIBED BY DEED TO THE GLEN EYRIE MUTUAL WATER COMPANY, A CORPORATION, RECORDED JULY 30, 1934 IN BOOK 181, PAGE 407 OF OFFICIAL RECORDS.

PARCEL 7:

GOVERNMENT LOTS 1, 2, 3 AND 4 IN THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 8:

EXHIBIT "E"

LEGAL DESCRIPTION

EASEMENT AREA

In the City of Banning, County of Riverside, State of California, being that portion of Lot 13 of Tract No. 34330 as shown on the map recorded in Book 429, Pages 84 through 103, inclusive of Maps in the Office of the County Recorder of said Riverside County, California, lying within that certain utility easement, 50.00 feet in width, granted to Southern Sierras Power Company recorded April 28, 1914 in Book 392, Page 332 of Deeds, in the Office of said Riverside County Recorder and also lying within Sections 25 and 36, Township 2 South, Range 1 West, San Bernardino Meridian.

CONTAINING:  4.62 acres, more or less.

EXHIBIT "E" attached hereto and by this reference made a part hereof.

This description was prepared by me or under my direction.

[Signature]
Thomas E. Verloop, PLS 5348

Date: 10/23/2014

LICENSED LAND SURVEYOR
STATE OF CALIFORNIA

RBF Consulting
3210 East Guasti Road
Ontario, CA 91761

October 20, 2014

JN 138094
Page 1 of 1
EXHIBIT F
EXHIBIT "F"

SEC. 25, T.2S., R. 1W., S.B.M.

LOT 13
TRACT NO. 34330
M.B. 429/84-103

CL UTILITY EASEMENT TO SOUTHERN SIERRAS POWER COMPANY PER 332/332 Docs.

LOT 20
LOT 15

EASEMENT AREA
SECTION 25, T.2S., R.1W., S.B.M.

SCALE: 1"=60'

REVOCABLE LICENSE AGREEMENT

362
EXHIBIT G
EXHIBIT "G"

LEGAL DESCRIPTION
HIKING AREA

In the City of Banning, County of Riverside, State of California, being that portion of Lot 13 of Tract No. 34330 as shown on the map recorded in Book 428, Pages 84 through 103, inclusive of Maps in the Office of the County Recorder of said Riverside County, California and lying within Sections 25 and 36, Township 2 South, Range 1 West, San Bernardino Meridian, more particularly described as follows:

BEGINNING at the northwest corner of said Lot 13;

Thence along the westerly line of said Parcel 13 South 00°05'41" East 396.35 feet;

Thence leaving said westerly line South 79°46'43" East 325.04 feet to the beginning of a tangent curve concave southwesterly and having a radius of 2790.00 feet;

thence along said curve easterly 315.45 feet through a central angle of 06°28'41"

thence tangent from said curve South 73°18'02" East 493.27 feet to the beginning of a tangent curve concave southwesterly and having a radius of 990.00 feet;

thence along said curve easterly 18.74 feet through a central angle of 01°05'05"

thence tangent from said curve South 72°12'57" East 382.93 feet to the beginning of a tangent curve concave northeasterly and having a radius of 1210.00 feet;

thence along said curve easterly 207.25 feet through a central angle of 09°48'49" to a point of reverse curvature with a curve concave southwesterly and having a radius of 30.00 feet, a radial line of said curve from said point bears South 07°58'14" West;

thence along said curve southeasterly 35.02 feet through central angle of 56°53'01"

thence tangent from said curve South 15°03'45" East 25.41 feet to the beginning of a tangent curve concave northeasterly and having a radius of 55.00 feet;

thence along said curve southeasterly 45.69 feet through a central angle of 47°36'00"

thence tangent from said curve South 62°44'45" East 106.45 feet to the beginning of a tangent curve concave southwesterly and having a radius of 80.00 feet;

thence along said curve southeasterly 57.78 feet through a central angle of 41°22'58"

thence non-tangent from said curve South 89°35'54" East 766.52 feet to the easterly line of said Lot 13;
thence along said easterly line North 00°24'06" East 985.58 feet to the northerly line of said Lot 13;

thence along said northerly line North 89°22'01" West 2649.36 feet to the POINT OF BEGINNING.

CONTAINING: 44.35 acres, more or less.

EXHIBIT "H" attached hereto and by this reference made a part hereof.

This description was prepared by me or under my direction.

[Signature]

Date: 10/23/2014

Thomas E. Verloop, PLS 5348

LICENSED LAND SURVEYOR
STATE OF CALIFORNIA

Page 2 of 2

REOVABLE LICENSE AGREEMENT
EXHIBIT F

Letter of Non-Opposition from the Resort, CVAN and CVPEG to the Court
November __, 2014

_Via Federal Express_

Hon. Daniel A. Ottolia  
Judge, Superior Court of California, County of Riverside  
Historic Courthouse, Department 4  
4050 Main Street  
Riverside, CA 92501

Re:  _Highland Springs Resort v. City of Banning_, Riverside Superior Court Case No. 1206246, consolidated with _Cherry Valley Pass Acres and Neighbors et al. v. City of Banning_, Case No. 1206271

Dear Judge Ottolia,

Petitioners Highland Springs Resort, Cherry Valley Pass Acres and Neighbors, and the Cherry Valley Environmental Planning Group have reached an agreement with Respondent City of Banning and Real Party in Interest Pardee Homes (collectively "Parties") in the above-captioned matter. Pardee Homes has agreed not to construct the proposed golf course and to maintain in an open, natural and scenic condition the northern most portion of the Butterfield Specific Plan identified as Planning Areas 60 and 61, with the exception of a potential fire station, water tanks and utility infrastructure, as more specifically set forth in the Restrictive Covenant attached as Exhibit B to the Settlement Agreement, and to implement the remainder of the Butterfield Specific Plan with measures designed to reduce the project's water and energy use. Petitioners no longer oppose the Butterfield Specific Plan and agree to dismiss the above-captioned matters pursuant to the Stipulated Judgment filed jointly by the Parties.

Sincerely,

[Signature]
Tina Kummerie  
President  
Highland Springs Resort

[Signature]
Patsy Reeley  
President  
Cherry Valley Pass Acres and Neighbors

Patrick Doherty  
President  
Cherry Valley Environmental Planning Group
EXHIBIT G

Parties' Officers or Principals
EXHIBIT G
Parties' Officers and/or Principals

<table>
<thead>
<tr>
<th>Officer/Principal Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mike Taylor</td>
<td>Division President of Inland Empire</td>
</tr>
<tr>
<td>Chris Hallman</td>
<td>General Counsel</td>
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<td>June Overholt</td>
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<td>Debbie Franklin</td>
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<td>Edward Miller</td>
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<td>Tina Kummerle</td>
<td>President</td>
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<td>Dr. Min Chul Han</td>
<td>Director</td>
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<td>Dr. Dong Yeon Moon</td>
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<td>Michael Ham</td>
<td>Secretary/Treasurer</td>
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<td>Marc Sanders</td>
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<td>President</td>
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<td>Richard Reeley</td>
<td>Vice President</td>
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<td>Patsy Reeley</td>
<td>Secretary/Treasurer</td>
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</tbody>
</table>

Updated: 10/30/14
EXHIBIT H

Authorized Representatives and Contact Information
EXHIBIT H

Authorized Representatives and Contact Information

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For: CVAN

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For: CVEPG

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Phone: ________________

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rgoodman@rio.com
kshipp@rio.com
Phone: 415-956-2828
EXHIBIT I

[Proposed] Stipulated Judgment
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

HIGHLAND SPRINGS RESORT,

Petitioner,

v.

CITY OF BANNING,

Respondent.

Real Party In Interest
PARDEE HOMES, INC. and Does 1-10
AND CONSOLIDATED CASE

Lead Case No. RIC 1206246
[Consolidated with Cherry Valley Pass Acres and Neighbors v. City of Banning — Case No. 1206271]

JOINT STIPULATED JUDGMENT AND
[PROPOSED] ORDER

[Assigned to the Hon. Daniel A. Ottolia]

Petitions Filed: April 26, 2012

Petitioners Highland Springs Resort, Cherry Valley Pass Acres and Neighbors and Cherry Valley Environmental Planning Group (herein collectively called “Petitioners”), by and through their attorneys of record Chatten-Brown & Carstens LLP and Rogers Joseph O’Donnell, Respondent City of Banning, by and through its attorneys of record Aleshire & Wynder LLP, and Real Party in Interest Pardee Homes, Inc. by and through its attorneys of record Brownstein HyattFarber Schreck, LLP (Respondent and Real Party in Interest are herein collectively called “Respondents”), hereby stipulate as follows:

///
WHEREAS, this matter came on for hearing before the Court on the Petitions for Writ of Mandate on September 20 and December 13, 2013;

WHEREAS, the Court took the matter under submission;

WHEREAS, the Court issued its Proposed Statement of Decision on December 23, 2013;

WHEREAS, at the request of the parties by stipulation, the Court issued a stay of all hearings on the Proposed Statement of Decision and the Court’s entry of judgment on January 21, 2014 and again on March 13, 2014 to allow the Parties time to informally resolve the above-captioned action (“the Action”) and avoid further litigation;

WHEREAS, the Petitioners and Respondents (collectively, “Parties”) have entered into a Settlement Agreement attached hereto for the purpose of concluding this Action.

NOW, THEREFORE, in light of the foregoing, including the provisions of the Settlement Agreement, the Parties, through their respective attorneys of record, do REQUEST, AGREE AND STIPULATE as follows:

1. The Action is dismissed with prejudice;

2. The terms of the Settlement Agreement are hereby incorporated by reference and constitute the terms of this stipulated judgment;

3. In accordance with provisions of section 664.6 of the Code of Civil Procedure, the Court retains jurisdiction over the parties to enforce the terms of the Settlement Agreement as part of this stipulated judgment; and

4. Except as agreed by the parties, each party is to bear its own costs and litigation expenses incurred in these proceedings.

IT IS REQUESTED, AGREED AND SO STIPULATED.
Dated: October ____, 2014

CHATTEN-BROWN & CARSTENS LLP

By:

JAN CHATTEN-BROWN
DOUGLAS P. CARSTENS
AMY MINTIEER
MICHELLE BLACK
Attorneys for Petitioner
HIGHLAND SPRINGS RESORT

Dated: October ____, 2014

ROGERS JOSEPH O'DONNELL

By:

ROBERT C. GOODMAN
ANN M. BLESSING
D. KEVIN SHIPP
Attorneys for Petitioners
CHERRY VALLEY PASS ACRES AND NEIGHBORS and CHERRY VALLEY ENVIRONMENTAL PLANNING GROUP

Dated: October ____, 2014

ALESHIRE & WYNDER, LLP

By:

DAVID J. ALESHIRE
JUNE S. AILIN
Attorneys for Respondent
CITY OF BANNING

Dated: October ____, 2014

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By:

DIANE C. DE FELICE
STEPHANIE O. HASTINGS
AMY M. STEINFELD
Attorneys for Real Party in Interest
PARDEE HOMES

JOINT STIPULATED JUDGMENT AND [PROPOSED] ORDER
[PROPOSED] ORDER FOLLOWING JOINT STIPULATED JUDGMENT

FOR GOOD CAUSE SHOWN, the Parties' Joint Stipulated Judgment as set forth above is APPROVED AND SO ORDERED AND JUDGMENT SHALL BE ENTERED AS STIPULATED. The Court will retain jurisdiction over the terms of the Settlement Agreement under section 664.6 of the Code of Civil Procedure.

DATE: ________________, 2014

THE HON. DANIEL A. OTTOLIA
Judge of the Superior Court
PROOF OF SERVICE

I, Ivy B. Capili, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Brownstein Hyatt Farber Schreck, LLP, 2049 Century Park East, Suite 3550, Los Angeles, California 90067-3007. October __, 2014, I served a copy of the within document(s):

**JOINT STIPULATED JUDGMENT AND [PROPOSED] ORDER**

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Los Angeles, California addressed as set forth below.

☐ By personally transmitting the document(s) via electronic service to the e-mail address(es) set forth below on this date.

See attached Service List

I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October __, 2014, at Los Angeles, California.

______________________________
Ivy B. Capili
SERVICE LIST

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Phn.: (310) 500-4600  
Fax: (310) 500-4602

Attorneys for Petitioner  
HIGHLAND SPRINGS RESORT

Attorneys for Petitioners  
CHERRY VALLEY PASS ACRES AND NEIGHBORS and CHERRY VALLEY ENVIRONMENTAL PLANNING GROUP

Attorneys for Real Party in Interest  
PARDEE HOMES, INC.
Attachment 8
CC Resolution 2017-07 Approving Minor Modifications and Attachment C, Conditions of Approval
RESOLUTION NO. 2017-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING GENERAL PLAN AMENDMENT NO. 16-2501 TO AMEND THE GENERAL PLAN CIRCULATION ELEMENT TO REFLECT THE REMOVAL OF THE PROPOSED EXTENSION OF HIGHLAND HOME ROAD TO BROOKSIDE AVENUE AND CHERRY VALLEY BOULVD, APPROVING AN ADDENDUM TO THE BUTTERFIELD SPECIFIC PLAN FINAL ENVIRONMENTAL IMPACT REPORT (SCH NO. 2007091149) AND ASSOCIATED MODIFICATIONS TO THE MITIGATION MONITORING AND REPORTING PROGRAM, CONCURRENCE WITH AND APPROVING PROPOSED MINOR MODIFICATIONS TO THE BUTTERFIELD SPECIFIC PLAN LOCATED AT THE NORTHEAST CORNER OF HIGHLAND SPRINGS AVENUE AND WILSON STREET, APNS 408-030-001 and 005; 408-120-001 through 020, and 022, 024, 025, 027, and 033; and 531-080-013 and 014

WHEREAS, an application for a General Plan Amendment to amend the City of Banning General Plan Circulation Element and for a Minor Modification to the Butterfield Specific Plan has been duly filed by:

Applicant / Owner: Pardee Homes
Authorized Agent: Chris Willis
Project Location: Noted Above
APN Number: Noted Above
Lot Area: 1,528 acres

WHEREAS, Pardee Homes submitted applications for a General Plan Amendment to remove the proposed extension of Highland Home Road to Brookside Avenue and Cherry Valley Boulevard from the General Plan Circulation Element, pursuant to a Settlement Agreement, and for a Minor Modification to the Butterfield Specific Plan for property located at the northeast corner of Highland Springs Avenue and Wilson Street. The General Plan Amendment and Minor Modification are incorporated herein by this reference.

WHEREAS, an Addendum was prepared to evaluate the proposed project consisting of both the General Plan Amendment as well as the Minor Modification to the Butterfield Specific Plan, and the Addendum concluded that there are no changes in circumstances or new information of substantial importance that would require preparation of a subsequent or supplemental EIR.
WHEREAS, on the 4th and 25th of January, 2017 the Planning Commission held a noticed public hearing at which time the General Plan Amendment No. 16-2501, the Addendum to the certified Final EIR and associated modifications to the Mitigation Monitoring and Reporting Program, and the Minor Modification along with the staff report and public testimonies were considered which were followed by the recommendation of approval to the City Council.

WHEREAS, on the 3rd of February, 2017 the City gave public notice as required under Chapter 17.68 (Hearings and Appeals) of the City of Banning Municipal Code by advertising in the Record Gazette newspaper of a City Council public hearing at which the General Plan Amendment No. 16-2501, the Addendum to the certified Final EIR and associated modifications to the Mitigation Monitoring and Reporting Program, and the Minor Modification would be considered. The public hearing notice was also mailed to property owners within 300 feet of the Project site.

WHEREAS, on the 14th day of February, 2017, the City Council held the public hearing at which interested parties had an opportunity to testify in support of or opposition to proposed General Plan Amendment No. 16-2501, Addendum to the certified Final EIR and associated modifications to the Mitigation Monitoring and Reporting Program and the Minor Modification.

WHEREAS, the findings and conclusions made by the City Council in this Resolution are based upon the oral and written evidence presented as well as the entirety of the administrative record for the project, which is incorporated herein by this reference. The findings are not based solely on the information provided in this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning as follows:

SECTION 1. RECITALS

The recitals set forth above are true and correct and incorporated herein by this reference.

SECTION 2: ENVIRONMENTAL FINDINGS

California Environmental Quality Act (CEQA)

That a Final EIR (SCH No. 2007091149) and MMRP were adopted for the 2012 Butterfield Specific Plan on March 27, 2012 in accordance with the requirements of the California Environmental Quality Act (CEQA), in accordance with Public Resources Code Section 21000 et seq., the CEQA Guidelines (14 California Code of Regulations Section 15000 et seq.), and the City's local CEQA Guidelines. City Council Resolution
No. 2012-24 incorporated herein by this reference, provides environmental findings in support of that certified Final EIR.

When an EIR or negative declaration has been prepared for a project and changes are subsequently proposed to that project, the City is required to determine whether the environmental effects of such actions are within the scope of previous environmental documentation, and whether additional environmental analysis is required. If the agency finds that, pursuant to Sections 15162 and 15164 of the CEQA Guidelines, no new effects would occur, nor would a substantial increase in the severity of previously identified significant effects occur, then no supplemental or subsequent EIR or Mitigated Negative Declaration is required.

Pursuant to CEQA Guidelines Section 15164, an Addendum to the Butterfield Specific Plan Final EIR was prepared to evaluate the potential effects of General Plan Amendment No. 16-2501 and the Butterfield Specific Plan Minor Modification and is the appropriate document for disclosing the changes and additions that are necessary to account for the General Plan Amendment and Minor Modification. Through the analysis described in that Addendum, which is incorporated herein by this reference, the City determined that changes associated with the proposed General Plan Amendment and Minor Modification are not substantial and that none of the conditions in CEQA Guidelines Section 15162 requiring the need for further subsequent environmental review have occurred. No new significant impacts would result from these changes, nor would there be a substantial increase in the severity of previously identified environmental impacts. In addition, the changes with respect to the circumstances under which the Project would be undertaken would not result in new or more severe significant environmental impacts.

The City Council finds that the Addendum, together with the previous Final EIR, reflect its independent judgement, and further finds that these documents have been completed in compliance with CEQA, the CEQA Guidelines and the City’s local CEQA Guidelines and satisfy the requirements of CEQA, the CEQA Guidelines and the City’s local CEQA Guidelines for General Plan Amendment No. 16-2501 and the Butterfield Specific Plan Minor Modification.

Findings

1. There are no substantial changes to the 2012 Specific Plan that would require major revisions of the Specific Plan EIR due to new significant environmental effects or a substantial increase in severity of impacts identified in the Specific Plan EIR;

2. Substantial changes have not occurred in the circumstances under which the Project is being undertaken that will require major revisions to the Specific Plan EIR to disclose new significant environmental effects or that would result in a substantial increase in severity of impacts identified in the Specific Plan EIR; and
3. There is no new information of substantial importance that was not known at the time the Specific Plan EIR was certified, indicating any of the following:
   - The Project will have one or more new significant effects not discussed in the certified Specific Plan EIR;
   - There are impacts determined to be significant in the Specific Plan EIR that would be substantially more severe;
   - There are additional mitigation measures or alternatives to the Project that would substantially reduce one or more significant effects identified in the Specific Plan EIR but the Project proponent declines to adopt them; or
   - There are additional mitigation measures or alternatives rejected by the Project proponent that are considerably different from those analyzed in the Specific Plan EIR that would substantially reduce a significant impact identified in that EIR.

SECTION 3. REQUIRED FINDINGS FOR GENERAL PLAN AMENDMENT NO. 16-97501.

Finding No. 1: The proposed General Plan Amendment No. 16-2501 is internally consistent with the General Plan.

Findings of Fact: The current General Plan was adopted in January 2006 and includes various policies that guide development in the City, including roadways. The proposed General Plan Amendment is to remove the previously proposed roadway extensions at Brookside Avenue and Cherry Boulevard from the City's General Plan Circulation Element. Approval of General Plan Amendment No. 16-2501 would ensure consistency between the proposed Project and the Settlement Agreement for the Butterfield Specific Plan project. The proposed Project will not create any conflicts among the various General Plan Elements' goals, policies, or objectives, including the maps and diagrams of all the Elements in the City's General Plan. Therefore, proposed General Plan Amendment No. 16-2501 is internally consistent with the City's General Plan.

Finding No. 2: The proposed General Plan Amendment No. 16-2501 would not be detrimental to the public interest, health, safety, convenience, or welfare of the community.

Findings of Fact: The proposed General Plan Amendment GPA No. 16-2501 when approved would remove the General Plan Circulation Element's proposed extension of Highland Home Road to Brookside Avenue and Cherry Valley Boulevard. An Addendum to the certified Final EIR analyzed traffic associated with the proposed change and did
not identify any new effects or substantial increases in significant
effects arising from the proposed General Plan Amendment.
Consequently, General Plan Amendment No. 16-2501 would not be
detrimental to the public interest, or health, safety, convenience, or
welfare of the community.

Finding No. 3: The proposed General Plan Amendment No. 16-2501 would
maintain the appropriate balance of land uses within the City.

Findings of Fact: The proposed amendment would maintain the appropriate balance
of land uses within the City in that affects only the City's street
circulation system. The Addendum prepared for the project did not
identify any new effects or substantial increases in significant
effects and thus, the proposed amendment would not have an
appreciable effect on the balance of land uses within the City.

Finding No. 4 With regard to General Plan Amendments to the General Plan Land
Use Map, the subject parcels are physically suitable for the
requested land use designations and the anticipated land use
development.

Findings of Fact: The proposed General Plan Amendment relates to a change in the
Circulation Element. The proposed amendment does not request a
change in land use designation or anticipated land use
development.

SECTION 4. CONCURRENCE WITH STAFF AND APPROVAL OF MINOR
MODIFICATION

The City Council concurs with staff and hereby approves the proposed Minor
Modification subject to the conditions listed in attached Exhibit "A". The Minor
Modification qualifies for processing as a minor modification and is in substantial
conformance with the Specific Plan. The changes are consistent with the overall vision
and uses that were outlined and described in the Specific Plan.

SECTION 5. CITY COUNCIL ACTION

The City Council hereby takes the following action:

Adopt City Council Resolution No. 2017-07:

1. Approving and adopting the Addendum to the Butterfield Specific Plan Final EIR,
and a revised Mitigation Monitoring and Reporting Program, incorporated herein
by this reference, based on the findings and facts contained herein.
2. Approving and adopting General Plan Amendment No. 16-2501 based on the findings and facts contained herein.

3. Concurring with staff and approving and adopting the Minor Modification subject to the conditions listed in City Council Resolution 2017-07 Exhibit “A” based on the findings and facts contained herein.

SECTION 6. NOTICE OF DETERMINATION

The City Council directs City staff to prepare, execute and file a Notice of Determination with the County Clerk within five (5) working days of the City Council’s approval.

SECTION 7. CUSTODIAN OF RECORDS AND LOCATION OF DOCUMENTS

The Final EIR, Addendum, MMRP, General Plan Amendment and Minor Modification are on file and available for public review at City Hall, located at 99 E. Ramsey Street, Banning, California. The custodian of record of proceedings is the Community Development Director.

SECTION 8. SEVERABILITY

If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by any such invalidity, and the provisions of this Resolution are severable.

PASSED, APPROVED, AND ADOPTED this 14th day of February, 2017.

George Moyer, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk
City of Banning
CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2017-07, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of February, 2017, by the following vote, to wit:

AYES: Councilmembers Andrade, Franklin, Peterson, Welch, Mayor Moyer

NOES: None

ABSENT: None

ABSTAIN: None

Marie A. Calderon, City Clerk
City of Banning, California
PARDEE BUTTERFIELD SPECIFIC PLAN MINOR MODIFICATIONS
CONDITIONS OF APPROVAL

COMMUNITY DEVELOPMENT DEPARTMENT

1. Approved Butterfield Specific Plan minor modifications are based upon the plan dated December 2016. The minor modifications include adjustments to the land use plan including:
   • Reservation of Planning Areas (PAs) 60 and 61 as open space rather than the development of 412 dwelling units.
   • Granting a revocable license for hiking, walking, and non-motorized bicycle use and the transport of equipment to the eastern portion of the site.
   • Elimination of the proposed golf course in PA 35 and PA 39, and replacement of the golf course with a central open space recreational area to include parks and open space uses.
   • Reduction in the number of residential units from 5,387 dwelling units to 4,862 dwelling units.
   • Removal of PA 43B in the northwest corner of the Specific Plan area that was outside current Banning city limits and outside of Pardee Homes property ownership, thereby reducing the Specific Plan area from 1,543 acres to 1,528 acres.

2. All original conditions of approval for the approved Butterfield Specific Plan shall remain in effect except as modified by this minor modification approval.

3. On page 1-8, the last bullet shall state that elimination of golf course should be replaced with "active recreational use including biking and pedestrian trails, turnouts for exercise, viewing and educational facilities, all linkable to other tracts, parks and open space, landscaping and providing full public access" as required by Section 8.1.3 of the Development Agreement. This language shall also be added to Section 3.6, Recreation and Open Space.

4. Drainage facilities in the central open space (former golf course) shall be constructed with natural materials or shall be made to appear natural and shall be subject to Design Review approval.

5. All language removing or making trails optional shall be deleted.

ENGINEERING / PUBLIC WORKS DEPARTMENT

6. All entry points to the development from Highland Springs Avenue, Wilson Street and Highland Home Road shall have raised medians (i.e. Highland Home Road/Highland Springs Ave; H Street/Highland Home Road). Revise exhibits as
needed.

7. Exhibit 3.3B shall indicate that the Applicant will construct improvements on the east side of Highland Home Road fronting existing homes and shall delete the reference to “improvements by others”. The applicant shall provide an exhibit showing the intersection of Highland Home Road and Wilson Street, to the satisfaction of the Public Works Director. There should only be one access road on the north side of this intersection.

8. Meandering sidewalks and dg trails as depicted in the approved plan for the backbone east-west streets shall be provided along the entire road segments of "B" Street, "C" Street, "H" Street, "F" Street, and the east-west portion of Highland Home Road.

9. Exhibit 3.3E, Neighborhood Entry shall show 2:1 Min/Max at right of way.

10. Section 3.4, Drainage Plan, shall include the City’s retention language: At a minimum, all development will make provision to store runoff from rainfall events up to and including the one-hundred-year, 3-hour duration event.

11. The applicant shall provide documentation for the number of proposed storage tanks and storage capacity.

12. The Specific Plan shall include language regarding Chromium treatment facilities needed to serve the development. Section 5.8.1. shall be updated, and it should also be noted that the proposed WWTP site will also double as a site for Chromium-6 treatment facilities (Applicant to revise exhibits as needed).

**ADDED CONDITION**

13. Specific Plan boundaries shall remain as originally approved.
Attachment 9
Mitigation Monitoring and Reporting Program and Addendum Modifications

(Butterfield Specific Plan Environmental Impact Report available on City website at http://www.ci.banning.ca.us/Archive.aspx?AMID=56
Minor Modification Addendum and appendices available on City website at http://www.ci.banning.ca.us/Archive.aspx?ADID=1630
## Butterfield Specific Plan Project
### Mitigation Monitoring and Reporting Program

<table>
<thead>
<tr>
<th>Project File No.:</th>
<th>Applicant:</th>
<th>EIR Prepared by:</th>
<th>Date:</th>
</tr>
</thead>
</table>

### Mitigation Measure No./ Implementation Action

**Aesthetics, Light and Glare**

**AES-1:** Development or revegetation shall be initiated within three months following initiation of mass grading or clearing activities, so as to limit the time graded surfaces remain in their exposed state, consistent with the Specific Plan’s approved landscape design guidelines and landscape plans and the provisions of Title 18.15.020 of the City’s Municipal Code. A Revegetation Plan, addressing interim revegetation during construction and for future development areas prior to buildout, shall be submitted for City review and approval as part of each grading permit application.

<table>
<thead>
<tr>
<th>Responsible for Monitoring</th>
<th>Timing of Verification</th>
<th>Method of Verification</th>
<th>Verified Date/ Initials</th>
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<tr>
<td>CDD</td>
<td>D,F</td>
<td>A2,C2</td>
<td></td>
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**AES-2:** The faces of all slopes shall be prepared, protected and maintained to control erosion and to reduce the visual impacts of slope grading. Slopes in excess of ten feet in height shall be graded pursuant to City Code requirements. Devices or procedures for erosion protections shall be installed as prescribed by State law and regulations and Title 18 of the City’s Municipal Code and shall be maintained in operable condition by the developer during the duration of the activity for which the grading permit was issued. The use of plastic sheeting for erosion control shall be avoided except where required in emergency conditions to prevent land slippage. Preferred means of erosion and sediment control on slopes and pads shall include hydromulching, placement of straw bales and wind fencing, and the use of straw blankets and similar devices.

<table>
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<tr>
<th>Responsible for Monitoring</th>
<th>Timing of Verification</th>
<th>Method of Verification</th>
<th>Verified Date/ Initials</th>
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<tbody>
<tr>
<td>CDD</td>
<td>D,G</td>
<td>A2,C2</td>
<td></td>
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</table>

**AES-3:** The Project developer shall maintain the site free of debris, which shall be promptly removed from the site when found at least once a quarter and at least daily during construction, and the Project developer shall monitor the site at least once a quarter and at least daily during construction to protect the site from illegal dumping.

<table>
<thead>
<tr>
<th>Responsible Person</th>
<th>Monitoring Frequency</th>
<th>Method of Verification</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDD – Community Development Director or designee</td>
<td>A - With each new development</td>
<td>A2 - Onsite inspection</td>
</tr>
<tr>
<td>CP - City Planner or designee</td>
<td>B - Prior to construction</td>
<td>B2 - Other agency permit/approval</td>
</tr>
<tr>
<td>CE - City Engineer or designee</td>
<td>C - Throughout construction</td>
<td>C2 - Plan check</td>
</tr>
<tr>
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<td>AES-4: The Project developer and its successor(s) in interest inclusive of the HOA or Landscape Lighting and Maintenance District, if any, shall maintain perimeter walls, fencing, irrigation, and landscape in a satisfactory condition at all times. Parkways and other landscape features visible from the public right of way shall be maintained free of weeds and trash and graffiti shall be promptly removed.</td>
<td>CDD, DPW</td>
<td>C, E</td>
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<td>AES-5: Rough Grading Plans, including a sheet detailing the location of the construction staging, shall be approved by the City Engineer, prior to grading permit issuance. The sheet pertaining to the construction staging shall include the following provisions:</td>
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<tr>
<td>• The construction equipment and supply staging areas shall be at least 500 feet from the nearest residence off site. Staging areas shall be screened.</td>
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<td>C, F</td>
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<tr>
<td>• During construction and grading, the construction contractor shall keep the site clear of all trash, weeds, and debris. Compliance with this measure is subject to periodic City inspections.</td>
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<td>• The grading contractor shall minimize creation of large stockpiles of soil (in terms of height) to minimize visual impacts pursuant to the provisions of the grading and/or stockpile permit issued by the City Engineer pursuant to the provisions of MC Section 18.09, Grading Permit Requirements, and the requirements of the City Engineer.</td>
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<td>• All temporary security lighting shall be designed and located so as to avoid intrusive effects on adjacent properties. Proper lighting techniques to direct light onsite and away from other properties shall be required to reduce light and glare impacts (including directional lighting away from reflective surfaces, use of non-reflective glass, low-intensity lighting, use of lighting baffles, and use of appropriate types of lighting fixtures).</td>
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<td>AES-6: As part of the final design, improvement plan and grading plan review and approval process, the applicant shall design plans to preserve the existing oak tree along Highland Springs Avenue. If during this process it is determined that preservation is not feasible, the Applicant will utilize the following options to mitigate this impact.</td>
<td>CP</td>
<td>C, D, F</td>
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<tr>
<td>• A certified arborist shall evaluate the viability of transplanting the oak tree. If transplanting is deemed feasible by the arborist, the Project Applicant shall relocate the oak tree to a suitable location as approved by the City and verified by the arborist within the Project boundaries, or</td>
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<tr>
<td>• If replacement is selected, the Project Applicant as “Replacement Option #1” shall replace the oak with a single oak tree contained in a minimum of a 60-inch box if readily available and suitable for transplanting at a suitable location approved by the City and verified by the arborist, or</td>
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<td>• If replacement is selected, and Option 1 is not feasible, the Project Applicant shall replace the oak tree with 24-inch box oak trees at a ratio of 3:1 at suitable locations approved by the City and verified by the arborist within the Project boundaries.</td>
<td>CDD</td>
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AES-7: Prior to issuance of building permits, architectural plans, including detailed lighting specifications, shall be submitted for the review and approval by the City of Banning Community Development Director. The specifications shall be consistent with lighting standards included in the Specific Plan and shall meet or exceed the lighting standards contained in the City’s Municipal Code. The lighting plans must demonstrate the following to the satisfaction of the City of Banning Community Development Director:

- Use of low-sodium lamps of 4,050 lumens (maximum), to provide for adequate public safety and security;
- A lighting standard that is shielded to direct illumination downward and to limit casting light and glare on adjacent properties;
- Exterior lighting, including street lights, landscape lighting, parking lot lighting, and lighting of the interior of parks and trails shall be sufficient to establish a sense of well-being for the pedestrian and sufficient to facilitate recognition of persons at a reasonable distance. Type (lighting standard) and placement of lighting shall be to the satisfaction of the Community Development Director or designee and shall be consistent with the requirements of the City’s most current lighting ordinance and the standards of the Specific Plan;
- A minimum of one foot-candle at ground level overlap provided in all exterior doorways and vehicle parking areas, and on outdoor pedestrian walkways presented on a photometric plan; and
- Outdoor light fixtures that are not covered by the Specific Plan’s lighting standards shall be subject to the City of Banning Municipal Code.

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<td>AQ-1: Prior to issuance of any Grading Permit, the Director of Public Works and the Building Official shall confirm that the Grading Plan, Building Plans, and specifications stipulate that, in compliance with SCAQMD Rule 403, excessive fugitive dust emissions shall be controlled by regular watering or other dust prevention measures, as specified in the SCAQMD’s Rules and Regulations. In addition, in accordance with SCAQMD Rule 402, the Applicant shall implement dust suppression techniques to prevent fugitive dust from creating a nuisance off-site. Implementation of the following measures are required:</td>
<td>DPW, BO</td>
<td>C, F</td>
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<td>- All active portions of the construction site shall be watered at least twice daily to prevent excessive amounts of dust;</td>
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<td>- On-site vehicle speed shall be limited to 15 miles per hour;</td>
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<td>- All on-site permanent roads shall be paved, watered as needed, or chemically stabilized;</td>
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<td>- Visible dust beyond the property line which emanates from the project shall be prevented to the maximum extent feasible through the use of dust suppressant techniques identified above;</td>
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<td>- All material transported off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust prior to departing the job site;</td>
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<td>- Track-out devices shall be used at all construction site access points;</td>
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<td>- All delivery truck tires shall be watered down and/or scraped down prior to departing the job site; and</td>
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<td>- Replace groundcover on disturbed areas within the required timeframes identified in Rule 403.</td>
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<td>AQ-2: All trucks that are to haul excavated or graded material on-site shall comply with State Vehicle Code Section 23114 (Spilling Loads on Highways), with special attention to Sections 23114(b)(F), (e)(4) as amended, regarding the prevention of such material spilling onto public streets and roads. Prior to the issuance of grading permits, the Applicant shall coordinate with the appropriate City of Banning Engineer on hauling activities compliance.</td>
<td>DPW, BO</td>
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<tr>
<td>AQ-3: Prior to the issuance of building permits, the City building official shall confirm that construction plans and specifications include the following measures, which shall be implemented to reduce ROG emissions resulting from application of architectural coatings:</td>
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<td>C, F</td>
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### Mitigation Measure No./ Implementation Action

- Contractors shall use high-pressure-low-volume (HPLV) paint applicators with a minimum transfer efficiency of at least 50 percent;
- Coatings and solvents with a ROG content lower than required under Rule 1113 shall be used;
- Construction and building materials that do not require painting shall be used where readily available; and
- Pre-painted construction materials shall be used where readily available.

| AQ-4: Prior to issuance of any Grading Permit, the Director of Public Works and the Building Official shall confirm that the Grading Plan, Building Plans and specifications stipulate that, in compliance with SCAQMD Rule 403, ozone precursor emissions from construction equipment vehicles shall be controlled by maintaining equipment engines in good condition and in proper tune per manufacturer’s specifications, to the satisfaction of the City Engineer. A set of maintenance records shall be provided to the City before grading commences. The City Inspector shall be responsible for ensuring that contractors comply with this measure during construction. |
|---|---|---|---|
| Responsible for Monitoring | Timing of Verification | Method of Verification | Verified Date/ Initials |
| DPW, BO | C,F | A2, C2 |

<p>| AQ-5: Prior to issuance of any Grading Permit, the grading plan shall indicate dust management measures for review and approval by the City Engineer, to identify viable dust control measures and include a monitoring plan to be implemented throughout the construction phases of the Specific Plan. In accordance with the Specific Plan and City’s Municipal Code, the dust management measures shall minimize wind-blown particles by including: |
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<td>AQ-6: GPS-controlled “machine-guided grading”, or other equivalent grading techniques, shall be incorporated into Project grading plans, subject to review and approval by the City Engineer. The City Engineer shall approve the areas of the site where this technology shall be used.</td>
<td>CE</td>
<td>C,F</td>
<td>A2,C2</td>
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<td>AQ-7: The following measures shall be implemented during construction to substantially reduce NOX related emissions. They shall be included in the Grading Plan, Building Plans, and specifications.</td>
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<td>- Off-road diesel equipment operators shall be required to shut down their engines rather than idle for more than five minutes, and shall ensure that all off-road equipment is compliant with the CARB in-use off-road diesel vehicle regulation and SCAQMD Rule 2449.</td>
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<td>- The following note shall be included on all grading plans: “The City shall require construction contractors to utilize diesel powered construction equipment that meets EPA-Certified Tier III emissions standards, or higher according to the following:</td>
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<td>o January 1, 2012, to December 31, 2014: All off-road diesel-powered construction equipment greater than 50 hp shall meet Tier 3 off-road emissions standards at a minimum. In addition, all construction equipment shall be outfitted with BACT devices certified by CARB. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 3 diesel emissions control strategy for a similarly sized engine as defined by CARB regulations.</td>
<td>DPW,BO</td>
<td>C,F</td>
<td>A2,C2</td>
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<td>o Post-January 1, 2015: All off-road diesel-powered construction equipment greater than 50 hp shall meet the Tier 4 emission standards, where available. In addition, all construction equipment shall be outfitted with BACT devices certified by CARB. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 3 diesel emissions control strategy for a similarly sized engine as defined by CARB regulations.</td>
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<td>o A copy of each unit’s certified tier specification, BACT documentation, and CARB or SCAQMD operating permit shall be provided at the time of mobilization of each applicable unit of equipment.</td>
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<td>o Encourage construction contractors to apply for AQMD “SOON” funds.</td>
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<tr>
<td>Incentives could be provided for those construction contractors who apply for AQMD “SOON” funds. The “SOON” program provides funds to accelerate clean up of off-road diesel vehicles, such as heavy duty construction equipment. More information on this program can be found at the following website: <a href="http://www.aqmd.gov/tao/Implementation/SOONProgram.htm%E2%80%9D">http://www.aqmd.gov/tao/Implementation/SOONProgram.htm”</a></td>
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<td>• The contractor and applicant, if the applicant’s equipment is used, shall maintain construction equipment engines by keeping them tuned and regularly serviced to minimize exhaust emissions.</td>
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<td>• Low sulfur fuel for stationary construction equipment shall be required. This is required by SCAQMD Rules 431.1 and 431.2.</td>
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<td>• Existing power sources (i.e., power poles) shall be used when available.</td>
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<td>• Construction parking shall be located on-site where possible and shall be configured to minimize traffic interference.</td>
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<td>• Obstruction of through-traffic lanes shall be minimized by providing temporary traffic controls such as flag persons, cones and/or signage during all phases of construction when needed to maintain smooth traffic flow. Construction shall be planned so that lane closures on existing streets are kept to a minimum.</td>
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<td>• Construction operations affecting traffic shall be scheduled for off-peak hours, except in situations deemed necessary.</td>
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<td>• Develop a traffic plan to minimize traffic flow interference from construction activities. The plan shall specify the times during which construction activities will occur and particular times when travel lanes cannot be blocked (e.g., peak traffic periods as directed by the affected City Engineer). The plans shall provide details regarding the placement of traffic control, warning devices and detours. As a supplement to the traffic plan, the construction contractor shall coordinate with the affected agency to determine the need for a public information program which would inform area residents, employers and business owners of the details concerning construction schedules and expected travel delays, detours, and blocking of turning movements lanes at intersections. The public information programs could utilize various media venues (e.g., newspaper, radio, television, telephone hot lines, internet website, etc.) to disseminate information such as:</td>
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<tr>
<td>o Overview of project information</td>
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<td>o Weekly updates on location of construction zones;</td>
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<td>o Identification of street(s) affected by construction;</td>
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<td>o Times when construction activities will occur and when traffic delays, and blockage of intersection turning movements can be expected; and</td>
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<td>o Identification of alternate routes which could be used to avoid construction.</td>
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<td><strong>AQ-8:</strong> The potential future construction and implementation of an onsite WWTP shall require a Conditional Use Permit (CUP) to be approved by the City of Banning, as well as design review of the proposed site plan and building architecture, landscaping and lighting.</td>
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<td><strong>BIO-1:</strong> Prior to the commencement of grading during the nesting season (approximately mid-February through mid-August), all suitable habitat shall be surveyed for the presence of nesting birds by a qualified biologist prior to site disturbance. Should any active nests be located, construction must comply with Migratory Bird Treaty Act requirements, including a 300-foot construction buffer around active nests or avoiding construction during the nesting season if a 300-foot buffer is infeasible.</td>
<td>DPW (verify pre-construction survey), BO (verify monitoring &amp; implementation)</td>
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<td><strong>BIO-2:</strong> A preconstruction clearance survey for burrowing owl will be performed within 30 days prior to ground disturbance in potentially suitable habitat within the site, pursuant to CDFG protocols. The preconstruction survey will include a 300-foot buffer if between February 1 and August 31 (nesting season) and a 100-foot buffer if outside of this period. If owls are found within the survey area during the nesting season, construction activities will not occur within 300 feet of the occupied burrows until nesting is completed. A qualified biologist must confirm that the nesting effort has been completed prior to the removal of the work buffer restriction. If owls are found within the disturbance footprint outside of the February 1 through August 31 period, passive relocation (e.g. use of one way doors and collapse of burrows) will occur. These surveys and mitigation for burrowing owl are consistent with Section 6.3.2, Additional Survey Needs and Procedures of the MSHCP.</td>
<td>DPW (verify pre-construction survey), BO (verify monitoring &amp; implementation)</td>
<td>B,C,F</td>
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<td><strong>BIO-3:</strong> The applicant shall provide mitigation for the temporary disturbance to 9.22 acres of CDFG jurisdictional waters at a minimum 1:1 ratio, which includes approximately 0.02 acres of vegetated riparian habitat, and the temporary disturbance to 8.65 acres of Regional Board and</td>
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**USACE Jurisdiction.** The applicant shall provide mitigation for the permanent impact disturbance to 2.47 acres of CDFG jurisdiction, of which 0.41 acre consists of vegetated riparian habitat and the permanent disturbance to 1.17 acres of USACE jurisdiction, of which 0.01 acre consists of jurisdictional wetlands.

The mitigation requirements will be determined through applicable regulatory permitting programs of CDFG, RWQCB, and USACE, and shall consist of minimum 1:1 mitigation through onsite restoration of 9.22 acres within the Smith Creek drainage and other onsite areas, which will be performed concurrently with development of the golf course (PA's 35 and 39) or alternative uses within these PAs and 1:1 mitigation through onsite restoration of 2.47 acres of permanent habitat within, or adjacent to, Smith Creek.

**BIO-4:** Prior to the issuance of the grading permits the developer shall complete and submit all required protocol and habitat assessment studies required to demonstrate compliance with the MSHCP. Specifically, a DBESP (Determination of Biologically Equivalent or Superior Preservation), following approval of all required permits for the CDFG and USACE, shall be prepared, which shall be reviewed by the CDFG and USFWS and approved by City staff, in compliance with Section 6.1.2 of the MSHCP. The applicant shall implement the approved DBESP as a condition of the issuance of a grading permit and comply with all biological mitigation measures contained within the DBESP.

**BIO-5:** The following mitigations shall be incorporated into the construction plans and specifications to minimize any potentially adverse construction impacts:

- Construction areas will be watered regularly to control dust and minimize impacts to adjacent vegetation and wildlife habitat.
- Short-term stream diversions will be accomplished by use of gravel bags or other methods that will result in minimal in-stream impacts. Short-term diversions will be evaluated through the riparian/riverine component of the MSHCP Consistency analysis (Section 6.1.2) (refer to Mitigation Measure BIO-4) which will require a DBESP analysis to be prepared. In addition the 401, 404, and 1602 permitting processes will evaluate short-term impacts relative to stream diversions. All biological mitigation measures contained within the 401, 404 and 1602 approval conditions and DBESP shall be implemented pursuant to BIO-3 and BIO-4, respectively, which typically require 1:1 onsite restoration. Any mitigation beyond the 1:1 restoration of the original stream will be mitigated onsite through negotiations with CDFG, RWQCB, and

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<td>USACE.</td>
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<td>• Equipment storage, fueling and staging areas will be sited on non-sensitive upland habitat types with minimal risk of direct discharge into riparian areas or other sensitive habitat types.</td>
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<td>• The limits of jurisdictional disturbance, including the upstream, downstream along Smith Creek and lateral extents that are tributaries to Smith Creek, will be clearly defined and marked in the field. Monitoring personnel will review the limits of disturbance prior to initiation of construction activities.</td>
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<td>• During construction, the placement of equipment within the stream or on adjacent banks or adjacent upland habitats occupied by Covered Species that are outside of the Project footprint will be avoided.</td>
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<td>• Exotic, weedy plant species removed during construction will be properly handled to prevent sprouting or re-growth.</td>
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<td>• Waste, dirt, rubble, or trash shall not be deposited in a conservation area or on native habitat.</td>
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<td><strong>Climate Change</strong></td>
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<td><strong>GHG-1:</strong> Prior to the issuance of building permits, the following measures shall be reflected on applicable tract maps, building permits, improvement plans, landscape plans and/or grading plans:</td>
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<td>a) <strong>Green Building Practices</strong></td>
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<td>1) <strong>Water Conservation</strong> – All appliances such as showerheads, lavatory faucets and sink faucets shall comply with efficiency standards set forth in Title 20, California Administrative Code Section 1604(f). Title 24 of the California Administrative Code Section 1606(b) prohibits the installation of fixtures unless the manufacturer has certified to the California Energy Conservation compliance with the flow rate standards.</td>
<td>DPW, BO</td>
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<td>2) <strong>Water Conservation</strong> – Low-flush toilets shall be installed as specified in California State Health and Safety Code Section 17921.3 and the County Green Building Ordinance [as applicable in Riverside County].</td>
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<td>A, F, G</td>
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<td>3) <strong>Water Conservation</strong> – All common area irrigation areas shall be operated by a</td>
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<td>Computerized irrigation system which includes an on-site weather station/ET gage capable of reading current weather data and making automatic adjustments to independent run times for each irrigation valve based on changes in temperature, solar radiation, relative humidity, rain and wind. In addition, the computerized irrigation system shall be equipped with flow sensing capabilities, thus automatically shutting down the irrigation system in the event of a mainline break or broken head. All common area irrigation controllers shall also include a rain-sensing automatic shutoff.</td>
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<td><strong>4) Water Conservation</strong> – Common-area landscaping shall emphasize drought-tolerant vegetation. Plants of similar water use shall be grouped to reduce over-irrigation of low-water-using plants. Those irrigated areas not designed with drought-tolerant vegetation shall be gauged to use the minimum amount of water needed to maintain healthy vegetation.</td>
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<td><strong>5) Water Conservation</strong> – Residential occupants shall be informed as to the benefits of low-water-using landscaping and sources of additional information related to water conservation documents.</td>
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<td><strong>6) Water Conservation</strong> – Community Center or Recreational Facilities with a pool amenity shall be conditioned to provide and use a pool cover to reduce water evaporation and retain heat.</td>
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<td><strong>7) Water Conservation</strong> – Water conservation standards shall be noted in the Tier 1 measures of the 2010 California Green Building Standards.</td>
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<td><strong>8) Energy, Water, and Recycling</strong> – The builder shall be conditioned to provide the following:</td>
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<td>• Energy efficient appliances;</td>
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<td>• Energy efficient indoor lighting</td>
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<td>• Water efficient smart controllers for landscaping</td>
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<td>• Water efficient plumbing in all buildings</td>
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<td>• Integrate recycling into residential home design. Create areas in the home to promote recycling (additional trash cans in cabinets, etc.)</td>
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<td>• Energy Efficiency standards shall be as noted in the Tier 1 measures of the 2010 California Green Building Standards.</td>
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<td><strong>9) Carbon Sequestration</strong> – The builder shall plant an average of approximately</td>
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<td>40 trees per landscaped acre (where landscaping is provided) as a means to capture (sequester) carbon dioxide emissions and to provide shade to the buildings, which can decrease the need for air conditioning.</td>
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<td><strong>10) Green Education Program</strong> - In order to increase awareness of green building practices and to promote water and energy conservation, the builder(s) shall develop and implement a green educational program. The program shall include but not necessarily be limited to a pamphlet that educates and promotes conservation practices that homeowners can implement, with specific guidance on landscaping with drought tolerant plants, use of efficient irrigation systems, compact fluorescent lighting, and other measures that help lower GHG emissions.</td>
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<td><strong>11) Energy Efficient Outdoor Lighting</strong> – Lighting for public streets, parking areas, and recreation areas shall utilize energy efficient light and mechanical, computerized or photo cell switching devices to reduce unnecessary energy usage.</td>
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<td><strong>12) Energy Conservation</strong> – Community Center or Recreational Facilities with a pool amenity shall be conditioned to install energy-efficient pumps and motors, such as variable speed motors.</td>
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<td><strong>b) Solid Waste Measures</strong></td>
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<td><strong>1) Reuse and recycle construction and demolition waste (including, but not limited to, soil, vegetation, concrete, lumber, metal, and cardboard).</strong></td>
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<td><strong>2) Shall comply with state model ordinance AB 1327, Chapter 18 California Solid Water Reuse and Recycling Access Act of 1991, which requires interior and exterior storage areas for recyclables and green waste and adequate recycling containers located in public areas.</strong></td>
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<td><strong>c) Transportation and Motor Vehicles</strong></td>
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<td><strong>1) Limit idling time for commercial vehicles, including delivery and construction vehicles, pursuant to applicable SCAQMD and City requirements.</strong></td>
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<td><strong>2) Promote ride sharing programs e.g., by designating a certain percentage of parking spaces for ride sharing vehicles, designating adequate passenger loading and unloading and waiting areas for ride sharing vehicles, and providing a web site or message board for coordinating rides. The actual</strong></td>
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| Percentage of potential ride sharing vehicle spaces will be determined in coordination with the City Planning Director or designee based on square footage and use type (e.g., shopping center, office, fitness center, etc.) prior to approval of a site plan within the commercial land use Planning Areas. |
| Provide adequate bicycle parking near non-residential building entrances to promote cyclist safety, security, and convenience. Provide facilities that encourage bicycle commuting (e.g., locked bicycle storage or covered or indoor bicycle parking). |
| All golf carts and Neighborhood Electric Vehicles (NEVs) shall be electrical powered only. |

| GHG-2: The Butterfield Specific Plan shall be conditioned to allow the following uses (as reflected on future tract maps and commercial site plans), to further promote renewable energy resources, including: |
| a) Allowing rooftop solar on all structures, subject to City Municipal Code and related building permit provisions; |
| b) Allowing electric vehicle charging stations at all commercial, park, golf course, multi-family residential, and school areas, subject to a Conditional Use Permit; and |
| c) Allowing hydrogen vehicle fueling stations within the Commercial zone, subject to a Conditional Use Permit. |

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| GHG-3 As part of future tract map, grading plan, site plan and/or improvement plan submittals, the Applicant shall identify bus stop provisions along arterial streets, through consultation with the City Engineer and Banning Pass Transit, including stops on Highland Springs Road, Wilson Street, Highland Home Road, and F Street as determined appropriate. |

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Cultural Resources

CUL-1: The Project Applicant shall prepare a paleontological resource impact mitigation program (PRIMP) for the grading and excavation phase of the Project, including both on- and off-site activities. The PRIMP shall be submitted for review and approval prior to issuance of any grading permit, and shall conform to the guidelines of the County of Riverside and the Society of Vertebrate Paleontology; including the following:

- A trained paleontological monitor shall be present during initial mass grading or deep trenching activities within the Project in sediment areas determined likely to contain
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<td>CUL-3: All earthmoving activity occurring within 30 meters of the on-site refuse scatter (LSA-PDH0601-H-2) shall be monitored by a qualified archaeologist. If archaeological remnants are discovered during monitoring, the archaeologist shall have the authority to divert construction in order to assess the significance of the find. Remnants shall be properly evaluated, documented, and deposited as applicable, consistent with State and local protocols.</td>
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<td>CUL-4: If previously unknown cultural resources, including human remains, are identified during grading activities, a qualified archaeologist shall be retained to assess the nature and significance of the find. If human remains are encountered, State Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resources Code Section 5097.98. The County Coroner shall be notified of the find immediately. If the remains are determined to be prehistoric, the Coroner shall notify the Native American Heritage Commission (NAHC), which shall determine and notify a Most Likely Descendant (MLD). With the permission of the landowner or his/her authorized representative, the MLD may inspect the site of the discovery. The MLD shall complete the inspection within 24 hours of notification by the NAHC. The MLD may recommend scientific removal and nondestructive analysis of human remains and items associated with Native American burials.</td>
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**Geology, Soils, and Seismicity**

**GEO-1:** All structures on the Project site shall be constructed pursuant to the most current applicable seismic standards, as determined by the City as part of the tract map, grading plan, and building permit review processes, with building setbacks as recommended by the Project’s Seismic Hazard Analysis (Geocen 2005). Design criteria developed for Project structures shall also be based on the most current standards of practice and design parameters suggested by the Structural Engineers Association of California based on the recommendations and amendments to the CBC by the Division of State Architect for specific types of buildings and occupancies.

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are anticipated and/or where evidence of debris flows or past landslides is found. | | | | 
GEO-3: The Project site shall be constructed pursuant to the following mitigation measure contained in the City of Banning General Plan E1, Geotechnical Element:

- During the site grading, all existing vegetation and debris shall be removed from areas that are to receive compacted fill. Any trees to be removed shall have a minimum of 95 percent of the root systems extracted. Man-made objects shall be over excavated and exported from the site. Removal of unsuitable materials may require excavation to depths ranging from 2 to 4 feet or more below the existing site grade.
- All fill soil, whether on site or imported, shall be approved by the individual Project soils engineer prior to placement as compaction fill. All fill soil shall be free from vegetation, organic material, cobbles and boulders greater than 6 inches in diameter, and other debris. Approved soil shall be placed in horizontal lifts or appropriate thickness as prescribed by the soils engineer and watered or aerated as necessary to obtain near-optimum moisture-content.
- Fill materials shall be completely and uniformly compacted to not less than 90 percent of the laboratory maximum density, as determined by American Society for Testing and Materials (ASTM) Test Method D-1557-78, or equivalent test method acceptable to the City Building Department. The project soils engineer shall observe the placement of fill and take sufficient tests to verify the moisture content, uniformity, and degree of compaction obtained. In-place soil density should be determined by the sand-cone method, in accordance with ASTM Test Method D1556-64 (74), or equivalent test method acceptable to the City Building Department.
- Finish cut slopes generally shall not be inclined steeper than 2:1 (horizontal to vertical). Attempts to excavate near-vertical temporary cuts for retaining walls or utility installation in excess of 5 feet may result in gross failure of the cut and may possibly damage equipment and injure workers. All cut slopes must be inspected during grading to provide additional recommendations for safe construction.
- Finish fill slopes shall not be inclined steeper than 2:1 (horizontal to vertical). Fill slope surfaces shall be compacted to 90 percent of the laboratory maximum density by either overfilling and cutting back to expose a compacted core or by approved

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- Foundation systems that utilize continuous and spread footings are recommended for the support of one- and two-story structures. Foundations for higher structures must be evaluated based on structure design and on-site soil conditions.
- Retaining walls shall be constructed to adopted building code standards and inspected by the Building Inspector.
- Positive site drainage shall be established during finish grading. Finish lot grading shall include a minimum positive gradient of 2 percent away from structures for a minimum distance of 3 feet and a minimum gradient of 1 percent to the street or other approved drainage course.
- Utility trench excavations in slope areas or within the zone of influence of structures should be properly backfilled in accordance with the following:
  - (a) Pipes shall be bedded with a minimum of 6 inches of pea gravel or approved granular soil. Similar material shall be used to provide a cover of at least 1 foot over the pipe. This backfill shall then be uniformly compacted by mechanical means or jetted to a firm and unyielding condition.
  - (b) Remaining backfill may be fine-grained soils. It shall be placed in lifts not exceeding 6 inches in thickness or as determined appropriate, watered, or aerated to near optimum moisture content, and mechanically completed to a minimum of 90 percent of the laboratory maximum density.
  - (c) Pipes in trenches within 5 feet of the top of slopes or on the face of slopes shall be bedded and backfilled with pea gravel or approved granular soils as described above. The remainder of the trench backfill shall comprise typical on-site fill soil mechanically completed as described in the previous paragraph.

### Hazards and Hazardous Materials

**HAZ-1:** The grading plans shall indicate methods to address potential contamination discovered during construction, as well as safety considerations for on-site construction personnel and the general public. Details of the plan shall include, but not be limited, to the following:

- Procedures for identification of contaminated soil during earthmoving operations;  

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| • Immediate measures to protect workers and the public from exposure to contaminated areas (e.g., fencing or hazard flagging, covering of contaminated soils with plastic, etc.) and prevent migration of the contaminants to the surrounding environment; and  
  • Steps to be taken following initial discovery of contaminated soils. Notification shall be made to the local environmental health officials and the City’s construction inspector(s) immediately following identification of previously unknown contamination within the construction area. In the event hazardous substances are encountered during site grading, work shall immediately cease in the area and the property owner/developer shall retain a qualified hazardous materials engineer to assess the impacts and prepare a response plan using risk-based cleanup standards applicable to residential land use. Upon approval of the response plan by the Fire Department or other agency, as applicable, the engineer shall obtain any required permits, oversee the removal of such features and/or conduct the response work to the satisfaction of the Fire Department or other agency, as applicable, until closure status is attained. | DPW, BO | C,F | A2,C2 |

**HAZ-2**: As part of construction specifications, procedures for the fueling and maintenance of construction vehicles shall be required to minimize the potential for accidental release of hazardous materials. This shall include locating refueling and maintenance areas minimum of 500 feet from occupied residential uses. Drip plans shall be placed under motorized equipment when parked on the site to prevent soil contamination from dripping oil or other fluids.

**HAZ-3**: Hazardous construction waste management practices are to be implemented pursuant to the Best Management Practices contained in the California Stormwater BMP Handbook (2009)\(^3\) and shall include the following:

1. All hazardous construction wastes as defined by Title 22 Division 4.5, or listed in 40 CFR Parts 110, 117, 261, or 302, including but not limited to petroleum products, concrete curing compounds, palliatives, septic wastes, stains, wood preservatives, asphalt products, pesticides, acids, paints, solvents, roofing tar, sandblasting grid mixed with lead-, cadmium-, or chromium based paints, asbestos, or PCBs, that

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<td>cannot be reused or recycled shall be disposed of by a licensed hazardous waste hauler.</td>
<td>A2 - Onsite inspection</td>
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<td>2. Wastes shall be stored in sealed containers constructed of suitable material and shall be labeled as required by Title 22 CCR, Division 4.5 and 49 CFR Parts 172, 173, 178, and 179.</td>
<td>A2 - Onsite inspection</td>
<td>B2 - Other agency permit/approval</td>
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<td>3. Waste containers shall be stored in temporary containment facilities that should comply with the following requirements:</td>
<td>A2 - Onsite inspection</td>
<td>B2 - Other agency permit/approval</td>
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<td>a. Temporary containment facility shall provide for a spill containment volume equal to 1.5 times the volume of all containers able to contain precipitation from a 25 year storm event plus the greater of 10 percent of the aggregate volume of all containers or 100 percent of the largest tank within its boundary, whichever is greater.</td>
<td>A2 - Onsite inspection</td>
<td>B2 - Other agency permit/approval</td>
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<td>b. Temporary containment facility shall be impervious to the materials stored there for a minimum contact time of 72 hours.</td>
<td>A2 - Onsite inspection</td>
<td>B2 - Other agency permit/approval</td>
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<td>c. Temporary containment facilities shall be maintained free of accumulated rainwater and spills. In the event of spills or leaks, accumulated rainwater and spills should be placed into drums after each rainfall. These liquids shall be handled as a hazardous waste unless testing determines them to be non-hazardous.</td>
<td>A2 - Onsite inspection</td>
<td>B2 - Other agency permit/approval</td>
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<td>d. Sufficient separation shall be provided between stored containers to allow for spill cleanup and emergency response access.</td>
<td>A2 - Onsite inspection</td>
<td>B2 - Other agency permit/approval</td>
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<td>e. Incompatible materials such as chlorine and ammonia shall not be stored in the same temporary containment facility.</td>
<td>A2 - Onsite inspection</td>
<td>B2 - Other agency permit/approval</td>
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<td>d. Throughout the rainy season, temporary containment facilities shall be covered during non-working days and prior to rain events.</td>
<td>A2 - Onsite inspection</td>
<td>B2 - Other agency permit/approval</td>
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<td>4. Storage drums shall not be overfilled and wastes should not be mixed.</td>
<td>A2 - Onsite inspection</td>
<td>B2 - Other agency permit/approval</td>
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<td>5. Unless watertight, containers of dry waste shall be stored on pallets.</td>
<td>A2 - Onsite inspection</td>
<td>B2 - Other agency permit/approval</td>
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<td>6. Herbicides and pesticides shall not be over used. Only the amount needed shall be prepared. Apply surface dressings in several small applications as opposed to one large application. Allow time for infiltration and avoid excess material being carried off-site by runoff. Do not apply such chemicals immediately prior to rain events. All persons applying pesticides must be certified in accordance with federal and State</td>
<td>A2 - Onsite inspection</td>
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7. Paint brushes and equipment for water and oil-based paints should be cleaned within a contained area and shall not be allowed to contaminate soil, watercourses or drainage systems. Waste paints, thinners, solvents, residues, and sludges that cannot be recycled or reused shall be disposed of as hazardous waste by a licensed hazardous waste hauler.

8. Hazardous waste storage areas on-site shall be located away from storm drains or watercourses and away from moving vehicles and equipment to prevent accidental spills.

9. Containment berms shall be used in fueling and maintenance areas and where the potential for spills is high.

10. Potentially hazardous waste shall be segregated from non-hazardous construction site debris.

11. Liquid or semi-liquid hazardous materials shall be stored in appropriate containers and under cover.

12. Hazardous waste collection sites shall be designated on-site away from watercourses and drainage systems, and shall be clearly labeled.

13. Hazardous materials shall be stored in containers and protected from vandalism.

14. All employees and subcontractors shall receive on-site training in hazardous waste storage and disposal procedures.

15. Areas treated with chemicals shall be identified with appropriate warning signage.

16. Place a stockpile of spill clean-up materials where it will be readily accessible.

17. Inspect and verify that activity-based BMPs are in place prior to the commencement of associated activities. While activities associated with the BMP are underway, BMPs shall be inspected on a weekly basis.

18. A copy of hazardous waste manifests shall be maintained on-site for access by City inspectors.

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HAZ-4 The abandoned well identified in the 2007 Converse Consultant's Technical Memorandum for the Butterfield Specific Plan shall be properly capped and any associated pipeline abandoned and/or removed from the site pursuant to applicable State and federal Guidelines.

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| HAZ-5 Prior to issuance of grading permits, the following remediation efforts shall occur:  
  - The batteries, auto parts, tires and the diesel engine observed on the concrete pad next to the well and any associated fuel sources shall be removed and disposed of in compliance with all applicable regulations by waste haulers certified by the State for the handling and disposal of such wastes;  
  - Piles of asphalt debris and inert trash observed in various locations throughout the property shall be removed following their inspection by a hazardous waste consultant and, if required, by a cultural resource consultant, and the material removed and disposed of pursuant to all applicable laws and regulations.  
  - Prior to the removal of any potentially hazardous debris, additional environmental assessment and testing shall be completed pursuant to the recommendations of a certified environmental consultant and appropriate methods of handling and disposal shall be identified and implemented pursuant to existing (or then current) regulations and procedures for any particular hazardous waste or toxic material identified. | DPW, BO | C,F,D | A2,C2,D2 |  
| HAZ-6 The contractor shall ensure that precautions are taken to avoid the Southern California Gas Company pipeline observed crossing the property diagonally from the west-center of the Project site to the southeast corner and that may be present along the alignments of the proposed off-site infrastructure. Such precautions shall include calling Dig Alert prior to any construction activity to determine and mark the exact location of this pipeline and close coordination with Southern California Gas Company to ensure that appropriate measures are taken by SCGC, including potential reduction in pressure and on-site monitoring, to protect both workers and the pipeline from accidental damage during grading activities. The appropriate identification and setbacks shall be maintained in order to ensure the safety of adjacent properties. | DPW, BO | B,C | A2,C2 |  
| HAZ-7: The Applicant shall ensure that the existing high pressure gas line is replaced by the operator with pipeline that is PUC-rated for location in residential areas. Replacement of the pipeline and required relocation shall occur prior to trenching for sewer, water and storm drain within 25 feet of the outer edge of the pipeline easement and/or prior to the issuance of building permits for residences located within 100 feet of the ultimate pipeline alignment and prior to the paving of any roads within the pipeline alignment. Unless directed otherwise by the PUC, wet utility crossings shall observe a minimum ten-foot vertical separation and ten-feet of horizontal separation from the pipeline, given the needed depth of utility services. | DPW, BO | C,D,G | A2,C2 |  

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<td>Undergrounded electrical services shall observe a minimum 10 foot horizontal separation from the pipeline. The location of the pipeline shall be indicated with appropriate curbside notation and/or monuments at minimum 50-foot intervals along its route and by ground-level monumentation through the golf course, or at intervals required by the PUC.</td>
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**HAZ-8:** A permit shall be obtained from the Riverside County Fire Department (Banning Services Unit) and, if required, from the County Department of Environmental Health, prior to installation of any temporary above ground fuel storage tank on the Project site.

- A hazardous materials business plan consisting of an owner/operator page, a chemical description/inventory page, and a site map must be submitted with the application for permit.
- The storage area shall be kept free of weeds and extraneous combustible material.
- Plans must be submitted for approval prior to installation. Aboveground fuel/mixed liquid tanks shall meet the following standards: Tank must be tested and labeled to UL2885 Protected Tank Standard or SwRI 93-01. The test must include the Projectile Penetration Test and the Heavy Vehicle Impact Test. A sample copy of the tank's label from an independent test laboratory must be submitted with the tank plans.
- The tank shall be kept 50 feet from buildings and conspicuously marked with the name DIESEL and COMBUSTIBLE—KEEP FIRE AWAY.
- The tank shall be located within a secondary containment area such as earthen berms covered from end to end by a thick mil plastic. Concrete or steel may also be used to provide secondary containment. Show calculations for secondary containment on the Site Plan.
- The tank shall be secured to prevent movement on the containment surface or be mounted on metal skids (not on an elevated still rack).
- The project manager or contractor shall contact the fire department representative for inspections at the time prior to when product is put into the tank to verify compliance, AND at the time when the tank is removed from the site to check for evidence of ground contamination.

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<td>Is adequate access and communications protocols for emergency response vehicles during each of the proposed construction phases.</td>
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<td><strong>HAZ-10</strong>: Prior to the issuance of grading permits or road encroachment permits, a Traffic Management Plan providing safety control measures for area-wide streets that would be affected by construction traffic and activities must be prepared by a licensed civil or traffic engineer, to the satisfaction of the City Engineer, that would minimize safety hazards and emergency access impacts. The temporary measures in the Traffic Management Plan could include: flaggers, temporary lane restriping, temporary lanes, caution signs, reduced-speed zones, temporary detours, and other safety and traffic control devices.</td>
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<td><strong>HAZ-11</strong>: All proposed subdivisions within the Specific Plan project area shall be evaluated by the Fire Department to determine whether the Department's Urban-Wildland Interface requirements should be implemented as part of the development. If the Department determines that either an interim or permanent condition of high fire risk would be present, a Fuel Modification Plan that meets the then-current requirements of the Fire Department shall be prepared and shall be approved by the Fire Department prior to recodification of a Final Tract Map. Maintenance of interim fuel modification areas shall be the responsibility of the master Homeowners Association and/or the property owner and/or a LLMP and temporary maintenance easements shall be recorded over interim fuel modification areas. Such easements shall be quantified when the Fire Department determines that additional new development has eliminated the need for fuel modification in these areas.</td>
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<td><strong>HAZ-12</strong>: Seed mix used for the temporary re-vegetation of graded areas that will remain as undeveloped open space for a period of 6 months or more shall consist primarily of drought-tolerant grasses that may combine native and non-native species. These mixes include grasses that require little maintenance and do not grow tall, but do provide sufficient vegetative coverage to be effective in controlling wind and water-caused erosion. Defensible spaces as defined by the Fire Department pursuant to Chapter 49 of the California Fire Code shall be maintained around the exposed perimeters of subdivisions abutting un-irrigated grassland and/or chaparral through weed abatement, mowing, and other fuel reduction/modification strategies.</td>
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<td><strong>HAZ-13</strong>: The applicant shall continue to provide annual fuel modification as required by City code. The annual fuel modification (thinning) shall also be conducted in the future development areas south of Highland Home Road extension as needed (which excludes PAs 50,</td>
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Mitigation Measure No./Implementation Action

S1, S2, S6, S7, and S23, which shall remain natural until such time these areas are developed or require infrastructure improvements.

### Hydrology and Water Quality

**HWQ-1:** The following measures shall be reflected in applicable Tentative Tract Maps (TTMs), site plans, grading plans, and/or improvement plans to the satisfaction of the City Engineer, prior to applicable plan/permit approval:

1. All building pads within the Specific Plan shall be constructed so that they are free from flood hazard for the 100-year frequency storm by elevating finished floor elevations above the 100-year level of flood protection.
2. The depths of flow in the Project's streets shall not exceed top of curb elevations for the 10-year frequency storm event.
3. Streets shall be oriented to allow for maximum potential conveyance of regional flooding during significant storm events to expedite the passage of storm flows through the Specific Plan area.
4. The Specific Plan will be phased so that 100-year flood protection is ensured in all areas of development. Interim improvements (such as temporary debris basin, earthen channels/berms, check dams, sand bag barriers, or other temporary BMP and flood protection measures; refer to Mitigation Measure HWQ-1, bullet #6 and 7 below) shall be provided as development progresses to protect against flooding, erosion, siltation, and water quality impacts.
5. All subdivisions implemented as part of the Specific Plan shall be required to detain any incremental increase in drainage within the Project Boundary until the Riverside County Flood Control and Water Conservation District Master Drainage Plan ("Banning" - Zone 5) is fully implemented downstream of the Project site.
6. Construction of each phase shall include an assessment of the size and flow patterns of the adjacent undeveloped areas of the Specific Plan site. Interim phase on-site facilities shall provide developed phases with required flood protection pursuant to Code.
7. Temporary basins shall be constructed to meet detention requirements and earthen channels/berms shall be used to divert and convey flows during construction phases.

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<td>Noise</td>
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<td>NOI-1: As a condition of approval of all grading and building permits, the Applicant shall comply with the following list of noise reduction measures, subject to inclusion of additional provisions at the discretion of the Building Official as appropriate:</td>
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<td>• Excavation, grading, and other noise-intensive construction activities related to the proposed Project shall be restricted to the hours of operation allowed under Section 8.44.090.E, Noise Prohibited — Unnecessary Noise Standard — Construction, Landscape Maintenance or Repair, of the City Municipal Code. Any deviations from these standards shall require the written approval of the City Building Official. The days and hours shall also apply to any servicing of equipment and to the movement of materials to and from the site.</td>
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<td>• The developer shall require, as a condition of contract, that all construction equipment operating on the site be equipped with mufflers and sound control devices (e.g., intake silencers and noise shrouds) no less effective than those provided on the original equipment and no equipment shall have an unmuffed exhaust.</td>
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<td>• The developer shall require all contractors, as a condition of contract, to maintain and tune-up all construction equipment to minimize noise emissions</td>
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<td>• Stockpiling and vehicle staging areas shall be located a minimum of 500 feet from occupied residences, and screened from these uses by a solid noise attenuation barrier where necessary to achieve City Municipal Code-required noise attenuation levels.</td>
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<td>• Solid noise attenuation barriers (temporary barriers or noise curtains) with a sound transmission coefficient (STC) of at least 20 shall be used along Project boundaries adjacent to sensitive receptors, where noise monitoring, performed by a qualified noise monitor, indicates exceedance of City Municipal Code noise levels for more than 15 minutes in any one hour period.</td>
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<td>• Construction activities that occur outside the allowable hours per City standards (6 PM to 7 AM) shall require approval of the City Building Official based on demonstration of unusual circumstances and avoidance of significant impacts to neighboring sensitive receptors. Construction noise exceeding City standards (i.e., interior noise in excess of 50 dBA or exterior noise in excess of 65 dBA) and statutory time limits is anticipated,</td>
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<td>shall require implementation of additional noise attenuation measures such as temporary noise “curtains” to reduce construction noise to meet City Standards, or offer the affected sensitive receptors the option of temporary relocation at the Developer’s expense for the duration of the impact.</td>
<td>DPW, BO</td>
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<td>• All stationary construction equipment (e.g., air compressor, generators, etc.) shall be operated as far away from the residential and institutional uses as practicable. If necessary to meet the City’s noise standards, the equipment shall be shielded with temporary sound barriers, sound aprons, or sound skins to the satisfaction of the Building Official.</td>
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<td>• In areas subject to potentially significant construction noise impacts, the developer shall be required to monitor and document compliance with all applicable noise level limits.</td>
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<td>• Construction haul routes for large equipment and material import/export shall be specified to minimize the use of routes affecting sensitive receptors (e.g., residential, parks, hospitals, schools, convalescent homes, etc.). Construction phasing for individual subdivisions shall be designed to avoid the need for construction vehicles and related construction traffic to traverse occupied residential neighborhoods. In all cases, trucks shall utilize a route that is least disruptive to sensitive receptors. Construction trucks shall avoid weekday and Saturday AM and PM peak hours (7 AM to 9 AM and 4 PM to 6 PM).</td>
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**NOI-2:** Prior to the issuance of each grading or building permit, the Applicant shall submit to the Building Official a proposed Construction Noise Monitoring Program to respond to and track complaints pertaining to construction noise, throughout demolition and/or grading. Throughout and/or grading, these measures shall include the following:

• A procedure and phone numbers for notifying the City Building and Safety Department staff and Banning Police Department (during regular construction hours and off-hours);

• A sign prominently posted on-site containing the permitted construction days and hours and complaint procedures and the name and phone number of the person(s) to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor’s telephone numbers (during regular construction hours.

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<td>and off-hours;</td>
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<td>- The designation of an on-site construction complaint and enforcement manager for the Project. The manager shall act as a liaison between the Project and its neighbors. The manager’s responsibilities and authority shall include the following:</td>
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<td>o An active role in monitoring project compliance with respect to noise;</td>
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<td>o Ability to reschedule noisy construction activities to reduce effects on surrounding sensitive receivers;</td>
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<td>o Site supervision of all potential sources of noise (e.g., material delivery, construction staging areas, construction workers, debris box pick-up and delivery) for all trades;</td>
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<td>o Intervening or discussing mitigation options with contractors; and</td>
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<td>o Conducting a preconstruction meeting shall be held with the job inspectors and the general contractor/ on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.</td>
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<td><strong>NOI-3:</strong> The Applicant shall, through contract specifications, prohibit the use of any on-site construction equipment generating greater than 0.049 RMS (greater than 79 VpD) within 25 feet of any sensitive use or limit the use of equipment exceeding this standard to less than 30 events per day.</td>
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<td><strong>NOI-4:</strong> Prior to the issuance of grading permits or encroachment permits for the improvement of Highland Home Road (aka Meridian Street) between future “D Street” and Wilson Street, an acoustical study shall be completed by the Applicant (using construction-level improvement plans and/or more detailed grading plans) and submitted to the City for review and approval. The acoustical study will specify additional specific noise attenuation measures necessary, if any, to ensure that the City of Banning’s exterior and interior noise standards are met at adjacent residential properties. Appropriate attenuation measures could include a solid wall in the landscaped parkway between future Highland Home Road and the existing frontage street.</td>
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<td><strong>NOI-5:</strong> Prior to the issuance of building permits for non-residential uses (such as commercial areas, wastewater treatment plant, and the golf course clubhouse), the Applicant shall prepare a site-specific construction level noise analysis, analyzing potential on and off site noise impacts, based upon detailed grading plans, improvement plans and site plans. The grading,</td>
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<td>site and/or improvement plans for these uses shall include the location of stationary noise sources, such as loading docks, air conditioning units, trash hauling and trash compactors (noise from trash pickup and compaction results from the use of hydraulic equipment to raise and lower the metal trash bins and to compact their contents), and drive-thru lanes. The noise analysis shall evaluate the potential noise impacts to the existing and proposed noise sensitive homes near the commercial areas of the project. In the event the analysis shows that noise levels for any adjacent sensitive receptor(s) would exceed applicable standards, measures shall be required to reduce noise to levels to within applicable standards, including providing enclosures for stationary sources (such as pump stations and air conditioners), and providing walls or sitting to attenuate mobile or stationary sources from receptors (such as loading bays). The analysis shall be subject to review and approval by the City Building Official and shall ensure compliance with applicable exterior and interior noise standards.</td>
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<td>PSU-1: Applicant shall communicate and work with the Fire Chief throughout Project development to determine the appropriate timing for a potential addition of a fire response unit (medic squad, fire engine), or the need for a fire station that is conceptually located in PA 60 but could be located in any Planning Area as described within the Specific Plan. When the fire station or a response unit is determined to be necessary, the Applicant shall fund and/or construct the fire response unit and/or fire station and would subsequently be credited the cost of the fire response unit or fire station towards the dedication of fire fees.</td>
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<td>PSU-2: The Project shall incorporate the principles of defensible space as defined by the U.S. Department of Housing and Urban Development Office of Policy Development and Research in the design of cluster housing and/or multifamily housing within the proposed Project to reduce the impact of such development on police services. These principles shall be incorporated through inclusion of the following design solutions:</td>
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<td>- Orienting the front doors and living area windows to the public street without providing &quot;protection&quot; of walls and fencing while providing back doors in these same units that will access to more secure play areas and open space.</td>
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<td>- Clustering parking in close proximity to units or the must provide enclosed garages or semi-subterranean parking garages that can be secured.</td>
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<td>- Providing motion-activated security lighting.</td>
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Public Services and Utilities

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<td>• Clustering multifamily units around shared courtyard spaces with appropriate amenities that draw residents into the common area and encourage the development of relationships between neighbors through interaction in the public domain (See Oscar Newman, Creating Defensible Space, 1996, Institute for Community Design Analysis, US Department of Housing and Urban Development, Office of Policy Development and Research for applicable guidelines and design criteria.)</td>
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<td>PSU-3: The Project shall include potential school sites within the development by designating and setting aside two 11+ acre Planning Areas (i.e., PA 68 for Banning Unified School District and PA 20 for Beaumont Unified School District) to increase available school facilities. (The intent of Mitigation Measure PSU-3 is to initially designate and set aside each of the two 11+ acre Planning Areas, then offer these sites to the School Districts for sale or fee credit. In the event that one or both of the Districts choose to not accept the site, the Applicant may opt to implement the residential overlay on the corresponding school site, which would permit medium-density residential development at 10 du/ac).</td>
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<td>PSU-4: Offsite infrastructure improvements (identified in Section 3.6.3) shall comply with all of the same mitigation measures for onsite facilities, as applicable. Offsite above-ground facilities shall provide for a general biological assessment by a qualified biologist. If sensitive resources are determined to be present, those resources shall be assessed and/or delineated, mitigation measures shall be developed and imposed.</td>
<td>DPW, BO (fair market compensation), CDD (biological assessment)</td>
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<td>PSU-5: Prior to the issuance of building permits for an onsite satellite WWTP, the City must prepare a site-specific construction-level noise analysis analyzing potential on- and off-site noise impacts. In addition, the analysis shall evaluate the potential noise impacts to existing and proposed sensitive receptors. Construction and implementation of the wastewater treatment plant would require a Conditional Use Permit (CUP) to be approved by the City of Banning, as well as design review of the proposed site plan and building architecture, landscaping and lighting. Compliance with the existing regulations (specified under Impact 4.8-1) and on-going monitoring of the plant’s operations would reduce potential impacts associated with the routine use, handling, transport, and storage of hazardous materials.</td>
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<td>PSU-6: The operator of the Butterfield Specific Plan Golf Course shall prepare and implement a Operational Waste Management Plan that incorporates the Best Management Practices for the management of green waste recommended by the Golf Course Superintendent Association of</td>
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<td>America (GCSAA) including separate collection and recycling of green waste by a licensed hauler and recycling facility, on-site use of green waste for landscape mulching, and other methods acceptable to the City and the SCAQMD so as to reduce the facility's impact on landfill capacity.</td>
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<td><strong>TRF-1</strong>: If not constructed by the City or others, the Applicant shall construct road improvements identified in Table 4.13-9, Summary of Future Improvements (&quot;Existing plus Project&quot; improvements in the City of Banning only). These improvements include portions on Highland Springs Avenue in the City of Beaumont, between I-10 and Brookfield, but exclude locations that are deemed by the affected jurisdiction(s) to be infeasible due to impacts of ROW acquisition. If constructed by the Applicant, the cost of these improvements shall be credited against applicable City fees, and/or shall be eligible for reimbursement due to impacts of ROW acquisition.</td>
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<td><strong>TRF-2</strong>: As part of each Final Tract Map, or appropriate group of maps, the Applicant shall prepare a TIA Validation Report (TVR) based on the criteria provided herein for review and approval by the City Engineer. Final Tract Map approvals resulting in less than 500 p.m. peak hour trips (Exempt Maps) shall not require a TVR unless the cumulative total of prior approved Exempt Maps exceeds 1,000 p.m. peak hour trips since the last TVR. The TVR shall identify which of the Existing Plus Project improvements identified in Table 4.13-9, are required to be constructed for the respective Final Tract Map, to ensure adequate emergency access and satisfactory levels of service. &quot;Existing plus Project&quot; improvements in the City of Banning identified in an approved TVR shall be conditions of Final Tract Map approval. To the extent that any of the improvements mentioned above are included in a fee program, the cost for those improvements, if constructed by the Applicant, will be eligible for fee credits. The ongoing traffic impact assessment program will be based on the p.m. peak-hour trip threshold. The Final Tract Maps' total number of p.m. peak hour trips will be established based on the trip generation listed in Table 4.13-7, Project Trip Generation. If a portion of commercial development and some residential development is included in the Final Tract Map, the total number of trips generated by each use (commercial and residential) will be calculated for the p.m. peak hour and compared to a predefined threshold.</td>
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</tr>
<tr>
<td>FC - Fire Chief or designee</td>
<td>F - Prior to issuance of grading/building permits</td>
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<tr>
<td>DPW - Director of Public Works or designee</td>
<td>G - Prior to approval of project plans and/or specifications</td>
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<tr>
<td>Mitigation Measure No./ Implementation Action</td>
<td>Responsible for Monitoring</td>
<td>Timing of Verification</td>
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<tr>
<td>Recognizing the variety of land use options, overlays and permitted or conditionally permitted uses, the TVR</td>
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<tr>
<td>will also be used to verify, as the Project builds out, that the Project's total peak hour trips are consistent</td>
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<td>with the assumptions in the Project TIA.</td>
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<tr>
<td><strong>TRF-3</strong>: Improvement plans shall be prepared for each Project-related offsite traffic improvement and</td>
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<tr>
<td>approved by the City Engineer. Improvement plans shall incorporate the following considerations, as</td>
<td></td>
<td></td>
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<tr>
<td>applicable:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Obtain encroachment permit(s) from the applicable jurisdiction(s) for offsite improvements;</td>
<td></td>
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</tr>
<tr>
<td>b) Through creative design techniques, where determined appropriate and consistent with City policy, modify</td>
<td></td>
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<tr>
<td>roadway geometry to reduce potential impacts to existing developed areas (such as reduced lane widths,</td>
<td></td>
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<td>reduced turn lane transition zones, and/or shifting intersection approaches to widen intersection quadrants</td>
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<tr>
<td>where associated impacts would be reduced);</td>
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<tr>
<td>c) Maintain access for existing residences and businesses at all times;</td>
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<tr>
<td>d) Replace landscaped areas within the affected parcel and along the parcel frontage wherever practical;</td>
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<tr>
<td>e) Assist the affected property owner in re-stripping affected parking areas and/or reconfiguring affected</td>
<td></td>
<td></td>
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<tr>
<td>driveways to avoid or offset improvement-related impacts;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>f) Follow applicable Project EIR mitigation measures related to biological resources (i.e., BIO-1 through BIO-5),</td>
<td></td>
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<tr>
<td>with respect to minimizing loss of native vegetation, replacement or relocation of mature trees, use of</td>
<td></td>
<td></td>
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<tr>
<td>native and/or drought tolerant vegetation in new landscaped areas, and ensuring consistency with</td>
<td></td>
<td></td>
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<tr>
<td>applicable MSHCP and regulatory agency permitting provisions; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>g) Compensate the affected property owner based on fair market valuation of the acquired ROW in</td>
<td></td>
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<tr>
<td>accordance with applicable local, State and federal regulations.</td>
<td></td>
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<tr>
<td><strong>TRF-4</strong>: The applicant shall pay a fair share toward cumulative impacts not otherwise captured in existing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>fee programs, funding sources or in lieu improvements noted above, if such a program is in place at the</td>
<td></td>
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<tr>
<td>time of building permit issuance, based on project contribution percentages identified in Table 4.13-16.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Water Supply</strong></td>
<td></td>
<td></td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Responsible Person</th>
<th>Monitoring Frequency</th>
<th>Method of Verification</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDD - Community</td>
<td>A - With each new</td>
<td>A2 - Onsite inspection</td>
</tr>
<tr>
<td>Development Director</td>
<td>development</td>
<td></td>
</tr>
<tr>
<td>CP - City Planner</td>
<td>B - Prior to</td>
<td>B2 - Other agency permit/approval</td>
</tr>
<tr>
<td>or designee</td>
<td>construction</td>
<td></td>
</tr>
<tr>
<td>CE - City Engineer</td>
<td>C - Throughout</td>
<td>C2 - Plan check</td>
</tr>
<tr>
<td>or designee</td>
<td>construction</td>
<td></td>
</tr>
<tr>
<td>BO - Building</td>
<td>D - On completion</td>
<td>D2 - Separate submittal (e.g., reports/studies/plans)</td>
</tr>
<tr>
<td>Official or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>designee</td>
<td>E - Operating</td>
<td></td>
</tr>
<tr>
<td>FC - Fire Chief</td>
<td>F - Prior to issuance</td>
<td></td>
</tr>
<tr>
<td>or designee</td>
<td>of grading/building</td>
<td></td>
</tr>
<tr>
<td>DPW - Director of</td>
<td>G - Prior to approval</td>
<td></td>
</tr>
<tr>
<td>Public Works or</td>
<td>of project plans and/or specifications</td>
<td></td>
</tr>
<tr>
<td>designee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mitigation Measure No./ Implementation Action</td>
<td>Responsible for Monitoring</td>
<td>Timing of Verification</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>----------------------------</td>
<td>-----------------------</td>
</tr>
</tbody>
</table>
| **WS-1:** With respect to the City’s Banning, Banning Bench, Banning Canyon, and Cabazon groundwater supplies, the City will:  
  1) Periodically, conduct a groundwater audit that evaluates groundwater level trends, production rates, groundwater quality or other aquifer/well/pump considerations from the previous year (through use of a on-going groundwater monitoring and data collection system).  
  2) Develop a groundwater model to allow accurate simulation of groundwater flow and groundwater quality (including potential impacts by recharge of recycled water) in the City of Banning groundwater resource area.  
  Additionally, to avoid injury to other legal users of the Cabazon Basin, the City will:  
  3) Site any new well so as to not result in material interference to existing wells. | DPW | E | D2 | |
| **WS-2:** Additionally, to guard against the potential adverse effects of climate change on the City’s water supplies, the City will:  
  1) Continue to manage its imported and surface water supplies conjunctively with its groundwater supplies to maximize opportunities for groundwater storage.  
  2) Continue to monitor expert technical analyses of the impacts of climate change on surface and groundwater supplies and incorporate any recommendations into the City’s water supply planning efforts.  
  3) Continue to practice and promote integrated flood management. The City will incorporate climate change findings into infrastructure design and continue to integrate water and land use practices, such as encouraging new developments to capture and treat stormwater onsite. New water infrastructure will be designed to operate under a wide range of conditions and will consider climate change impacts.  
  4) Continue to diversify its portfolio through increased water use efficiency and aggressive demand reductions achieved by existing and new conservation programs. The development and use of a new recycled water supply will further diversify the City’s portfolio and reduce potable water demands.  
  5) Continue to further develop regional alliances with cities, water districts and water agencies to integrate, improve and develop regional water management. | DPW | E | D2 | |

<table>
<thead>
<tr>
<th>Responsible Person</th>
<th>Monitoring Frequency</th>
<th>Method of Verification</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDD – Community Development Director or designee</td>
<td>A - With each new development</td>
<td>A2 - Onsite inspection</td>
</tr>
<tr>
<td>CP - City Planner or designee</td>
<td>B - Prior to construction</td>
<td>B2 - Other agency permit/ approval</td>
</tr>
<tr>
<td>CE - City Engineer or designee</td>
<td>C - Throughout construction</td>
<td>C2 - Plan check</td>
</tr>
<tr>
<td>BO - Building Official or designee</td>
<td>D - On completion</td>
<td>D2 - Separate submittal (e.g., reports/studies/plans)</td>
</tr>
<tr>
<td>PC - Police Captain or designee</td>
<td>E - Operating</td>
<td></td>
</tr>
<tr>
<td>FC - Fire Chief or designee</td>
<td>F - Prior to issuance of grading/building permits</td>
<td></td>
</tr>
<tr>
<td>DFW - Director of Public Works or designee</td>
<td>G - Prior to approval of project plans and/or specifications</td>
<td></td>
</tr>
</tbody>
</table>
### Butterfield Specific Plan Project

**Addendum Modifications to the Mitigation Monitoring and Reporting Program**

**Project File No.:** __________________________ **Applicant:** __________________________

**EIR Prepared by:** __________________________ **Date:** __________________________

<table>
<thead>
<tr>
<th>Mitigation Measures No./Implementation Action</th>
<th>Responsible for Monitoring</th>
<th>Timing of Verification</th>
<th>Method of Verification</th>
<th>Verified Date/Initials</th>
</tr>
</thead>
</table>

**Mitigation Measure AQ-7:** The following measures shall be implemented during construction to substantially reduce nitrogen oxides (NOx)-related emissions. They shall be included in the Grading Plan, Building Plans, and specifications.

- Off-road diesel equipment operators shall be required to shut down their engines rather than idle for more than 5 minutes, and shall ensure that all off-road equipment is compliant with the California Air Resources Board (ARB) in-use off-road diesel vehicle regulations and SCAQMD Rule 2449.

- The following note shall be included on all grading plans: "The City shall require construction contractors to utilize diesel powered construction equipment that meets EPA-certified Tier III emissions standards, or higher according to the following:

January 1, 2012, to December 31, 2014: All off-road diesel-powered construction equipment greater than 50-hp shall meet Tier 3 off-road emissions standards at a minimum. In addition, all construction equipment shall be outfitted with best available control technology (BACT) devices certified by ARB. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 3 diesel emissions control..."
strategy for a similarly sized engine as defined by ARB regulations.

Post January 1, 2015: All off-road diesel-powered construction equipment greater than 50 hp shall meet the Tier 4 emission standards, where available. In addition, all construction equipment shall be outfitted with BACT devices certified by ARB. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 3 diesel emissions control strategy for a similarly sized engine as defined by ARB regulations.

- A copy of each unit's certified tier specification, BACT documentation, and ARB or SCAQMD operating permit shall be provided at the time of mobilization of each applicable unit of equipment.
- Construction contractors are encouraged to apply for AQMD “SOON” funds. Incentives could be provided for those construction contractors who apply for AQMD “SOON” funds. The “SOON” program provides funds to accelerate clean up 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.
- The contractor and the Applicant, if the Applicant's equipment is used, shall maintain construction equipment engines by keeping them tuned and regularly serviced to minimize exhaust emissions, as required by SCAQMD Rules 431.1 and 431.2.
- Existing power sources (i.e., power poles) shall be used when available. This measure would minimize the use of higher polluting gas or diesel generators.
- Construction parking shall be located on the site where possible and shall be configured to minimize traffic interference.
- Obstruction of through-traffic lanes shall be minimized by providing temporary traffic controls such as flag persons, cones, and/or signage during all phases of construction when needed to maintain smooth traffic flow. Construction shall be planned so that lane closures on existing streets are kept to a minimum.
- A traffic plan shall be developed to minimize traffic flow interference from construction activities. The plan shall specify the times during which construction activities would occur and particular times when travel lanes cannot be blocked (e.g., peak traffic periods as directed by the affected City Engineer). The plans shall provide details regarding the placement of traffic control, warning devices, and detours. As a supplement to the traffic plan, the construction contractor shall coordinate with the affected agency to determine the need for a public information program that would inform area residents, employers, and business owners of the details concerning construction schedules and expected travel delays, detours, and blocking of turning movements lanes at intersections. The public information programs could utilize various media venues (e.g., newspaper, radio, television, telephone hot lines, or internet website, etc.) to disseminate information such as:
  o Overview of project information
  o Weekly updates on location of construction zones;
  o Identification of street(s) affected by construction;
  o Times when construction activities would occur and when traffic delays, and blockage of intersection turning movements can be expected; and
  o Identification of alternate routes that could be used to avoid construction delays.

**Mitigation Measure BIO-3:** The Applicant shall provide compensatory mitigation for the temporary disturbance to CDFW jurisdictional waters, which includes approximately
0.41 acre of vegetated riparian habitat, and the temporary disturbance to RWQCB and USACE jurisdiction, none of which consists of jurisdictional wetlands. The mitigation requirements will be determined through applicable regulatory permitting programs of the CDFW, the RWQCB, and the USACE, and shall consist of minimum 1:1 mitigation primarily through onsite restoration within the Smith Creek drainage and other on-site areas, which will be performed concurrently with development of the golf course (Planning Areas [PAs] 35 and 39) or alternative uses within these Planning Areas 35 and 39 (the golf course/open space PAs uses, including various combinations of parks, trails, native habitat, drainage facilities, water quality improvements, groundwater recharge areas, and wetland mitigation areas).

**Mitigation Measure GHG-2:** The Butterfield Specific Plan shall be conditioned to allow the following uses (as reflected on future tract maps and commercial site plans), to further promote renewable energy resources, including:
- Allowing rooftop solar on all structures, subject to City Municipal Code and related building permit provisions;
- Allowing electric vehicle charging stations at all commercial, park, golf course, multifamily residential, and school areas, subject to a Conditional Use Permit; and allowing hydrogen vehicle fueling stations

**Mitigation Measure PSU-6:** The operator of the Butterfield Specific Plan Golf Course shall prepare and implement an Operational Waste Management Plan that incorporates to the extent feasible the Best Management Practices for the management of green waste recommended by the Golf Course Superintendent Association of America (GCSAA) including separate collection and recycling of green waste by a licensed hauler and recycling facility, on-site use of green waste for landscape mulching, and other methods acceptable to the City
and the SCAQMD so as to reduce the facility’s impact on landfill capacity.

**Mitigation Measure TRF–2:** As part of each Final Tract Map, or appropriate group of maps, the Applicant shall prepare a Traffic Impact Analysis Validation Report (TVR) based on the criteria provided herein for review and approval by the City Engineer. Final Tract Map approvals resulting in less than 500 p.m. peak hour trips (Exempt Maps) shall not require a TVR, unless the cumulative total of prior approved Exempt Maps exceeds 1,000 p.m. peak hour trips since the last TVR. The TVR shall identify which of the Existing plus Project improvements identified in Table 4.13-9 are required to be constructed for the respective Final Tract Map, to ensure adequate emergency access and satisfactory levels of service. Improvements identified in an approved TVR shall be conditions of Final Tract Map approval. To the extent that any of the improvements mentioned above are included in a fee program, the cost for those improvements, if constructed by the Applicant, will be eligible for fee credits.

The ongoing traffic impact assessment program will be based on the p.m. peak hour trip threshold. The Final Tract Maps’ total number of p.m. peak hour trips will be established based on the trip generation listed in Table 4.13-7, *Project Trip Generation*, Table 3.1, *Project Trip Generation Comparison*. If a portion of commercial development and some residential development is included in the Final Tract Map, the total number of trips generated by each use (commercial and residential) will be calculated for the p.m. peak hour and compared to a predefined threshold. Recognizing the variety of land use options, overlays and permitted or conditionally permitted uses, the TVR will also be used to verify, as the Project builds out, that the Project’s total peak hour trips are consistent with the assumptions in the project Traffic Impact Analysis.
| Mitigation Measure TRF-4: The Applicant 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 Specific Plan EIR, with the exception of the intersections included in the Project study area for the 2016 Traffic Impact Analysis, as outlined in Table 4.13-16A. |  |  |  |
Attachment 10

Public Hearing Notice
NOTICE OF A PUBLIC HEARING FOR TENTATIVE TRACT MAP NO. 37298 TO SUBDIVIDE APPROXIMATELY 199 GROSS ACRES OF VACANT LAND FOR RESIDENTIAL, COMMERCIAL, SCHOOL, OPEN SPACE, AND PARKS USES ALONG WITH PUBLIC STREETS FOR PROPERTY LOCATED NORTH OF WILSON STREET AND EAST OF HIGHLAND SPRINGS AVENUE WITHIN THE BUTTERFIELD SPECIFIC PLAN AREA

NOTICE IS HEREBY GIVEN of a public hearing before the City of Banning Planning Commission, to be held on Wednesday, June 6, 2018, at 6:30 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider Tentative Tract Map No. 37298 to subdivide approximately 199 gross acres of vacant land property for the purpose of creating 264 single family residential lots, 1 lot for future medium density residential development, 1 lot for future medium density residential development and future park, 2 commercial lots, 1 school lot, 1 lots for a park, 15 lots for open space, and public streets, all within the Butterfield Specific Plan area. The property is located north of Wilson Street and east of Highland Springs Avenue, within the Butterfield Specific Plan area. Assessor's Parcel Numbers are identified as 408-120-001 through -05, 408-120-007 through -009, and portions of 408-120-006, -010, -012, 019, and -020, within the City of Banning.

Potential environment issues associated with the proposed Tentative Tract Map were analyzed in the previously certified Environmental Impact Report for the Butterfield Specific Plan project (SCH No. 2007091149) as modified by the Addendum approved by the City Council on February 14, 2017, which documents are on file in the Community Development Department. There have been no substantial changes in the project nor in the circumstances under which the project is undertaken which will require major revisions of the previous environmental document; nor is there new information that shows that the project will have a significant environmental effect or an effect more severe than originally thought. Therefore, in accordance with CEQA Guidelines Section 15162, a subsequent environmental document is not required.

Information regarding Tentative Tract Maps No. 37298 can be obtained by contacting the City's Community Development Department at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning. You may also go to the City of Banning website at http://www.ci.banning.ca.us/.

All parties interested in speaking either in support of or in opposition of this item are invited to attend said hearing, or to send their written comments to the Community Development Department, City of Banning at P.O. Box 998, Banning, California, 92220. If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the Planning Commission makes its decision on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA

Patty Nevins
Community Development Director

Dated: May 22, 2018

Dated: May 25, 2018
CITY OF BANNING
Planning Commission Report

DATE:       June 6, 2018
TO:         Planning Commission
FROM:       Patty Nevins, Community Development Director
PREPARED BY: Sonia Pierce, Senior Planner

SUBJECT:    CAREAGE MEDICAL OFFICE BUILDING - GENERAL PLAN AMENDMENT 17-2503; ZONE CHANGE 17-3503; DESIGN REVIEW 17-7004; AND ENVIRONMENTAL ASSESSMENT 17-1504 FOR THE PROPOSED DEVELOPMENT OF 36,171 SQUARE FOOT MEDICAL SUPPORT OFFICE BUILDING WITHIN THE CONGREGATE CARE DISTRICT OF THE SUN LAKES VILLAGE NORTH SPECIFIC PLAN ON SUN LAKES BOULEVARD (APN 419-140-059)

RECOMMENDATIONS

1. That the Planning Commission adopt Resolution 2018-07 recommending that the Council approve General Plan Amendment 17-2503, Zone Change 17-3503, and Design Review 17-7004.

2. That the Planning Commission recommend that the City Council adopt the Mitigated Negative Declaration (MND) for the project (Environmental Assessment 17-1504).

APPLICANT INFORMATION:

Project Location: North side of Sun Lakes Boulevard, east of Highland Springs Avenue, between Sun Lakes Village Drive and Silver Lakes Avenue, within the Congregate Care District (Planning Area C) of The Sun Lakes Village North Specific Plan.

APN Information: 419-140-059

Project Applicant: Gary Miller Architects
APPICANT'S REQUEST:

The applicant is requesting approval of a General Plan Amendment to change the General Plan land use designation of a vacant 3.31 acre parcel from High Density Residential (HDR) to Professional Office (PO); a Zone Change to change the Zoning District from High-Density Residential -20/Affordable Housing Opportunity (HDR-20/AHO) to Professional Office (PO); and Design Review approval for the construction of a new 36,174 square foot medical support office building on the parcel identified as APN 419-140-059 located on the north side of Sun Lakes Boulevard, east of Highland Springs Avenue, between Sun Lakes Village Drive and Silver Lakes Avenue, in the Congregate Care District (Planning Area C) of the Sun Lakes Village North Specific Plan.

PROJECT BACKGROUND AND SETTING:

In 1983, the City of Banning approved the Sun Lakes Specific Plan that established development standards and design guidelines for approximately 964 acres. The Specific Plan also approved a variety of residential, commercial, office and industrial land uses. Various amendments to the Specific Plan have been approved by the City since 1983; these changes modified, deleted or added numerous provisions to the Plan, including changes to residential density, land uses, parking standards requirements, etc.

A related modification to the northern planning area within the Sun Lakes Village Specific Plan (Amendment #3 - Sun Lakes Village North Specific Plan) occurred in 2000. This amendment made changes to the properties on the north side of Sun Lakes Boulevard and included changes to the development standards and design guidelines of the subject site. The changes included the reduction of the required number of parking spaces and the amount of open space required within the planning area, and an option of providing senior apartments (adjacent to the existing congregate care facility). Overall, this amendment established the ability to construct uses/structures intended to serve, and directly related to the congregate care land uses. It also allowed other uses as approved by the Director of Community Development.

The site is surrounded by the development of congregate care facilities and residential development of varying densities and design restricted to senior citizens age 55 or older.
The Sun Lakes area is most known for retirement lifestyle living. Table 1 lists the land uses surrounding the site:

### Table 1
#### Land Use Summary

<table>
<thead>
<tr>
<th>Subject Site</th>
<th>Existing Land Use</th>
<th>Zoning Designation</th>
<th>General Plan Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>Congregate Care</td>
<td>High Density Residential (HDR)</td>
<td>HDR/ Specific Plan Area C Overlay</td>
</tr>
<tr>
<td>South</td>
<td>Senior Housing</td>
<td>Medium Density Residential (MDR)</td>
<td>MDR/ Specific Plan Area C Overlay</td>
</tr>
<tr>
<td>East</td>
<td>Senior Housing</td>
<td>Medium Density Residential (HDR)</td>
<td>MDR/ Specific Plan Area C Overlay</td>
</tr>
<tr>
<td>West</td>
<td>Congregate Care</td>
<td>High Density Residential (HDR)</td>
<td>HDR/ Specific Plan Area C Overlay</td>
</tr>
</tbody>
</table>

**PROJECT DESCRIPTION**

The applicant proposes a General Plan Amendment (GPA 17-2503), Zone Change (ZC 17-3503), and Design Review (DR 17-004) to allow construction of a two-story, 36,174 square-foot medical support office structure. (Additional description of the entitlement actions requested is contained in following discussion.) The proposed building would include 30,977 square-feet of medical offices, 2,579 square-feet of general offices, 1,249 square-feet of pharmacy space, and 1,369 square-feet of meeting room area. In addition, 193 parking spaces, and 40,189 square-feet of on-site related landscaping is proposed on site.

The primary function of the building is proposed to provide ambulatory medical services commonly associated with primary medical care and ophthalmology. The meeting room / "presentation hall" is proposed to be used for staff training and wellness instruction. Related and ancillary uses are proposed to include a pharmacy and optical shop on the ground floor. This patient convenience is provided as a one-stop facility that allows patients to fill their prescriptions without leaving the Sun Lakes community. Table 3 provides a statistical summary of project characteristics.
Table 2
Project Characteristics

<table>
<thead>
<tr>
<th>Area Calculations</th>
<th>Square footage</th>
<th>Area</th>
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</thead>
<tbody>
<tr>
<td>Gross property area</td>
<td>144,009</td>
<td>3.31 Acres</td>
</tr>
<tr>
<td>Net Property Area</td>
<td>94,148</td>
<td>2.16 Acres</td>
</tr>
<tr>
<td>Concrete curbs and walks</td>
<td>12,584</td>
<td>8.8 % of site area</td>
</tr>
<tr>
<td>Site Paving (concrete, asphalt, decorative)</td>
<td>71,800</td>
<td>49.9% of site area</td>
</tr>
<tr>
<td>Landscape Area</td>
<td>40,225</td>
<td>27.9% of site area</td>
</tr>
<tr>
<td>Building pad</td>
<td>19,339</td>
<td>13.5% of site area</td>
</tr>
<tr>
<td>First story</td>
<td>19,313</td>
<td></td>
</tr>
<tr>
<td>Second story</td>
<td>16,171</td>
<td></td>
</tr>
</tbody>
</table>

Existing Site Conditions

The project site is a 3.3-acre vacant lot, and is the last parcel to develop within the recorded Parcel Map No. 29395. The site is generally flat and is surrounded by “The Lakes Independent Living and Memory Care” facility to the north and west, and residential development for senior citizens to the east and south across Sun Lakes Boulevard. The site is identified as urban built up land. The land was under cultivation into the 1960s and is void of native vegetation and is surrounded by walls on the south and east. To date no evidence has been found to indicate the site was ever subject to other improvements.

General Plan Amendment and Zone Change

The proposed project includes a General Plan Amendment (GPA) from High Density Residential to Professional Office and a Zone Change (ZC) from High-Density Residential -20/Affordable Housing Opportunity (HDR-20/AHO) zoning district to Professional Office (PO) zoning district. Upon the City Council’s approval of the requested GPA and ZC, the site’s land use designation and zoning classification would be changed to Professional Office, and the proposed development would be consistent with uses permitted within the Professional Office land use designation, the PO zoning district, and Planning Area C of the Sun Lakes North Specific Plan. The Professional Office land use designation and PO Zone are intended to allow “professional offices and social services, and financial institutions, all with only ancillary retail”.

The Housing Element anticipated that this site (APN 419-140-059) would accommodate 66 lower-income units. The proposed General Plan and zoning amendments would change the land use designation, resulting in a net loss of 66 potential lower-income units in the Housing Element sites inventory. The remaining unmet need for housing during the 2014-2021 planning period and the remaining capacity of sites identified in the Housing Element are as follows:
<table>
<thead>
<tr>
<th></th>
<th>Very Low</th>
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<td>Net Remaining Housing Need</td>
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<td>593</td>
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As 1,465 very low and low income units are required and capacity for 1,967 units remains, there will be no net loss of very low and low housing units. The City has more than adequate capacity remaining to accommodate the City’s share of regional housing need.

Because the City identified excess land capacity to meet the most recent Regional Housing Needs Allocation (RHNA), the project is also considered consistent with the Housing Element of the General Plan.

**Design Review**

**Building Design**

The applicant proposes to incorporate cream colored stucco as the primary building cladding, with burnt sienna colored cement board siding as accents and a sheet metal trim at the entrance. The architectural forms, colors and materials have been chosen for their similarity to and compatibility with the newer developments that have been approved within the Sun Lakes Village Specific Plan planning areas. Recent developments such as Big 5, Marshall, T-Mobil and Chipotle stores also include similar rooflines, colors, themes and defined entries. The building will be consistent with the new development in the Sun Lakes Village Specific Plan.

The building is situated 220-feet from Sun Lakes Boulevard and over 20-feet from all other property lines, exceeding the Specific Plan’s 20-foot setback requirement from Sun Lakes Boulevard in the Congregate Care District.

The subject site is Parcel 4 of Tract Map No. 29395, created in December 1999. The lot is 3.306 gross acres, 322-feet in width and 500-feet deep. The building pad is 19,313 sq ft, which is 13.5 % of the site. The maximum building site coverage in the Sun Lakes Village North Specific Plan is 60 % percent. The development meets all setback and lot coverage requirements for Planning Area C of the Sun Lakes Village North Specific Plan.

**Building Height**

The two-story building height ranges from thirty-two to thirty-six feet in height. The majority of the building is thirty-two feet in height and a few thirty-six feet high accent walls have been incorporated at various locations, to add articulation to the building and to help
screen the mechanical roof top equipment. The Sun Lakes Village North Specific Plan allows for building at a maximum of forty-five (45) feet in height with the Community Development Director’s approval. Staff is supportive of the height at thirty-six, since it is an integral part of the building architectural design and it helps to screen the roof top equipment.

**Perimeter Walls**

The existing perimeter wall along Sun Lakes Boulevard is proposed for demolition/removal along the site frontage. The project has been conditioned to provide a smooth transition by patching and repairing the wall where the existing wall will be terminated. The proposed project will result in a more visually pleasing open street frontage with a landscaped setback.

The Municipal Code (Section 17.28.060(E) (11) requires a 6 foot high “solid architecturally treated decorative masonry wall” approved by the Community Development Director in any non-residential development abutting “residentially designated property”. In accordance Section 17.28.060(E)(11), a perimeter wall will be required along the north and east property lines, which adjoin residentially designated land uses in the Sun Lakes Village North Specific Plan planning areas.

**Parking and Loading**

Site access will be provided by one primary driveway directly off of Sun Lakes Boulevard and one existing secondary access point through the adjacent property to the west. In order ensure access in perpetuity from the secondary access points, recordation of a joint access easement with the adjoining property will be required along the west property line. The project, as proposed, provides a total of 193 parking spaces, of which 8 are to be designated for handicapped parking. Table 3 illustrates parking required by the Municipal Code and parking proposed.

The parking for this project is based on Section 17.28.040(C) Parking and Loading Standards of the Municipal Code. The building floor plan is divided into 8 individual “leasable medical office units” averaging 3,900 square feet each. The 8 “leasable medical units” total 31,200 square-feet in area. Some “leasable medical units” include spaces for common areas such as restrooms, break rooms, copy rooms, meeting rooms, storage, elevators, stairwells, management offices and mechanical rooms. Those common areas have been included in this parking calculation. Parking is based on the use at the time of occupancy, and this district is allowed shared parking and up to 25% compact parking. A condition of approval has been included requiring a parking analysis at the time of occupancy for tenant improvements. The parking calculation is based on all lease spaces constructed for medical office use at 10 spaces for the first 2,000 sq. ft. plus 1 space per 175 sq. ft. thereafter.
Table 3
Parking Calculations

<table>
<thead>
<tr>
<th>Type of use</th>
<th>Parking Standard</th>
<th>Parking Required</th>
<th>Parking Provided (per applicant calculations)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical office (31,200 sq.ft.)</td>
<td>10 spaces for the first 2,000 sq.ft. + 1 space/175 sq.ft. thereafter</td>
<td>10 spaces plus 166.8 spaces = Total 166.7 spaces</td>
<td>193 spaces</td>
</tr>
<tr>
<td>Total</td>
<td>176.8 spaces, round to 177 spaces</td>
<td>193 spaces</td>
<td></td>
</tr>
</tbody>
</table>

Section 17.28.070, Off Street Loading Standards of the Zoning Ordinance, requires three loading spaces for uses of more than 25,000 square feet. No loading spaces are depicted on the proposed site plan for the medical support office building. Staff has recommended the imposition of a Condition of Approval requiring three 15' x 20' loading spaces with 15 feet of vertical clearance.

Parking lot design must comply with the standards set forth in Section 17.28.060 of the Municipal Code. Among other things, this section states that “parking stalls shall be non-perpendicular to the parking aisle whenever possible”. The parking stalls presently shown on the proposed conceptual Site Plan are all perpendicularly oriented.

Landscaping

The project site has been previously rough graded, and is sparsely vegetated, with no distinctive natural features. The proposed conceptual “Planting Plan” depicts landscaping with trees and shrubs along the site perimeter and distributed throughout parking areas. The landscape plan provides a variety of planting materials, including two 48 inch box trees, twenty-four 36 inch box trees, ninety-two 24 inch box trees and twenty-eight 15 gallon size trees, as well as a variety of shrubs and ground cover. The project’s landscape program must comply with standards set forth in Section 17.28.060 and Chapter 17.32 of the Municipal Code. Modifications to the proposed conceptual Planting Plan will be necessary as result of the additional parking required for the proposed classroom/presentation space, as described in the preceding section. In addition, the applicant will be required to coordinate the proposed conceptual Planting Plan with the proposed Lighting Plan. A Condition of Approval requires that the applicant address these items prior to the issuance of Building Permits.

Open Space

On April 25, 2000, the Banning City Council approved an amendment to the Sun Lakes Village North Specific Plan (Amendment #3.) The amendment revised the open space requirement in the Congregate Care District and limited the requirement to developments
involving dwelling units. The proposed medical office building does not contain any dwelling units, therefore there are no requirements for open space. The project provides 40,225 square feet of landscaping (27.9%).

**Lighting**

A photometric plan has been prepared for the project, and was evaluated on a preliminary Basis in the Initial Study/MND. See the Aesthetics discussion, item 1(d). In order to ensure that no adverse impacts from possible spillage of light and glare occur, Mitigation Measure AES-1, requiring compliance with the Municipal Code, has been incorporated into the project. A Condition of Approval has been included to require compliance with all applicable standards and requirements the Municipal Code. In addition, the project is required to compliance with all CEQA mitigation measures.

**Refuse Storage**

A condition of approval has been included to require that project met the city requirements for trash enclosures including decorative walls and cover to complement the building.

**Conclusion**

The proposed use and site, building, and landscape design, along with proposed and recommended improvements and conditions, will enhance the site and provide for a land use that would complement the adjacent congregate care and the surrounding community. Staff recommends approval of the proposed project, subject to conditions contained in Exhibit “A” attached.

**REQUIRED FINDINGS**

**General Plan Amendment Findings**

A. Finding: That the proposed amendment is internally consistent with the General Plan.

Findings of Fact:

Upon City Council approval of the requested General Plan Amendment, the site’s land use designation will be changed to Professional Office, and the proposed development would be consistent with uses permitted within the Professional Office land use designation. The Professional Office land use designation is intended to allow “professional offices and social services, and financial institutions, with only ancillary retail, and mixed uses.”

Because the City identified excess land capacity to meet the most recent Regional Housing Needs Allocation (RHNA), the project is considered consistent with the Housing Element of the General Plan.
B. Finding: That the proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

Findings of Fact:

The proposed project will complement the adjoining assisted living/congregate care facility and retirement housing and provide medical services to the broader Sun Lakes Village community. As demonstrated in the analysis contained in the Planning Commission staff report dated June 6, 2018, and the MND prepared for the project (Environmental Assessment 17-1504), there are no features unique to the project site or the proposed use that would create conditions detrimental to the public interest, health, safety, convenience, or welfare of the City.

C. Finding: That the proposed amendment would maintain the appropriate balance of land uses within the City.

Findings of Fact:

Upon City Council approval of the requested General Plan Amendment, the site’s land use designation will be changed to Professional Office (PO), and the proposed development would be consistent with uses permitted within the Professional Office land use designation. The Professional Office land use designation is intended to allow “professional offices and social services, and financial institutions, with only ancillary retail, and mixed uses.”

The project is consistent with the General Plan Land Use Element Policy which states: “The land–use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands”. The land-use designation of Professional Office allows the proposed medical support office building use. The proposed medical support office building will provide approximately 3,948 square feet of general office space (including the proposed presentation space/classroom), 1,249 square feet of retail space, and 30,997 square feet of medical facilities/offices.

Pursuant to Government Code Section 65863(b)(2), the Planning Commission finds that the site that is the subject of this amendment will accommodate fewer housing units than identified in the Housing Element; however, the remaining sites identified in the Housing Element are adequate to meet the requirements of Section 65583.2 and to accommodate the City’s share of the regional housing need pursuant to Section 65584.

The Housing Element anticipated that this site (APN 419-140-059) would accommodate 66 lower-income units. The proposed General Plan and zoning amendments would change the land use designation, resulting in a net loss of 66 potential lower-income units in the Housing Element sites inventory. The remaining unmet need for housing during the 2014-2021 planning period and the remaining capacity of sites identified in the Housing Element are as follows:
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As 1,465 very low and low income units are required and capacity for 1,967 units remains, the City has more than adequate capacity remaining to accommodate the City’s share of regional housing need, and there will be no net loss of Very Low or Low housing units.

Because the City identified excess land capacity to meet the most recent Regional Housing Needs Allocation (RHNA), the project is considered consistent with the Housing Element of the General Plan.

D. Finding: That in the case of an amendment to the General Plan Land Use Map, the subject parcel(s) is 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(s) and the anticipated land use developments(s).

Findings of Fact:

The 3.31 acre land area is of adequate size to accommodate the proposed medical support office building, subject to compliance with the proposed Conditions of Approval. No natural constraints exist to the proposed development, and significant adverse environmental impacts are anticipated with mitigation measures contained in the MND for the project (Environmental Assessment 17-1504).

Sun Lakes Boulevard provides suitable access and all necessary utilities are in place within adjacent public rights-of-way. As has been described in the preceding analysis, the site is surrounded by an assisted living/congregate care facility to the west, to which the proposed medical offices will provide support for residents of the facility and the surrounding Sun Lakes Village community. High density residential use adjoins the project site on the north, with medium density single family land uses to the east and to the south across Sun Lakes Boulevard. A six foot perimeter will buffer the proposed project on the north and east boundaries. The subject site is basically flat with and has been rough graded in the past, thus no unique physical features or vegetation will be affected by the proposed project.
Zone Change Findings

A. Finding: The proposed Amendment is consistent with the goals and policies of the General Plan.

Findings of Fact:

The project is consistent with the General Plan Land Use Element Policy which states: "The land-use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands". The zoning classification of Professional Office (PO) allows medial services, clinics and labs, subject to approval of a Conditional Use Permit by City Council. The Professional Office zoning classification is intended to allow "professional offices and social services, and financial institutions, with only ancillary retail, and mixed uses."

Because the City identified excess land capacity to meet the most recent Regional Housing Needs Allocation (RHNA), the project is considered consistent with the Housing Element of the General Plan.

B. Finding: The proposed Amendment is internally consistent with the Zoning Ordinance.

Findings of Fact:

The proposed project is not anticipated to result in exceeding, either cumulatively or individually, any applicable level of service standards. Pursuant to the project’s Conditions of Approval, the proposed project will be constructed in conformance with City standards and specifications.

C. Finding: The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.

Findings of Fact:

The City, in light of the whole record before it, including, but not limited to, the City’s local CEQA Guidelines and Thresholds of Significance, the proposed MND and documents incorporated therein by reference, any written comments received and responses provided, the proposed Mitigation Monitoring and Reporting Program (MMRP) and other substantial evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record and/or provided at the public hearing, hereby finds and determines as follows:
1. Review Period: That the City has provided the public review period for the MND for the duration required under CEQA Guidelines Sections 15073 and 15105.

2. Compliance with Law: That the MND and MMRP 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.

3. Independent Judgment: That the MND reflects the independent judgment and analysis of the City Council.

4. Mitigation Monitoring Program: That the MND is designed to ensure compliance during project implementation in that changes to the project and/or mitigation measures have been incorporated into the project and are fully enforceable through permit conditions, agreements or other measures as required by Public Resources Code Section 21081.6.

5. No Significant Effect: That mitigation measures imposed as Conditions of Approval on the project, avoid or mitigate any potential significant effects on the environment identified in the Initial Study to a point below the threshold of significance. Furthermore, after taking into consideration the mitigation measures imposed, the City Council finds that there is no substantial evidence, in light of the whole record, from which it could be fairly argued that the project may have a significant effect on the environment. Therefore, the City Council concludes that the project will not have a significant effect on the environment.

Design Review Findings

A. Finding: The proposed project is consistent with the General Plan.

Findings of Fact:
The project is consistent with the General Plan Land Use Element Policy which states: “The land-use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands”. The land-use designation of Professional Office (PO) allows the proposed medical support building use. The proposed project will provide approximately 3,948 square feet of general office space (including the proposed presentation hall/classroom), 1,249 square feet of retail space, and 30,997 square feet of medical facilities/offices.

Further, the project is consistent with General Plan Economic Development Policy which states: “The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and
contribute to City General Fund revenues”. The proposed project is estimated to generate approximately 50 jobs.

B. Finding: The proposed project is consistent with the Zoning Ordinance, including the development standards and guidelines for the district in which it is located.

Findings of Fact: The proposed project is consistent with the Zoning Ordinance and the development standards of the Professional Office (PO) Zone, with the imposition of Conditions of Approval, as detailed in the analysis contained in the Planning Commission staff report dated June 6, 2018.

C. Finding: The design and layout of the proposed project will not unreasonably interfere with the use and enjoyment of neighboring existing or future development, and will not result in vehicular and/or pedestrian hazards.

Findings of Fact: The proposed project has provided site and circulation layout design in such a way that the project will not interfere with the use and enjoyment of existing and future development in the surrounding area. The proposed project provides vehicular access from Sun Lakes Boulevard as well as through the adjacent property to the west. A reciprocal access agreement is required as a Condition of Approval to preserve future access in perpetuity. The proposed project provides pedestrian paths around the building in coordination with the parking layout. A six-foot solid perimeter wall will buffer adjacent residential development to the north and east of the proposed project and design of lighting on-site is subject to compliance with the Municipal Code to prevent spillage onto adjacent areas.

D. Finding: The design of the proposed project is compatible with the character of the surrounding neighborhood.

Findings of Fact: The proposed use will not impair the integrity and character of the PO land use district in which it is to be located because it is surrounded by existing developments and Sun Lakes Boulevard in proximity to Highland Springs Avenue, an established commercial corridor. The building architecture, site circulation and landscaping have been designed in a manner that the project is compatible with the character of the surrounding neighborhood, with the imposition of Conditions of Approval and CEQA mitigation measures. Additionally, a 6-foot solid wall, along with landscaping, will buffer the site from adjacent residential areas on the north and east.

ENVIRONMENTAL DETERMINATION:

California Environmental Quality Act (CEQA)
The proposed General Plan Amendment No. 17-2503, Zone Change 17-3503 and Design Review 17-7004 are considered a “project” as defined by the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 et seq.). An Initial Study (EA 17-1504) has been prepared and made available for public review beginning on May 11, 2018 and closing on May 31, 2018.

Based upon analysis contained in the Initial Study, staff determined that any potentially significant effects on the environment would be reduced to less than significant levels by mitigation measures incorporated in the Initial Study and that the preparation of an MND was appropriate. All mitigation measures are carried forward into project Conditions of Approval. An MMRP has also been prepared, as required by CEQA.

**Multiple Species Habitat Conservation Plan (MSHCP).**

The project is consistent with the MSHCP. The project is located outside of any MSHCP criteria area and mitigation is provided through payment of the MSHCP Mitigation Fee at the time of building permit issuance

**PUBLIC COMMUNICATION:**

Proposed GPA 17-2503, Zone Change 17-3503, DR 17-7004, and Environmental Assessment 17-1504 were advertised in the Record Gazette newspaper on May 11, 2018 (Attachment No. 3).

Staff advertised the public hearing on proposed GPA 17-2503, Zone Change 17-3503, DR 17-7004, and Environmental Assessment 17-1504 in the Record Gazette newspaper on May 25, 2018 (Attachment No. 3).

**ATTACHMENTS:**

1. Planning Commission Resolution No. 2018-07
   - Exhibit A – Project Plans/General Plan / Zone Change Map
   - Exhibit B – Conditions of Approval
2. Project Plans
3. Mitigated Negative Declaration/Mitigation Monitoring and Reporting Program
4. Public Hearing Notice

Prepared By: 

\[Signature\] 
Sonia Pierce 
Senior Planner

Reviewed and Recommended By: 

\[Signature\] 
Patty Nevins 
Community Development Director
RESOLUTION NO. 2018-07

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF BANNING ADOPT A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM (ENVIRONMENTAL ASSESSMENT 17-1504) FOR A PROPOSED 36,171 SQUARE FOOT MEDICAL OFFICE BUILDING, APPROVE GENERAL PLAN AMENDMENT NO. 17-2503 TO AMEND THE GENERAL PLAN LAND USE DESIGNATION OF REAL PROPERTY LOCATED ON THE NORTH SIDE OF SUN LAKES BOULEVARD, EAST OF HIGHLAND SPRINGS AVENUE, BETWEEN SUN LAKES VILLAGE DRIVE AND SILVER LAKES AVENUE (APN: 419-140-059), FROM HIGH DENSITY RESIDENTIAL TO PROFESSIONAL OFFICE, APPROVE ZONE CHANGE NO. 17-3503 TO AMEND THE ZONING MAP AND RE-ZONE REAL PROPERTY LOCATED ON THE NORTH SIDE OF SUN LAKES BOULEVARD, EAST OF HIGHLAND SPRINGS AVENUE, BETWEEN SUN LAKES VILLAGE DRIVE AND SILVER LAKES AVENUE (APN: 419-140-059), FROM HIGH DENSITY RESIDENTIAL-20/AFFORDABLE HOUSING OPPORTUNITY (HDR-20/AHO) TO PROFESSIONAL OFFICE (PO), AND APPROVE DESIGN REVIEW 17-7004 TO PERMIT THE DEVELOPMENT OF A PROPOSED 36,171 SQUARE FOOT MEDICAL OFFICE BUILDING ON 3.31 ACRES OF REAL PROPERTY LOCATED ON THE NORTH SIDE OF SUN LAKES BOULEVARD, EAST OF HIGHLAND SPRINGS AVENUE, BETWEEN SUN LAKES VILLAGE DRIVE AND SILVER LAKES AVENUE (APN: 419-140-059)

WHEREAS, an application for General Plan Amendment 17-2503, Zone Change 17-3503, and Design Review 17-7004 to permit the development of a proposed 36,171 square foot medical office building (the “Project”) has been duly filed by:

Applicant / Owner: Gary Miller Architects / RCCI, LLC
Project Sponsor: Careage healthcare, Inc.
Authorized Agent: Gary Miller Architects
Project Location: North side of Sun Lakes Boulevard, east of Highland Springs Avenue, between Sun Lakes Village Drive and Silver Lakes Avenue, within the Congregate Care District (Planning Area C) of the Sun Lakes Village North Specific Plan

APN Number: 419-140-059
Lot Area: 3.31 acres;

WHEREAS, the Planning Commission has the authority to review and make recommendations to the City Council concerning General Plan Amendment 17-2503, Zone Change 17-3503, and Design Review 17-7004;

WHEREAS, in accordance with Government Code Sections 65353, 65090, and 65091, on May 25, 2018, the City gave public notice, by advertisement in the Record Gazette newspaper, of a public hearing concerning the Project, which included the General Plan Amendment 17-2503, Zone Change 17-3503, Design Review 17-7004, and Environmental Assessment 17-1504 (a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP)). The public hearing notice was also mailed to the owner of the subject real property, the owner’s duly authorized agent, the Project applicant, and property owners within 300 feet of the Project site on or before May 27, 2018. Further, in accordance with Public Resources Code Section 21165, a Notice of Availability and Public Hearing Notice was advertised in the Record Gazette Newspaper announcing the 20 day circulation for public review and comment of the draft MND for the proposed Project. Copies of the draft MND were made available at Banning City Hall and Banning Public Library;

WHEREAS, in accordance with Government Code Section 65353, on June 6, 2018, the Planning Commission held the public hearing at which interested parties had an opportunity to testify in support of, or opposition to, General Plan Amendment 17-2503, Zone Change 18-3503, Design Review 17-7004, and at which the Planning Commission considered the Project, each of the proposed entitlements, and the MND; and

WHEREAS, at this public hearing on June 6, 2018, the Planning Commission heard public comments on, and adopted this Resolution recommending that the City Council adopt the MND and MMRP for the Project, and approve General Plan Amendment 17-2503, Zone Change 17-3503, and Design Review 17-7004.

NOW THEREFORE, the Planning Commission of the City of Banning does hereby recommend to the City Council of the City of Banning as follows:

SECTION 1: California Environmental Quality Act Findings and Recommendation for Adoption of Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program. The Planning Commission of the City of Banning does hereby recommends that the City Council of the City of Banning make the following environmental findings and determinations in connection with the approval of the Project:

A. Pursuant to the California Environmental Quality Act ("CEQA") (Cal. Pub. Res. Code § 21000 et seq.), the State Guidelines (14 Cal. Code Regs. § 15000 et seq.), and the City’s Local Guidelines, City staff prepared an Initial Study of the potential environmental effects of the approval of the Project as described in the Initial Study. Based upon the findings contained in that Study, City staff determined that, with the incorporation of mitigation measures, there was no substantial evidence that the Project could have a
significant effect on the environment and a Mitigated Negative Declaration (MND) was prepared in full compliance with the requirements of CEQA.

B. Thereafter, City staff provided public notice of the public comment period and of the intent to adopt the MND as required by law. The public comment period commenced on May 11, 2018, and expired on May 31, 2018. Copies of the documents have been available for public review and inspection at City Hall, 99 E. Ramsey Street, Banning, California 92220, and the Banning Public Library, 21 West Nicolet Street, Banning, California 92220. The City received did not receive any comments during the public review period.

C. The City Council reviewed MND and the MMRP, which is on file with the Planning Department and incorporated herein by this reference, and all comments received regarding the MND and, based on the whole record before it, finds that: (1) the MND was prepared in compliance with CEQA; (2) with the incorporation of mitigation measures, there is no substantial evidence that the Project will have a significant effect on the environment; and (3) the MND reflects the independent judgment and analysis of the City Council.

D. Based on the findings set forth in this Resolution, the City Council hereby adopts the MND and MMRP for the Project.

E. The Community Development Director is authorized and directed to file a Notice of Determination in accordance with CEQA.

SECTION 2: Findings for Recommendation of Approval of General Plan Amendment 17-2503. The Planning Commission of the City of Banning does hereby recommend that the City Council of the City of Banning find and determine that General Plan Amendment 17-2503 should be approved because:

A. Finding: The proposed amendment is internally consistent with the General Plan.

Findings of Fact:
Upon City Council approval of the requested General Plan Amendment, the site’s land use designation will be changed to Professional Office, and the proposed development would be consistent with uses permitted within the Professional Office land use designation. The Professional Office land use designation is intended to allow “professional offices and social services, and financial institutions, with only ancillary retail, and mixed uses.”

Because the City identified excess land capacity to meet the most recent Regional Housing Needs Allocation (RHNA), the Project is considered consistent with the Housing Element of the General Plan.

B. Finding: That the proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.
Findings of Fact:
The proposed Project will complement the adjoining assisted living/congregate care facility and retirement housing and provide medical services to the broader Sun Lakes Village community. As demonstrated in the analysis contained in the Planning Commission staff report dated June 6, 2018, and the MND prepared for the Project (Environmental Assessment 17-1504), there are no features unique to the Project site or the proposed use that would create conditions detrimental to the public interest, health, safety, convenience, or welfare of the City.

C. Finding: That the proposed amendment would maintain the appropriate balance of land uses within the City.

Findings of Fact:
Upon City Council approval of the requested General Plan Amendment, the site’s land use designation will be changed to Professional Office (PO), and the proposed development would be consistent with uses permitted within the Professional Office land use designation. The Professional Office land use designation is intended to allow “professional offices and social services, and financial institutions, with only ancillary retail, and mixed uses.”

The Project is consistent with the General Plan Land Use Element Policy which states: “The land–use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands”. The land-use designation of Professional Office allows the proposed medical support office building use. The proposed medical support office building will provide approximately 3,948 square feet of general office space (including the proposed presentation space/classroom), 1,249 square feet of retail space, and 30,997 square feet of medical facilities/offices.

Pursuant to Government Code Section 65863(b)(2), the Planning Commission finds that the site that is the subject of this amendment will accommodate fewer housing units than identified in the Housing Element; however, the remaining sites identified in the Housing Element are adequate to meet the requirements of Section 65583.2 and to accommodate the City’s share of the regional housing need pursuant to Section 65584.

The Housing Element anticipated that this site (APN 419-140-059) would accommodate 66 lower-income units. The proposed General Plan and zoning amendments would change the land use designation, resulting in a net loss of 66 potential lower-income units in the Housing Element sites inventory. The remaining unmet need for housing during the 2014-2021 planning period and the remaining capacity of sites identified in the Housing Element are as follows:
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<td>872</td>
<td>593</td>
</tr>
<tr>
<td>Total</td>
<td>1465</td>
<td></td>
</tr>
<tr>
<td>Housing Element sites capacity</td>
<td>2,553</td>
<td></td>
</tr>
<tr>
<td>APN 537-190-018 (Prev Rezone)</td>
<td>(520)</td>
<td></td>
</tr>
<tr>
<td>APN 419-140-059 (Project)</td>
<td>(66)</td>
<td></td>
</tr>
<tr>
<td>Net Remaining Capacity</td>
<td>1967</td>
<td></td>
</tr>
</tbody>
</table>

As 1,465 very low and low income units are required and capacity for 1,967 units remains, the City has more than adequate capacity remaining to accommodate the City’s share of regional housing need, and there will be no net loss of Very Low or Low housing units.

Because the City identified excess land capacity to meet the most recent Regional Housing Needs Allocation (RHNA), the Project is considered consistent with the Housing Element of the General Plan.

D. Finding: That in the case of an amendment to the General Plan Land Use Map, the subject parcels (s) is 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(s) and the anticipated land use developments(s).

Findings of Fact:
The 3.31 acre land area is of adequate size to accommodate the proposed medical support office building, subject to compliance with the proposed Conditions of Approval. No natural constraints exist to the proposed development, and significant adverse environmental impacts are anticipated with mitigation measures contained in the MND for the Project (Environmental Assessment 17-1504).

Sun Lakes Boulevard provides suitable access and all necessary utilities are in place within adjacent public rights-of-way. As has been described in the preceding analysis, the site is surrounded by an assisted living/congregate care facility to the west, to which the proposed medical offices will provide support for residents of the facility and the surrounding Sun Lakes Village community. High density residential use adjoins the Project site on the north, with medium density single family land uses to the east and to the south across Sun Lakes Boulevard. A six foot perimeter will buffer the proposed Project on the north and east boundaries. The subject site is basically flat with and has been rough graded in the past, thus no unique physical features or vegetation will be affected by the proposed Project.
SECTION 3: Findings for Recommendation of Approval of Zone Change 17-3503. The Planning Commission of the City of Banning does hereby recommend that the City Council of the City of Banning find and determine that Zone Change 17-3503 should be approved because:

A. Finding: The proposed Amendment is consistent with the goals and policies of the General Plan.

Findings of Fact:
The Project is consistent with the General Plan Land Use Element Policy which states: “The land-use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands”. The zoning classification of Professional Office (PO) allows medical services, clinics and labs, subject to approval of a Conditional Use Permit. The Professional Office zoning classification is intended to allow “professional offices and social services, and financial institutions, with only ancillary retail, and mixed uses.”

Because the City identified excess land capacity to meet the most recent Regional Housing Needs Allocation (RHNA), the Project is considered consistent with the Housing Element of the General Plan.

B. Finding: The proposed Amendment is internally consistent with the Zoning Ordinance.

Findings of Fact:
The proposed Project is not anticipated to result in exceeding, either cumulatively or individually, any applicable level of service standards. Pursuant to the Project’s Conditions of Approval, the proposed Project will be constructed in conformance with City standards and specifications.

C. Finding: The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.

Findings of Fact:
See findings of fact in Section 1 of this Resolution.

SECTION 4: Findings for Recommendation of Approval of Design Review 17-7004. The Planning Commission of the City of Banning does hereby recommend that the City Council of the City of Banning find and determine that Design Review 17-7004 should be approved because:

A. Finding: The proposed Project is consistent with the General Plan.

Findings of Fact:
The Project is consistent with the General Plan Land Use Element Policy which states: "The land–use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands". The land-use designation of Professional Office (PO) allows the proposed medical support building use. The proposed Project will provide approximately 3,948 square feet of general office space (including the proposed presentation hall/classroom), 1,249 square feet of retail space, and 30,997 square feet of medical facilities/offices.

Further, the Project is consistent with General Plan Economic Development Policy which states: "The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues". The proposed Project is estimated to generate approximately 50 jobs.

B. Finding: The proposed Project is consistent with the Zoning Ordinance, including the development standards and guidelines for the district in which it is located.

Findings of Fact:
The proposed Project is consistent with the Zoning Ordinance and the development standards of the Professional Office (PO) Zone, with imposition of Conditions of Approval, as detailed in the analysis contained in the Planning Commission staff report dated June 6, 2018.

C. Finding: The design and layout of the proposed Project will not unreasonably interfere with the use and enjoyment of neighboring existing or future development, and will not result in vehicular and/or pedestrian hazards.

Findings of Fact:
The proposed Project has provided site and circulation layout design in such a way that the Project will not interfere with the use and enjoyment of existing and future development in the surrounding area. The proposed Project provides vehicular access from Sun Lakes Boulevard as well as through the adjacent property to the west. A reciprocal access agreement is required as a Condition of Approval to preserve future access in perpetuity. The proposed Project provides pedestrian paths around the building in coordination with the parking layout. A six foot solid perimeter wall will buffer adjacent residential development to the north and east of the proposed Project and design of lighting on-site is subject to compliance with the Municipal Code to prevent spillage onto adjacent areas.

D. Finding: The design of the proposed Project is compatible with the character of the surrounding neighborhood.
Findings of Fact:
The proposed medical support office building use will not impair the integrity and character of the PO land use district in which it is to be located because it is surrounded by existing developments and Sun Lakes Boulevard in proximity to Highland Springs Avenue, an established commercial corridor. The building architecture, site circulation and landscaping have been designed in a manner that the Project is compatible with the character of the surrounding neighborhood, with the imposition of Conditions of Approval and CEQA mitigation measures. Additionally, a 6-foot solid wall, along with landscaping, will buffer the site from adjacent residential areas on the north and east.

SECTION 5: PLANNING COMMISSION ACTION - Recommendation of Approval of Project with Conditions. Based on the foregoing, the Planning Commission of the City of Banning hereby recommends that the City Council of the City of Banning approve General Plan Amendment 17-2503, Zone Change 17-3503, and Design Review 17-7004 to permit the development of a 36,171 square foot medical office building on 3.31 acres of real property located on the north side of Sun Lakes Boulevard, east of Highland Springs Avenue, between Sun Lakes Village Drive and Silver Lakes Avenue, within the Congregate Care District (Planning Area C) of the Sun Lakes Village North Specific Plan as shown in plans attached as Exhibit A (APN: 419-140-059) and, subject to the recommended Conditions of Approval attached as Exhibit B. Further, the Planning Commission of the City of Banning hereby recommends to the City Council of the City of Banning that the Council’s approval of Design Review 17-7004 not be effective until the effective date of the City Council resolution approving General Plan Amendment 17-2503 and the ordinance adopting Zone Change 17-3503, whichever date occurs later.

PASSED, APPROVED AND ADOPTED this 6th day of June, 2018.

________________________
Eric Shaw, Chairman
Banning Planning Commission

ATTEST:

________________________
Sandra Calderon, Recording Secretary
City of Banning, California

APPROVED AS TO FORM
AND LEGAL CONTENT:
ATTEST:

Sandra Calderon, Recording Secretary
City of Banning, California

APPROVED AS TO FORM
AND LEGAL CONTENT:

Serita R. Young, Assistant City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Sandra Calderon, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2018-07, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 6th day of June, 2018, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Sandra Calderon, Recording Secretary
City of Banning, California
This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy please contact Banning staff for the most up-to-date information.
General Plan Amendment 17-2503, Zone Change 17-3503,

PROJECT #: Design Review 17-7004, Conditions of Approval

SUBJECT: (Planning Commission Resolution No. 2018-07)

APPLICANT: Gary Miller Architects

LOCATION: APN: 419-140-059

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, state Planning and Zoning Laws, 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. Approval of this entitlement shall not waive compliance with any sections of the
Development Code, or other applicable City Ordinances, in effect at the time of
building permit issuance.

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

4. 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.

5. Prior to any use of the project site, or business activity being commenced thereon, the
applicant shall complete all Conditions of Approval to the satisfaction of the
Community Development Director.

6. 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, Banning Municipal Code regulations.

7. The applicant shall comply with all conditions of approval imposed on the medical
office facility located at APN: 419-140-059 and the approval of GPA 17-2503, ZC 17-
3503, ENV 17-1504 and DR 17-7004 prior to the issuance of a Certificate of
Occupancy.

8. There shall be no storage of vehicles or equipment, or any other materials in the
parking or landscaping areas of the project.

9. The applicant shall remove all graffiti immediately or within 24 hours of notice from the
City.
10. The applicant shall keep the entire project site free from trash and debris at all times and in no event shall trash and debris remain for more than 24 hours.

11. The proposed site plan and project design shall comply with all Mitigation Measures contained in Mitigated Negative Declaration (MND) 17-1504 and the Mitigation Monitoring and Reporting Program (MMRP).

12. If the existing wall along the Sun Lakes Boulevard frontage is removed, a smooth, aesthetic transition shall be made between any remaining wall(s) on adjacent property.

13. In accordance with the Municipal Code a new 6-foot high solid perimeter wall shall be constructed along the north and east property lines, which adjoin residentially designated land uses in the Sun Lakes Specific Plan.

14. In order to ensure ingress/egress and access to parking taking access from the adjacent property (APN 419-140-063 and 419-140-062) to the west and north in perpetuity, recordation of a joint access easement/agreement with the adjoining property shall be executed in a form acceptable to the City Attorney.

15. The project site plan shall provide three loading spaces in compliance with Municipal Code.

16. If necessary, due to the ingress and egress easement requirements, relocation of parking may be required. As allowed by the Specific Plan, the project applicant may submit a shared parking analysis prepared by a qualified traffic engineer to evaluate and identify parking demand for the proposed project in conjunction with adjacent parcels to the immediate west (APN 419-140-063) and north (APN 419-140-062). The parking supply and site plan may be adjusted in accordance with findings of such analysis, as approved by the Director of Community Development. The scope of such analysis shall be approved in advance by the Director of Community Development.

17. Prior to approval of Building Permits, the Landscape Plan shall be coordinated with the Lighting Plan to avoid conflicts and ensure proper placement of trees and lighting standards.

18. Prior to issuance of Building Permits, the project shall develop an alternate access option for service and delivery vehicles by providing access from the existing driveway and eastbound left-turn pocket located on the west of the project site. The design and configuration of such access shall be approved by the Director of Public Works.

19. All signage shall comply with the Specific Plan requirements. A coordinated comprehensive signage program shall be submitted for review and the approval of
the Planning Department prior to issuance of Occupancy Permits. Signage shall be
designed to accommodate the special needs of low vision and elderly patients.

20. Prior to the issuance of Building Permits, a comprehensive lighting plan, including
specification details, shall be submitted to the Planning Department for review and
approval prior to the issuance of Building Permits. The Lighting Plan shall comply
with Title 24 of the California Uniform Building Code. Any existing lighting along Sun
Lakes Boulevard shall be plotted on the Lighting Plan, Site Plan and Landscape
Plan. Any proposed wall lighting shall be schematically plotted on the Lighting Plan,
Site Plan and on building facades.

21. A consistent level of lighting adequate to ensure public safety shall be provided
throughout the site, including but not limited to, building and site entrances/exits,
along pedestrian pathways, at handicapped parking locations, and at the proposed
patient drop-off area.

22. Low intensity ground level lighting shall be provided along pedestrian paths and
adjacent to handicapped parking spaces.

23. No spillage of light shall be allowed off-site on any property line.

24. Prior to certificate of occupancy, a comprehensive parking plan shall be submitted to
Community Development identifying each use and related parking. Thereafter, each
tenant shall submit a comprehensive parking plan identifying that the facility is in
compliance with the parking code.

**Public Works Department**

A. General Requirements

25. 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.

26. 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:

- Fire Marshal (access)
- Public Works Department (grading permits, street improvement permits)
- Riverside County Flood Control & Water Conservation District (storm drain)
• California Regional Water Quality Control Board Colorado River Basin (RWQCB)
• South Coast Air Quality Management District (SCAQMD)
• California Department of Transportation (CALTRANS)

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.

27. The following improvement plans shall be prepared by a Civil Engineer licensed by the State of California 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 in writing by the City Engineer, the plans shall utilize the minimum scale specified and shall be drawn on 24” x 36” Mylar film. 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. Rough Grading Plans 1" = 40' horizontal
   (All Conditions of Approval shall be reproduced on last sheet of set)

b. Haul Route Plans 1" = 40' horizontal

c. Clearing Plans 1" = 50' horizontal
   (Include construction fencing plan)

d. Erosion Control & SWPPP, WQMP 1" = 40' Horizontal
   (Note: a, b, c & d shall be reviewed and approved concurrently)

e. Storm Drain Plans 1" = 40' Horizontal

f. Street Improvement Plans 1" = 40' Horizontal
   1" = 40' Vertical

g. Signing & Striping Plans 1" = 40' Horizontal

h. Precise Grading Plans 1" = 40' Horizontal

i. Landscaping Plans 1" = 20' Horizontal

j. Water & Sewer Improvement Plans 1" = 40' Horizontal
   1" = 4' Vertical
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.

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.

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.

27. Upon completion of construction, the Developer shall furnish the City with reproducible record drawings on Mylar film 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 files submitted to the City, revised to reflect the “As-Built” conditions.

B. Rights of Way

28. Prior to issuance of any permit(s), the applicant shall offer to dedicate (additional 5 feet right-of-way) to the City of Banning for public purposes for Sun Lakes Boulevard fronting the site as a Major Arteria street. The existing right-of-way on Sun Lakes Blvd is currently 90 feet (45 feet from centerline). The City General Plan designation for Major Arteria streets is 100 feet right-of-way (50 feet from centerline).

29. Remove and reconstruct the driveway approach in accordance with City Standard No. C-210 fronting Sun Lakes Boulevard. Street lights, if required, shall be installed offset of the existing street lights.

30. Proposed sidewalk shall be constructed within the Street Right of Way (50 feet from centerline). Applicant shall submit document for additional Right of Way dedication to the City Engineer for review and approval prior to issuance of any permits.

31. The proposed sidewalk shall connect to the existing sidewalk to the east of the project. The minimum width of sidewalk on Sun Lakes Boulevard shall be 8 feet in width.

32. Any public improvements damaged during the course of construction shall be replaced to the satisfaction of the City Engineer, or his/her designee.

33. The applicant shall plant and perpetually maintain trees, shrubs, and ground cover placed in the parkway, slopes adjacent to public right-of-ways constructed in connection with the project. This includes providing irrigation and the clearing of debris and weed removal.
34. All required public improvements for the project shall be completed, tested, and approved by the Engineering Division prior to issuance of any Certificate of Occupancy.

C. Grading and Drainage

35. Submit a Drainage Study with hydrologic and hydraulic analysis for developed and undeveloped (existing) conditions to the Engineering Division for review and approval. The study and analysis shall be prepared by a civil engineer licensed by the State of California. Drainage design shall be in accordance with Banning Master Drainage Plan adopted by Riverside County Flood Control and Water Conservation District (RCFCD), RCFCD Hydrology Manual, and standard plans and specifications. The 10-year storm flow shall be contained within the street curbs, and the 100-year storm shall be contained within the street right-of-way; when this criteria is exceeded, additional drainage facilities shall be designed and constructed.

36. At a minimum, all development will make provisions to store runoff from rainfall events up to and including the one-hundred three-hour during event. Post-development peak urban runoff discharge rates shall not exceed pre-development peak urban runoff discharge rates.

37. If the site is located in a Flood Area as identified in Flood Insurance Rate Map dated August 28, 2008 the developer is responsible for providing a certification by a registered professional engineer or architect demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

38. 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. The project shall accept and convey storm flows from the adjacent property to the north, east and west.

39. The applicant shall comply with Chapter 13.24 “Stormwater Management Systems” of the Banning Municipal Code (BMC) and Title 18 “Grading, Erosion and Sediment Control” of the California Building Code related to excavation and grading; and, the State Water Resources Control Board’s orders, rules and regulations.
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.

The applicant’s SWPPP shall be reviewed and approved by the City Engineer prior to any permit issuance.

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.

The applicant’s SWPPP shall include provisions for all of the following Best Management Practices ("BMPs"):

- Temporary Soil Stabilization (erosion control).
- Temporary Sediment Control.
- Wind Erosion Control.
- Tracking Control.
- Non-Storm Water Management.
- Waste Management and Materials Pollution Control.

All erosion and sediment control BMPs proposed by the applicant shall be designed using the CASQA BMP handbook and approved by the City Engineer prior to any onsite or offsite grading, pursuant to this project.

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.

40. 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 California Regional Water Quality Control Board Colorado River Basin Region Order No. R7-2013-0011.

41. 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.

42. Prior to the issuance of any building permit(s), a precise grading plan shall be submitted to the City Engineer for review and approval. A grading permit shall be obtained prior to commencement of any grading activity.
43. The following notation shall be placed on the grading plan: “No more than three days prior to removing trees, shrubs or tall herbaceous vegetation during the breeding season for migratory birds (February 15 to August 31) a qualified biologist shall conduct a nesting bird survey.”

44. Prior to the issuance of a building permit, the applicant shall provide a lot pad certification stamped and signed by a qualified civil engineer or land surveyor. Pad certification shall list the pad elevation as shown on the approved grading plan, the actual pad elevation and the difference between the two, if any. Such pad certification shall also list the relative compaction of the pad soil.

D. Traffic

45. Prior to the issuance of a grading permit or building permit, the applicant shall submit and obtain approval in writing from the Fire Marshall for the plans for all public or private access drives or streets. 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.

46. Driveway grades shall not exceed eight percent unless approved by the City Engineer.

47. Access drives to the public right-of-way shall be restricted to those approved by the City Engineer as shown on the approved plans.

48. Prior to the issuance of a grading permit or building permit, the applicant shall conduct a Traffic Impact Analysis and submit the report to the Engineering Division for review and approval. All mitigation identified in the Traffic Impact Analysis shall be implemented by the applicant to the satisfaction of the City Engineer.

49. 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/access driveway as approved by the Fire Marshall, and must be maintained in good condition by the property owner until the street is accepted for maintenance.

E. Water

50. Design and construct water line and connect to the existing City water system. Submit any water improvement plans to Engineering Division for review and approval. If the water line is not located on a public street, an easement over the water line, minimum 15 feet in width, shall be granted to the City of Banning for maintenance purposes.
51. A backflow device must be installed on all commercial buildings and at each irrigation water connection. The backflow device must be in compliance with the State Department of Health Regulations.

52. Fire Services will require a Double Detector Check or RPP Device.

Pay all applicable water connection and frontage fees per Chapter 13.08 “Water, Sewer and Electricity Rates” of the Banning Municipal Code prior to the issuance of a building permit.

F. Sewer

53 Design and construct sewer line and connect to existing City sewer system. Submit any sewer improvement plans to Engineering Division for review and approval. If the sewer line is not located on a public street, an easement over the sewer line, minimum 15 feet in width, shall be granted to the City of Banning for maintenance purposes.

54. 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" and all sewer mains shall be a minimum of 8". Final sizes shall be approved by the City Engineer.

56. A sewer check valve shall be provided for each building with a finish pad elevation lower than the rim elevation of the immediate up-stream sewer manhole.

57. Pay all applicable sewer connection and frontage fees per Chapter 13.08 “Water, Sewer and Electricity Rates” of the Banning Municipal Code prior to the issuance of a building permit.

G. Trash/Recycling

58. The developer shall participate in the City’s recycling program by providing two trash receptacles, one for regular trash and one for recycling, within the covered trash enclosure. The covered trash enclosure shall be designed and constructed in such a manner to accommodate a recycling bin as well as the necessary solid waste containers.

59. Construction debris shall be disposed of at a certified recycling site. It is recommended that the developer contact the City’s franchised solid waste hauler, Waste Management of the Inland Valley at 1-800-423-9986, for disposal of construction debris.

H. Fees

60. 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.
61. Public Works Inspection fees shall be paid prior to issuance of any permits in accordance with the fee schedule in effect at time of time of scheduling.

62. Water and sewer 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.

63. 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.

64. Prior to issuance of grading permits, the applicant shall submit to the City Engineer a Notice of Intent (NOI) to comply with obtaining coverage under the National Pollutant Discharge Elimination System (NPDES) General Construction Storm Water Permit from the State Water Resources Control Board. Evidence that this has been obtained (i.e., a copy of the Waste Dischargers Identification Number) shall be submitted to the City Engineer for coverage under the NPDES General Construction Permit prior to initiation of construction activities.

**Electric Utility Department**

65. The Electric Utility currently has a point-of-connection for electric service located near the northeast corner of the property. An area for the new pad mounted transformer(s), vault(s) & service equipment must be sufficient in size for safe operation and maintenance.

The Electric Utility notes that the Environmental Checklist Form and Initial Study submitted does not note any impacts to electric utility service.

The developer shall be responsible the following:

66. Submitting detailed plans indicating lot lines, streets, easements, building layout, anticipated loading information, etc. These plans are required in electronic format. We currently use AutoCad2016. Plans should consist of a plot plan, site plan, one line diagram of proposed electrical main service panel and a sheet showing load calculations by an electrical engineer.

Additional sheets may be required upon request.

67. Paying required fees - electrical permit, plan check fee, inspection fees, meter fee and cost of electrical apparatus for completing the underground line extension.

68. Granting easement for electric facilities installation / maintenance, etc.

69 Installation of all electric utility conduits and substructures.
70. All trenching, backfill, and compaction.

71. The installation of the service entrance cable from the transformer(s) to the pull section and switchgear.

72. The City of Banning Electric Utility shall be responsible for:
   1. Reviewing plans submitted by customer.
   2. Design an electrical utility plan for the installation of substructures and conduit by developer.
   3. Providing a cost estimate for installing an underground electrical system for this project.
   4. Inspecting all trenches prior to backfilling. 24-hour prior notice is required before inspection.
   5. Install electrical apparatus including primary conductors, terminations, metering, and transformer to provide electrical service for your project.

Fire Department

73. The Fire Department requires the listed fire protection measures be provided in accordance with the City of Banning Municipal Code and/or the Riverside County Fire Department Fire Protection Standards. Final conditions will be addressed when complete buildings plans are reviewed.

For commercial areas, the required fire flow shall be available from 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 a fire flow 2750 GPM per minute for two-hours duration at 20 psi residual operating pressure, which must be available before any combustible material is placed on the construction site.

74. 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.

75. Install a complete commercial fire sprinkler system. Fire sprinkler system(s) with pipe sizes in excess of 4" in diameter will require the project Structural Engineer to certify with a “wet signature”, that the structural system is designed to support the seismic and gravity loads to support the additional weight of the sprinkler system. All fire sprinkler risers shall be protected from any physical damage.

76. The PIV and FDC shall be located to the front of building within 50 feet of approved roadway and within 200 feet of an approved hydrant. Sprinkler riser room must have indicating exterior and/or interior door signs. A C-16 licensed contractor must submit
plans, along with current permit fees, to the Fire Department for review and approval prior to installation.

77. Install an alarm monitoring system for fire sprinkler system(s) with 20 or more heads, along with current permit fees, to the Fire Department for review and approval prior to installation.

78. Gate(s) shall be automatic or manual operated. Install Knox key operated switches, with dust cover, mounted per recommended standard of the Knox Company. Building plans shall include mounting location/position and operating standards for Fire Department approval.

79. Fire Apparatus access road and driveways shall be in compliance with the Riverside County Fire Department Standard number 06-05 (located at www.rvccfire.org). Access lanes will not have an up, or downgrade of more than 15%. Access roads shall have an unobstructed vertical clearance not less than 13 feet and 6 inches. Access lanes will be designed to withstand the weight of 80 thousand pounds over 2 axles. Access will have a turning radius capable of accommodating fire apparatus. Access lane shall be constructed with a surface so as to provide all weather driving capabilities.

80. Commercial address must be a minimum 12" tall in contrasting color visible from the street address side of the building. Illuminated internally or externally.

81. 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.

82. An approved Fire Department access key lock box (Minimum Knox Box 3200 series model) shall be installed next to the approved Fire Department access door to the building. If the buildings are protected with an alarm system, the lock box shall be required to have tampered monitoring. Required order forms and installation standards may be obtained at the Fire Department.

**Building and Safety Department**

The following conditions are required to be met at time of plan check submittal:

83. 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.

84. 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, landings, walks and sidewalks, pedestrian ramps, curb ramps,
warning curbs, detectable warnings, 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.

85. Multi-family buildings on the site shall be accessible/adaptable per California
Building Code (CBC), Chapters; 11A and 11B.

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

87. 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.

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

89. 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.

***END***
ATTACHMENT 2

Exhibits-Plans
(Full Size Plans Provided)
INITIAL STUDY & MITIGATED NEGATIVE DECLARATION
No. 17-1504
FOR

Careage Medical Office Building
(GPA 17-2503, Zone Change 17-3503)

PREPARED FOR:
City of Banning
99 East Ramsey Street
Banning, CA 92220
Contact:
(951) 922-3130

CONSULTANT ASSISTANCE
BY:

Lilburn Corporation
1905 Business Center Drive
San Bernardino, CA 92408
909-890-1818

May 2018
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APPENDICES

The following technical studies in support of this Initial Study are available to the
public for review at the Community Development Department, Planning Division.

Appendix A – Biological Assessment
Appendix B - Phase I Cultural Resources Investigation
Appendix B – Report of Soils and Foundation Evaluations
Appendix C – Hydrology Study & Drainage Analysis
Appendix D – Noise Impact Analysis
Appendix E – Traffic Impact Analysis
Project Title: Careage Medical Office Building  
(GPA 17-2503, ZC 17-3503, DR 17-7004, EA 17-1504)

Lead Agency Name: City of Banning Community Development Department  
Planning Division

Address: 99 E. Ramsey Street  
Banning, CA  92220

Contact Person: Sonia Pierce  
phone Number: (951) 922-3152

Project Sponsor: Careage HealthCare, Inc.  
Address: 4411 Point Fosdick Drive, Ste. 203  
Gig Harbor, WA 98335

Existing General Plan Designation: High Density Residential  
Existing Zoning: High Density Residential / Affordable Housing Opportunity (HDR-20)

Proposed Banning General Plan Designation: Professional Office (PO)  
Proposed Banning Zoning Designation: Professional Office (PO)

Zone Change: From High Density Residential – Affordable Housing Opportunity (HDR-20) to  
Professional Office (PO)

Project Location (Address/Nearest cross-streets): The 3.31-acre Project Site is located on the  
north side of Sun Lakes Boulevard between Sun Lakes Village Drive and Silver Lakes Avenue in  
the City of Banning (refer to Figure 1: Regional Location Map and Figure 2: Vicinity Map). The  
property is legally described as APN 419-140-059 and is within Section 12 of Township 3 South,  
Range 1 West, San Bernardino Base and Meridian.

Project Description: Careage HealthCare, Inc. is proposing to construct a medical office building  
(MOB) on a 3.31-acre site (see Figure 3: Site Plan). The two-story building (maximum 38 feet in  
height) is proposed to have a gross floor area of 36,174 square feet and would include the  
following uses: 30,977 square-feet for medical office; 2,579 square-feet for general office; 1,249  
square feet for ancillary uses (pharmacy/ optical); and 1,369 square feet for a “presentation hall”  
for activities associated with the medical complex. The Site Plan shows 193 parking spaces in  
accordance with the Municipal Code, of which 8 would be handicap spaces.

The City of Banning designates zoning at the Project Site as High Density Residential-  
20/Affordable Housing Opportunity (20-24 du/acre. The Applicant has submitted an Application  
for a General Plan Amendment and Zone Change from High Density Residential to Professional  
Office.

Surrounding Land Uses and Setting: The Project Site is vacant and is adjacent to the existing  
“The Lakes Independent Living and Memory Care” facility which is located to the north and the
west. Other surrounding development includes single-family low density residential use to the south and medium density residential use to the east. The Southern Pacific Railroad right-of-way is located approximately 795 feet north of the Project Site and I-10 freeway is approximately 1,000 feet north of the Project Site. The property is not within an Airport Influence Area, an Airport Compatibility Zone, a Historic Preservation Zone, a Fire Responsibility Area, or an Agricultural Preserve. It also is not located within a Cell Group of the Western Riverside County Multiple-Species Habitat Conservation Plan, or within a floodplain.
ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- [ ] Aesthetics
- [ ] Biological Resources
- [ ] Hazards & Hazardous Materials
- [ ] Mineral Resources
- [ ] Public Services
- [x] Tribal Cultural Resources
- [ ] Utilities / Service Systems
- [ ] Agriculture Resources
- [x] Cultural Resources
- [ ] Hydrology / Water Quality
- [x] Noise
- [ ] Recreation
- [ ] Transportation/Traffic
- [ ] Mandatory Findings of Significance
- [ ] Air Quality
- [ ] Geology / Soils
- [ ] Land Use / Planning
- [ ] Population / Housing

DETERMINATION

On the basis of this initial evaluation:

( ) I find that the Proposed Project COULD NOT have a significant effect on the environment. A NEGATIVE DECLARATION will be prepared.

(✓) I find that although the Proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by, or agreed to, by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

( ) I find that the Proposed Project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

( ) I find that the Proposed Project MAY have a "Potentially Significant Impact" or "Potentially Significant Unless Mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standard and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

( ) I find that although the Proposed Project could have a significant effect on the environment, because all potentially significant effects 1) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and 2) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the Proposed Project, nothing further is required.

Signature: [Signature]
Date: 5/11/18

Patty Nevins, Community Development Director
EVALUATION OF ENVIRONMENTAL IMPACTS

<table>
<thead>
<tr>
<th>Issues and Supporting Information Sources:</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant Impact With Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. AESTHETICS. Would the project:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Have a substantial effect on a scenic vista?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>( ✓ )</td>
</tr>
<tr>
<td>b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a State Scenic Highway?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>( ✓ )</td>
</tr>
<tr>
<td>c) Substantially degrade the existing visual character or quality of the site and its surroundings?</td>
<td>( )</td>
<td>( ✓ )</td>
<td>( )</td>
<td>( )</td>
</tr>
<tr>
<td>d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?</td>
<td>( )</td>
<td>( ✓ )</td>
<td>( )</td>
<td>( )</td>
</tr>
</tbody>
</table>

Impact Discussion:

a) **No Impact.** According to the City’s General Plan, the Project Site is not within a scenic vista/scenic highway view corridor. Nearby streets include Sun Lakes Boulevard, and Highland Springs Avenue. Neither of these is designated as a scenic route in the General Plan. There are no scenic vistas that would be impacted by the Proposed Project, and therefore no impacts would result.

b) **No Impact.** The 3.31-acre Project Site is currently vacant and is located on the north side of Sun Lakes Boulevard between Sun Lakes Village Drive and Silver Lakes Avenue. The Project Site is surrounded by “The Lakes Independent Living and Memory Care” facility to the west, multi-family residential to the north, and single family residential development to the east and south (across Sun Lakes Boulevard). There are no designated State Scenic Highways within the vicinity of the Project Site. Similarly, there are no historic buildings on-site or in the vicinity that would be impacted as a result of the Project. No impacts would result.

c) **Less than Significant Impact.** The City of Banning designates the Project Site as High Density Residential-20/Affordable Housing Opportunity (20-24 du/ac) (HDR-20). The Project Proponent has submitted an Application for a Zone Change to Professional Office. This district allows professional offices and social services, and other similar uses; all with only ancillary retail. The project site is essentially level, presently vacant and has no significant vegetation or unique physical features. Because there are similar visual environs adjacent to the Project Site (i.e., The Lakes Independent Living and Memory Care facility); approval of the Proposed Project would not substantially alter the visual character of the area. The proposed two-story building would consequently have a less than significant impact and no mitigation measures are necessary.
d) **Less than Significant with Mitigation.** The project site is currently vacant; thus no light or glare currently emanates from the site. The proposed project will create a new source of light and glare. Potentially sensitive receptors in the vicinity include: *The Lakes Independent Living and Memory Care* facility to the west, multi-family residential to the north, and residential development to the east and on the south side of Sun Lakes Boulevard. Lighting to be provided on-site would be typical of similar development, with no unusual features or characteristics.

A photometric plan has been prepared for the project. According to the photometric plan for the Project, the nearest sensitive receptor (residential to the east) is located approximately 45 ft. to the nearest light pole (measured to structures). At the eastern property line within this area would range from 0.0 to 0.8 lumens. (A lumen is a unit of luminous flux equal to the amount of light given out through a solid angle by a source of one candela intensity radiating equally in all directions.) On the western property line, lumens are shown to range from 0.0 to 1.6, and the assisted living facility would be approximately 90 feet from the closest light pole. On the north property line, where multi-family housing is located, lumens are shown to range from 0.0 to 1.2 lumens, and the closest structure would be approximately 60 feet from the closest light pole.

Residents to the west have in past expressed concerns regarding lighting. **Mitigation Measure AES-1** The final photometric plan installation of lighting within the parking area and building entries shall be designed in a manner to control spillage of light from the Project Site, as required by the City of Banning Municipal Code. Attention will be made to assure no spillage of lights onto the residential properties to the west. The lighting plan must also comply with Title 24 of the California Uniform Building Code. Compliance with these regulations is a Condition of Approval. Consequently, impacts to sensitive receptors will be less than significant.
## Issues and Supporting Information Sources:

<table>
<thead>
<tr>
<th>Impact Discussion:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a, c, e) <strong>No Impact.</strong> The California Department of Conservation Farmland Mapping and Monitoring Program (FMMP) produces maps and statistical data that inventories agricultural land resources in the State. Agricultural land is rated according to soil quality and irrigation status; the best quality land is classified as Prime Farmland. The maps are updated every</td>
</tr>
</tbody>
</table>

### 2. AGRICULTURAL RESOURCES.

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state’s inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment Project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:

<table>
<thead>
<tr>
<th></th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant With Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>c) Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland to non-agricultural use?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>d) Result in the loss of forest land or conversion of forest land to non-forest use?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
</tbody>
</table>
two years and the latest maps are available digitally through the FMMP interactive mapping viewer.

The Project site and vicinity was reviewed in the FMMP interactive map on November 3, 2017. The Project Site and vicinity is identified as urban built-up land. No Prime Farmland, Unique Farmland, or Farmland of Statewide Importance is identified for the Project Site or in the immediate vicinity. Therefore, the Proposed Project would not result in the conversion of farmland designated of importance locally or statewide to a non-agricultural use. No impacts would occur.

b) **No Impact.** California Land Conservation (Williamson) Act of 1965 was adopted to regulate the conversion of farmland/agricultural land into non-agricultural use and control urban expansion. The Act enables local governments to enter into contracts with private landowners for the purpose of restricting specific parcels of land to long term agricultural or open space use. No portion of the Project Site is contracted under the Williamson Act. Therefore the Proposed Project would not impact any Williamson Act Land Conservation Contract. Similarly, approval of the Proposed Project would not conflict with or change existing zoning for agricultural use, or a Williamson Act Contract. No impacts would result.

d) **No Impact.** The 3.31-acre Project Site is located on north side of Sun Lakes Boulevard between Sun Lakes Village Drive and Silver Lakes Avenue; approximately 1,000 feet south of the I-10 freeway. No portion of the Project Site is located within forest land. Consequently, approval of the proposed General Plan Amendment (GPA) and Zone Change (ZC) to allow site development would not result in the loss of forest land or convert forest land to a non-forest use. No impacts would result.

<table>
<thead>
<tr>
<th>Issues and Supporting Information Sources:</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant Impact With Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. <strong>AIR QUALITY. Would the project:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Conflict with or obstruct implementation of the applicable air quality plan?</td>
<td>( )</td>
<td></td>
<td>(✓)</td>
<td>( )</td>
</tr>
<tr>
<td>b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?</td>
<td>( )</td>
<td></td>
<td>(✓)</td>
<td>( )</td>
</tr>
<tr>
<td>c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable Federal or State ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?</td>
<td>( )</td>
<td></td>
<td>(✓)</td>
<td>( )</td>
</tr>
<tr>
<td>d) Expose sensitive receptors to substantial pollutant concentrations?</td>
<td>( )</td>
<td></td>
<td>(✓)</td>
<td>( )</td>
</tr>
<tr>
<td>e) Create objectionable odors affecting a substantial number of people?</td>
<td>( )</td>
<td></td>
<td>(✓)</td>
<td>( )</td>
</tr>
</tbody>
</table>
Impact Discussion:

a) **Less than Significant.** The Project Site is located in the South Coast Air Basin (SCAB). The South Coast Air Quality Management District (SCAQMD) has jurisdiction over air quality issues and regulations within the SCAB. The Air Quality Management Plan (AQMP) for the basin establishes a program of rules and regulations administered by SCAQMD to obtain attainment of the state and federal air quality standards. The most recent AQMP (2016 AQMP) was adopted by the SCAQMD on March 3, 2017. The 2016 AQMP incorporates the latest scientific and technological information and planning assumptions, including transportation control measures developed by the Southern California Association of Governments (SCAG) from the 2016 Regional Transportation Plan/Sustainable Communities Strategy, and updated emission inventory methodologies for various source categories.

Conflicts with the AQMP would arise if Project activities resulted in a substantial increase in employment or population that was not previously adopted and/or approved in a General Plan. Large population or employment increases could affect transportation control strategies, which are among the most important in the air quality plan, since transportation is a major contributor to particulates and ozone for which the SCAB is not in attainment.

The Proposed Project consists of a General Plan Amendment and Zone Change from High Density Residential to Professional Office. The Housing Element of the General Plan identifies the project site for build-out of 66 low income units at a maximum density of 20 dwelling units/acre, which would generate approximately 178 new residents. (SCAG, May 2017, average 2.7 residents per household, City of Banning). The proposed project is estimated to generate approximately 45-50 new jobs. A portion of future employees can be assumed to be drawn from the existing local labor pool and a portion may represent new residents. Consequently, the proposed General Plan Amendment and Zone Change would result in a minimal deviation from population and employment projections which form the basis of the AQMP.

An evaluation of potential air quality impacts related to buildout under the current General Plan and the Proposed Project was prepared. Table 1 and Table 2 illustrate operational emissions associated with the current General Plan/Zoning designations and the proposed project. Construction emissions were not modeled as they are short-term in nature, and measures will be required to minimize such impacts. (See discussion under Threshold 3 - b, c) As shown, neither operational impacts resulting from the existing General Plan/Zoning designations or the proposed project would exceed SCAQMD thresholds. Consequently, the proposed project would not result in a conflict or obstruction to the implementation of the AQMP and related impacts are considered **Less Than Significant.**
Table 1
Consistency with the AQMP
Operational Emissions
(Pounds per Day)

<table>
<thead>
<tr>
<th>Source</th>
<th>ROG</th>
<th>NOx</th>
<th>CO</th>
<th>SO2</th>
<th>PM10</th>
<th>PM2.5</th>
</tr>
</thead>
<tbody>
<tr>
<td>66 Apartments¹</td>
<td>19.8</td>
<td>9.1</td>
<td>49.9</td>
<td>0.1</td>
<td>8.5</td>
<td>6.0</td>
</tr>
<tr>
<td>Proposed Project</td>
<td>3.0</td>
<td>17.5</td>
<td>23.5</td>
<td>0.0</td>
<td>7.0</td>
<td>2.0</td>
</tr>
<tr>
<td>SCAQMD Threshold</td>
<td>55</td>
<td>55</td>
<td>550</td>
<td>150</td>
<td>150</td>
<td>55</td>
</tr>
<tr>
<td>Significance</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

Source: CalEEMod.2016.3.2 Winter Emissions

Table 2
Consistency with the AQMP
Greenhouse Gas Operational Emissions
(Metric Tons per Year)

<table>
<thead>
<tr>
<th>Source/Phase</th>
<th>CO2</th>
<th>CH4</th>
<th>N2O</th>
</tr>
</thead>
<tbody>
<tr>
<td>66 Apartments</td>
<td>924.7</td>
<td>0.6</td>
<td>0.0</td>
</tr>
<tr>
<td>MTCO2e</td>
<td>940.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SCAQMD Threshold</td>
<td>3,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Significant</td>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposed Project</td>
<td>1,453.4</td>
<td>1.9</td>
<td>0.0</td>
</tr>
<tr>
<td>MTCO2e</td>
<td>1,557.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SCAQMD Threshold</td>
<td>3,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Significant</td>
<td>No</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: CalEEMod.2016.3.2 Annual Emissions.

b/c) **Less than Significant.** The Proposed Project’s construction and operational emissions were screened using California Emissions Estimator Model (CalEEMod) version 2016.3.2 prepared by the SCAQMD. The emissions estimates incorporate Rule 402 and 403 by default as required during construction. The criteria pollutants screened for include: reactive organic gases (ROG), nitrous oxides (NOx), carbon monoxide (CO), sulfur dioxide (SO2), and particulates (PM10 and PM2.5). In addition, reactive organic gas (ROG) emissions are analyzed. Two of the analyzed pollutants, ROG and NOx, are ozone precursors. Both summer and winter season emission levels were estimated.

**Construction Emissions**

Construction emissions are considered short-term, temporary impacts and were modeled with the following parameters: site grading (mass and fine grading), building construction, paving, and architectural coating. Construction is anticipated to begin in early to mid-2018 and be completed in 2020. Estimated emissions generated by construction of the Proposed Project are shown in Table 3 and Table 4, which represent winter and summer construction emissions, respectively. As shown in Table 3 and Table 4, construction

¹ Dwelling unit count based upon RHNA Site Inventory allocation, 2014-2021 Housing Element, City of Banning General Plan.
emissions would not exceed SCAQMD thresholds. Impacts would be **Less Than Significant.**

### Table 3
Winter Construction Emissions Summary  
(Pounds per Day)

<table>
<thead>
<tr>
<th>Source/Phase</th>
<th>ROG</th>
<th>NO\textsubscript{X}</th>
<th>CO</th>
<th>SO\textsubscript{2}</th>
<th>PM\textsubscript{10}</th>
<th>PM\textsubscript{2.5}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Preparation</td>
<td>4.7</td>
<td>48.2</td>
<td>23.1</td>
<td>0.0</td>
<td>9.8</td>
<td>6.2</td>
</tr>
<tr>
<td>Grading</td>
<td>2.9</td>
<td>30.7</td>
<td>17.4</td>
<td>0.0</td>
<td>4.7</td>
<td>3.0</td>
</tr>
<tr>
<td>Building Construction</td>
<td>3.2</td>
<td>26.8</td>
<td>20.9</td>
<td>0.0</td>
<td>2.4</td>
<td>1.7</td>
</tr>
<tr>
<td>Paving</td>
<td>1.7</td>
<td>12.8</td>
<td>13.0</td>
<td>0.0</td>
<td>0.9</td>
<td>0.7</td>
</tr>
<tr>
<td>Architectural Coating</td>
<td>20.9</td>
<td>1.9</td>
<td>2.2</td>
<td>0.0</td>
<td>0.2</td>
<td>0.2</td>
</tr>
<tr>
<td><strong>Highest Value (lbs/day)</strong></td>
<td><strong>20.9</strong></td>
<td><strong>48.2</strong></td>
<td><strong>23.1</strong></td>
<td>0.0</td>
<td><strong>9.8</strong></td>
<td><strong>6.9</strong></td>
</tr>
<tr>
<td>SCAQMD Threshold</td>
<td>75</td>
<td>100</td>
<td>550</td>
<td>150</td>
<td>150</td>
<td>55</td>
</tr>
<tr>
<td>Significant</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

Source: CalEEMod.2016.3.2 Winter Emissions.  
Phases do not overlap and represent the highest concentration.

### Table 4
Summer Construction Emissions Summary  
(Pounds per Day)

<table>
<thead>
<tr>
<th>Source/Phase</th>
<th>ROG</th>
<th>NO\textsubscript{X}</th>
<th>CO</th>
<th>SO\textsubscript{2}</th>
<th>PM\textsubscript{10}</th>
<th>PM\textsubscript{2.5}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Preparation</td>
<td>4.7</td>
<td>48.3</td>
<td>23.3</td>
<td>0.0</td>
<td>9.8</td>
<td>6.2</td>
</tr>
<tr>
<td>Grading</td>
<td>2.9</td>
<td>30.7</td>
<td>17.3</td>
<td>0.0</td>
<td>4.7</td>
<td>3.0</td>
</tr>
<tr>
<td>Building Construction</td>
<td>3.7</td>
<td>26.8</td>
<td>21.2</td>
<td>0.0</td>
<td>2.3</td>
<td>1.6</td>
</tr>
<tr>
<td>Paving</td>
<td>1.7</td>
<td>12.8</td>
<td>13.1</td>
<td>0.0</td>
<td>0.9</td>
<td>0.8</td>
</tr>
<tr>
<td>Architectural Coating</td>
<td>20.9</td>
<td>1.8</td>
<td>2.3</td>
<td>0.0</td>
<td>0.2</td>
<td>0.2</td>
</tr>
<tr>
<td><strong>Highest Value (lbs/day)</strong></td>
<td><strong>20.9</strong></td>
<td><strong>48.3</strong></td>
<td><strong>23.3</strong></td>
<td>0.0</td>
<td><strong>9.8</strong></td>
<td><strong>6.9</strong></td>
</tr>
<tr>
<td>SCAQMD Threshold</td>
<td>75</td>
<td>100</td>
<td>550</td>
<td>150</td>
<td>150</td>
<td>55</td>
</tr>
<tr>
<td>Significant</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

Source: CalEEMod.2016.3.2 Summer Emissions.  
Phases do not overlap and represent the highest concentration.

**Compliance with SCAQMD Rules 402, and 403**

Although the Proposed Project does not exceed SCAQMD thresholds for construction emissions, the Project Proponent would be required to comply with all applicable SCAQMD rules and regulations, because the SCAB is in non-attainment status for ozone and suspended particulates (PM\textsubscript{10} and PM\textsubscript{2.5}).

The Project Proponent would be required to comply with Rules 402 nuisance, and 403 fugitive dust, which require the implementation of Best Available Control Measures (BACMs) for each fugitive dust source, and the AQMP which identifies Best Available Control Technologies (BACTs) for area sources and point sources. The BACMs and BACTs would include, but not be limited to the following:

1. The Project Proponent shall ensure that any portion of the site to be graded shall be pre-watered prior to the onset of grading activities.
(a) The Project Proponent shall ensure that watering of the site or other soil stabilization method shall be employed on an on-going basis after the initiation of any grading activity on the site. Portions of the site that are actively being graded shall be watered regularly (3x daily) to ensure that a crust is formed on the ground surface and shall be watered at the end of each workday.

(b) The Project Proponent shall ensure that all disturbed areas are treated to prevent erosion until the site is constructed upon.

(c) The Project Proponent shall ensure that landscaped areas are installed as soon as possible to reduce the potential for wind erosion.

(d) The Project Proponent shall ensure that all grading activities are suspended during first and second stage ozone episodes or when winds exceed 25 miles per hour.

During construction, exhaust emissions from construction vehicles and equipment and fugitive dust generated by equipment traveling over exposed surfaces, would increase NO\textsubscript{X} and PM\textsubscript{10} levels in the area. Although the Proposed Project does not exceed SCAQMD thresholds during construction, the Applicant/Contractor would be required to implement the following conditions as required by SCAQMD:

2. To reduce emissions, all equipment used in grading and construction must be tuned and maintained to the manufacturer’s specification to maximize efficient burning of vehicle fuel.

3. The Project Proponent shall ensure that existing power sources are utilized where feasible via temporary power poles to avoid on-site power generation during construction.

4. The Project Proponent shall ensure that construction personnel are informed of ride sharing and transit opportunities.

5. All buildings on the Project Site shall conform to energy use guidelines in Title 24 of the California Administrative Code.

6. The operator shall maintain and effectively utilize and schedule on-site equipment in order to minimize exhaust emissions from truck idling.

7. The operator shall comply with all existing and future California Air Resources Board (CARB) and SCAQMD regulations related to diesel-fueled trucks, which may include among others: (1) meeting more stringent emission standards; (2) retrofitting existing engines with particulate traps; (3) use of low sulfur fuel; and (4) use of alternative fuels or equipment.

Operational Emissions

The operational mobile source emissions were calculated using a Traffic Impact Analysis (TIA) prepared by Kunzman Associates, Inc. in April 2018. The TIA determined that the Proposed Project would generate approximately 1,259 total daily trips. Emissions associated with the Proposed Project’s estimated vehicle trips were modeled and are listed in Table 5 and Table
Tables 5 and 6 summarize the winter and summer operational emissions, respectively. As shown, both winter and summer season operational emissions are below SCAQMD thresholds. Impacts are anticipated to be less than significant, and no mitigation measures are required.

### Table 5
**Winter Operational Emissions Summary**
(Pounds per Day)

<table>
<thead>
<tr>
<th>Source</th>
<th>ROG</th>
<th>NO\textsubscript{X}</th>
<th>CO</th>
<th>SO\textsubscript{2}</th>
<th>PM\textsubscript{10}</th>
<th>PM\textsubscript{2.5}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Area</td>
<td>0.9</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Energy</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>
</tr>
<tr>
<td>Mobile</td>
<td>32.1</td>
<td>17.3</td>
<td>23.1</td>
<td>0.0</td>
<td>6.9</td>
<td>1.9</td>
</tr>
<tr>
<td><strong>Totals (lbs/day)</strong></td>
<td><strong>3.0</strong></td>
<td><strong>17.3</strong></td>
<td><strong>23.1</strong></td>
<td><strong>0.0</strong></td>
<td><strong>6.9</strong></td>
<td><strong>1.9</strong></td>
</tr>
<tr>
<td>SCAQMD Threshold</td>
<td>55</td>
<td>55</td>
<td>550</td>
<td>150</td>
<td>150</td>
<td>55</td>
</tr>
<tr>
<td><strong>Significance</strong></td>
<td><strong>No</strong></td>
<td><strong>No</strong></td>
<td><strong>No</strong></td>
<td><strong>No</strong></td>
<td><strong>No</strong></td>
<td><strong>No</strong></td>
</tr>
</tbody>
</table>

Source: CalEEMod.2016.3.2 Winter Emissions.

### Table 6
**Summer Operational Emissions Summary**
(Pounds per Day)

<table>
<thead>
<tr>
<th>Source</th>
<th>ROG</th>
<th>NO\textsubscript{X}</th>
<th>CO</th>
<th>SO\textsubscript{2}</th>
<th>PM\textsubscript{10}</th>
<th>PM\textsubscript{2.5}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Area</td>
<td>0.8</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Energy</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>
</tr>
<tr>
<td>Mobile</td>
<td>2.5</td>
<td>17.3</td>
<td>26.1</td>
<td>0.1</td>
<td>6.9</td>
<td>1.9</td>
</tr>
<tr>
<td><strong>Totals (lbs/day)</strong></td>
<td><strong>2.5</strong></td>
<td><strong>17.3</strong></td>
<td><strong>26.1</strong></td>
<td><strong>0.1</strong></td>
<td><strong>6.9</strong></td>
<td><strong>1.9</strong></td>
</tr>
<tr>
<td>SCAQMD Threshold</td>
<td>55</td>
<td>55</td>
<td>550</td>
<td>150</td>
<td>150</td>
<td>55</td>
</tr>
<tr>
<td><strong>Significance</strong></td>
<td><strong>No</strong></td>
<td><strong>No</strong></td>
<td><strong>No</strong></td>
<td><strong>No</strong></td>
<td><strong>No</strong></td>
<td><strong>No</strong></td>
</tr>
</tbody>
</table>

Source: CalEEMod.2016.3.2 Summer Emissions.

The Proposed Project does not exceed applicable SCAQMD regional thresholds either during construction or operational activities. Consequently, the associated impacts are considered to be Less Than Significant; and no mitigation measures are necessary.

d) **Less than Significant.** Sensitive receptors include residences, schools, hospitals, and similar uses that are sensitive to adverse air quality. Adjacent existing sensitive receptors include residential structures located immediately to the east, north and the west of the project site. Localized significance thresholds (LST) are assessed, reviewed and compared to SCAQMD mass rate look-up screening threshold tables. LSTs represent the maximum emissions from a Project Site that would not cause an exceedance of the national or state standards. LSTs are based on the ambient concentrations of specific pollutants within the sensitive receptor area (SRA) and the distance to the nearest sensitive receptor. The thresholds for a 2-acre site with sensitive receptors located within 25 meters of property lines were used to analyze the proposed project and represent a worst-case scenario.

The project site is located within the Banning Airport-Source Receptor Area (SRA No. 29). In the case of CO and NO\textsubscript{2}, if ambient levels are below the standards, a project is considered to have a significant impact if project emissions result in an exceedance of one
or more of these standards. If ambient levels already exceed a State or federal standard, then project emissions are considered significant if they increase ambient concentrations by a measurable amount. This would apply to PM$_{10}$ and PM$_{2.5}$, both of which are nonattainment pollutants (areas considered to have air quality worse than the National Ambient Air Quality Standards as defined in the Clean Air Act Amendments of 1970) or these two pollutants, the significance criteria are the pollutant concentration thresholds established in SCAQMD Rules 403 and 1301.

Table 7 shows the estimated emissions for the proposed construction and operational activities compared with appropriate LSTs. The data provided in Table 7 shows that none of the analyzed criteria pollutants would exceed the calculated local emissions thresholds at the nearest sensitive receptors consequently, a Less Than Significant local air quality impact would occur with approval of the proposed project, and no mitigation measures are necessary.

### Table 7
Local Construction Emissions at Nearest Sensitive Receptors

<table>
<thead>
<tr>
<th></th>
<th>NOx</th>
<th>CO</th>
<th>PM10</th>
<th>PM2.5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Emissions (Max. from Table 3 and Table 4)</td>
<td>48.3</td>
<td>23.3</td>
<td>9.8</td>
<td>6.2</td>
</tr>
<tr>
<td>Operational Emissions (Max. Total from Table 5 and Table 6)</td>
<td>17.3</td>
<td>26.1</td>
<td>1.7</td>
<td>0.5</td>
</tr>
<tr>
<td><strong>Highest Value (lbs/day)</strong></td>
<td><strong>48.3</strong></td>
<td><strong>23.3</strong></td>
<td><strong>9.8</strong></td>
<td><strong>6.2</strong></td>
</tr>
<tr>
<td><strong>LST Thresholds</strong></td>
<td><strong>149</strong></td>
<td><strong>1,541</strong></td>
<td><strong>10</strong></td>
<td><strong>3</strong></td>
</tr>
<tr>
<td><strong>Greater Than Threshold</strong></td>
<td><strong>No</strong></td>
<td><strong>No</strong></td>
<td><strong>No</strong></td>
<td><strong>No</strong></td>
</tr>
</tbody>
</table>

Source: Calculated from CalEEMod and SCAQMD’s Mass Rate Look-up Tables for two acres in SRA 29 Banning Airport.

*The nearest existing sensitive receptors are located adjacent to the north, east, and south of the project site; however, according to LST methodology any receptor located closer than 25 meters should be based on the 25 meter threshold.

† Construction emissions LST

‡ Operational emissions LST

e) **Less than Significant.** The Proposed Project will not involve activities typically associated with the emission of objectionable odors. Potential odor sources associated with the Proposed Project may result from construction equipment exhaust and the application of asphalt and architectural coatings during construction activities; and the temporary storage of solid waste (refuse) associated with the Projects’ (long-term operational) uses. Standard construction measures such as those listed under Threshold b) and c) would minimize odor impacts resulting from construction activity. It should be noted that any construction odor emissions generated would be temporary, short-term, and intermittent in nature and would cease upon completion of the respective phase of construction activity. Project-generated refuse would be stored in covered containers and removed at regular intervals in compliance with the City of Banning’s solid waste regulations. The Project would be also required to comply with SCAQMD Rule 402 to prevent occurrences of public nuisances. Consequently, odors associated with the Proposed Project construction and operations would be Less Than Significant and no mitigation is necessary.
4. BIOLOGICAL RESOURCES. Would the project:

<table>
<thead>
<tr>
<th></th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant With Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>b) Have a substantial adverse effect on riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community conservation Plan, or other approved local, regional, or State habitat conservation plan?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
</tbody>
</table>

Impact Discussion:

In November 2017, Natural Resources Assessment, Inc. (NRAI) performed a General Biological Assessment under the requirements of the Western Riverside County Multiple Species Habitat Conservation Plan (MSCHP). This assessment is contained in Appendix A, which is available for review at the community Development Department, Planning Division. Findings are summarized in the following discussion.

a) No Impact. A data search for information on plant and wildlife species known occurrences within the vicinity of the Project Site has been conducted along with review of biological texts on general and specific biological resources, and those resources considered to be sensitive by various wildlife agencies, local governmental agencies and interest groups.
A field survey of the Project Site was conducted on October 15, 2017 and included an evaluation of Project Site’s habitats, records of the general and sensitive biological resources present on-site, and taking representative photographs. The survey included habitat assessment surveys for resources covered under the MSHCP survey requirements. The Project Site was mapped by the MSHCP as disturbed/developed in both the 1994 and 2012 mapping.

The Project Site is predominantly composed of weeds and includes a mix of mostly native weeds including: telegraph weed (*Heterotheca grandiflora*), and doveweed (*Croton setiger*). Non-native weeds such as Russian thistle (*Salsola tragus*), short-pod mustard (*Hirschfeldia incana*) and red-stemmed filaree (*Erodium cicutarium*) also occur on-site. The weed-dominated plant community is found mostly at the southern and eastern boundaries of the Project Site. The presence of individual plants and a single red gum (*Eucalyptus camaldulensis*), were observed along the eastern boundary as well, and indicates that this area is possibly receiving supplemental water from the adjacent residential development. Plants along the southern boundary are all annual weeds that mostly occur in low-lying areas where water collects.

During the field survey, no amphibian or reptile species were observed. A total of four bird species were observed and included: house finch (*Haemrohous mexicanus*), white-crowned sparrow (*Zonotrichia leucophrys*), Anna’s hummingbird (*Calypte anna*) and house sparrow (*Passer domesticus*). No sign of mammal species (i.e., scat, tracks) was observed.

Section 6 of the MSHCP states that all projects must be reviewed for compliance with plan policies pertaining to Riparian/Riverine resources, Criteria resources, Narrow Endemic Plant Species, urban/wildlands interface, and additional survey needs as applicable. For the Proposed Project, the MSHCP required an assessment for Narrow Endemic Plant Species, presence of burrowing owl habitat, riverine and riparian habitats, as well as vernal pools and fairy shrimp habitat, and jurisdictional waters. The Narrow Endemic Plant Species identified as potentially present were Marvin’s onion (*Allium marvinii*) and many-stemmed dudleya (*Dudleya multicaulis*).

The Yucaipa onion (*Allium marvinii*) is a perennial herb that flowers annually from an underground bulb. It is found in areas of clay soils within openings within chaparral habitats. It is known to occur from the Yucaipa and Beaumont area of the southern San Bernardino Mountains, at elevations ranging from 2300 to 3200 feet. The Yucaipa onion flowers from April through May and would not have been visible during the survey. Threats to the Yucaipa onion include invasion of historical habitats by non-native weeds, loss of habitat to development and the alteration of fire regimes. The alteration of fire regimes (mainly suppression) has resulted in formerly open areas preferred by this species becoming closed over. The Yucaipa onion is not listed as either endangered for threatened by the U.S. Fish and Wildlife Service (USFWS) or the California Department of Fish and Wildlife (CDFW). However, it is on list 1B.1 of the California Natural Plant Society (CNPS) Inventory.

No suitable heavy or clayey soils are present on-site. In addition, the site lacks the soils and plant community preferred by this species. Therefore, the Yucaipa onion is not expected to be present.
The many-stemmed dudleya (*Dudleya multicaulis*) is a perennial herb that grows from a corm. It is found usually on clay or similarly dense soils in chaparral, coastal scrub, valley and foothill grassland plant communities. It blooms from an elevation of 15 to 790 meters (50 to 2600 feet), and flowers from April through July; thus it would not have been visible during the survey. The species has been recorded from Los Angeles, Orange, Riverside, San Bernardino and San Diego counties, specifically the Temescal Mountains in Riverside County. It is threatened by clay mining, off-road activities, grazing, farming and development. It is not listed by the USFWS or the CDFW; however, it is on List 1B.2 of the CNPS Inventory. The Project Site has no suitable habitat or soils for this species. Many-stemmed dudleya is not expected to be present.

Habitat for the burrowing owl was assessed over the entire property in accordance with MSHCP “Burrowing Owl Survey Instructions.” The assessment included looking for burrowing owl burrows, whitewash, pellets, animal remains and other burrowing owl indicators. The Project Site does not provide suitable habitat for burrowing owls, as there is no scrub cover and no burrows or other structures suitable for use by the burrowing owl. The Project Site is disturbed on a regular basis and is located in an area that experiences ongoing human disturbance. No burrowing owls are expected to use or nest on the Project Site.

The species objectives for the Stephens kangaroo rat (SKR) in the Western Riverside MSHCP were designed to incorporate the objectives and be consistent with the Long-Term Stephens Kangaroo Rat Habitat Conservation Plan (SKR Plan). Any projects that are within the MSHCP boundaries must meet the SKR Plan requirements. The project is not located within the SKR fee area; and therefore no impacts to this species would result.

The Proposed Project would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFW or U.S. Fish and Wildlife Service. No impacts are anticipated to candidate, sensitive, or special status species and no mitigation measures are necessary.

b) **No Impact.** Riparian/Riverine Areas are defined by the MSHCP as “lands which contain habitat dominated by trees, shrubs, persistent emergents, or emergent mosses and lichens, which occur close or depend upon soil moisture from a nearby fresh water source; or areas with fresh water flow during all or a portion of the year.” The property is flat and shows no evidence of any regular flow. There is no riparian habitat that occurs on-site as defined in the MSHCP. The mulefat (*Baccharis salicifolia*) plants observed do not make a true riparian habitat, as they are scattered individuals on bare ground, do not occur along a drainage, and are likely present only because of runoff from adjacent residential properties. Similarly, there are no jurisdictional waters on-site. The mulefat plants observed along the eastern boundary do not make a true wetland habitat, as they are scattered individuals on bare ground, do not occur along a drainage, and are likely present only because of runoff from adjacent residential properties. Consequently, no impacts to riparian habitat or any other sensitive natural community are anticipated and no mitigation measures are necessary.

c) **No Impact.** Vernal pools are defined by the MSHCP as “seasonal wetlands that occur in depression areas that have wetlands indicators of all three parameters (soils, vegetation and hydrology) during the wetter portion of the growing season but normally lack wetlands
indicators of hydrology and/or vegetation during the drier portion of the growing season. Evidence concerning the persistence of an area's wetness can be obtained from its history, vegetation, soils, and drainage characteristics, uses to which it has been subjected, and weather and hydrologic records.” During the field survey, no indicators of vernal pool development were observed. Given the history of the Project Site, the currently highly disturbed surface, and the original sandy loam soils (unsuitable for pool formation), vernal pools are not present nor expected to occur in the future. Consequently, no impacts are anticipated to federally protected wetlands and no mitigation measures are necessary.

d) **No Impact.** Raptors and all migratory bird species, whether listed or not, receive protection under the Migratory Bird Treaty Act (MBTA) of 1918. The MBTA prohibits individuals to kill, take, possess or sell any migratory bird, bird parts (including nests and eggs) except per regulations prescribed by the Secretary of the Interior Department (16 U. S. Code 703). Additional protection is provided to all bald and golden eagles under the Bald and Golden Eagle Protection Act of 1940, as amended. State protection is extended to all birds of prey by the CDFW Code, Section 2503.5. No take is allowed under these provisions except through the approval of the agencies or their designated representatives.

At the time of the survey, the Project Site had very limited marginal nesting habitat for ground and tree nesting bird species. In addition, there is no shrub habitat. Trees and shrubs occur on adjacent properties, and may provide nesting habitat for species using these habitats.

Wildlife movement and the fragmentation of wildlife habitat are recognized as critical issues that must be considered in assessing impacts to wildlife. In summary, habitat fragmentation is the division or breaking up of larger habitat areas into smaller areas that may or may not be capable of independently sustaining wildlife and plant populations. Wildlife movement (more properly recognized as species movement) is the temporal movement of individuals (plants and animals) along diverse types of corridors. Wildlife corridors are especially important for connecting fragmented habitat areas.

The Project Site is in an area that is developed. Native habitats in the nearby surrounding areas are gone and habitat fragmentation in the general area is substantial. The Proposed Project will impact a previously impacted area and will not add significantly to additional fragmentation of habitat or affects to wildlife movement. Consequently, no impacts to the movement of any native resident or migratory fish or wildlife species or established native resident or migratory wildlife corridors would result, and no mitigation measures are necessary.

e) **No Impact.** Currently, the City of Banning does not have a tree preservation policy or ordinance in place. As observed during the field survey conducted for the biological assessment, a single red gum tree was observed near the eastern boundary of the Project Site. It is anticipated that the tree would be removed during clearing/grading of the site. However, the Project Site would be landscaped in accordance with approved drought tolerant trees, shrubs and groundcover. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance would not result. Consequently, no impacts are anticipated and no mitigation measures are necessary.
f) **No Impact.** The Project Site is located within the MSHCP Conservation Area. As part of the Conservation Area, there is a concern with the identification of specific areas that are necessary to assemble a sufficiently large and diverse parcel to protect the resources of concern for that reserve. Each area has a designated conservation plan and is therefore referred to as an Area Plan. The smallest unit is the Cell, which individually form the basis for Cell Groups that make up Area Plans. The MSHCP defines [Criteria] Cells as “a unit within the Criteria Area generally 160 acres in size, approximating one quarter section,” and Cell Groups as “an identified grouping of Cells within the Criteria Area.”

All the Cells have been identified during the preparation of the MSHCP and form the basis for identifying areas of sensitivity. Areas outside Cells are generally not considered to have a high sensitivity for the species identified by the MSHCP, although they could have resources such as riparian habitat that are sensitive and require additional analysis. The Project Site is not located within or adjacent to any Criteria Cells. Consequently, the Project would not conflict with the provisions of an adopted Habitat Conservation Plan, and no mitigation measures are necessary...

<table>
<thead>
<tr>
<th>Issues and Supporting Information Sources:</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant Impact</th>
<th>Less Than Significant Impact with Mitigation Incorporated</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>5. CULTURAL RESOURCES. Would the project:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?</td>
<td>( )</td>
<td>( ✓ )</td>
<td>( )</td>
<td>( )</td>
</tr>
<tr>
<td>b) Cause a substantial adverse change in the significance of an archeological resource pursuant to § 15064.5?</td>
<td>( )</td>
<td>( ✓ )</td>
<td>( )</td>
<td>( )</td>
</tr>
<tr>
<td>c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?</td>
<td>( )</td>
<td>( ✓ )</td>
<td>( )</td>
<td>( )</td>
</tr>
<tr>
<td>d) Disturb any human remains, including those interred outside of formal cemeteries?</td>
<td>( )</td>
<td>( ✓ )</td>
<td>( )</td>
<td>( )</td>
</tr>
</tbody>
</table>

**Impact Discussion:**

In November 2017, a Phase I Cultural Resources Investigation was prepared for the Project by McKenna et al, which included an archeological records search, Native American consultation, paleontological overview, historic background research, and field survey. A copy of the report is contained in Appendix B, which is available for review at the community Development Department, Planning Division. Findings presented in the Cultural Resources report are outlined in the following discussion.

The City of Banning Planning Department has conducted notification and consultation with the Native American Historical Commission (NAHC) and area tribes, as required under SB 18 and AB 52. Discussion and mitigation language contained in this section reflect the results of those consultations.
a-b) **Less Than Significant with Mitigation:**
During the field survey conducted in November 2017, the Project Site was found to be void of native vegetation, and the surficial deposits were likely impacted by past farming and modern activities. The Project Site is surrounded by modern improvements (i.e., existing development, roadways, infrastructure, etc.).

Review of records indicated that improvements to the east were completed in 2002-03; to the west in 2003-04; and improvements to the north in 2011. Earlier aerials show the surrounding properties vacant and disked. Based on the historic development of the City and the agriculture uses that surrounded it, the Project Site was likely an old grain/hay field. No evidence was found to indicate the Project Site was ever subjected to significant improvements. The land was under cultivation into the 1960s and is currently vacant.

McKenna et al. completed a standard archaeological records search through the University of California, Riverside, Eastern Information Center, Riverside, California. Research indicated that the general area was subject to at least three prior studies and that a minimum of 25 cultural resources studies have been completed within one-mile of the Project Site. Two reports in 1981 and 1982 specifically referenced the Stewart Ranch, and confirm that the current study area is within the historic boundaries of the Old Stewart Ranch; however, no resources were recorded within the Project Site. Three cultural resources have been recorded within one-mile of the current project area. As defined, each of these resources is historic but are well outside the boundaries of the Project Site.

A review of historic maps shows the presence of an “Indian Trail” crossing Banning and leading to the mapped location of an “Indian Village.” This suggests the trail was a major route during the proto-historic period, and likely earlier. However, this trail does not occur within the vicinity of the Project Site. By 1897-1898, the USGS quadrangle covering the Banning area illustrates the presence of the railroad alignment north of the Project Site; however, no structures are indicated in the immediate vicinity of the Project Site. The 1956 USGS quadrangle illustrates the presence of the pipeline along the present-day alignment of Sun Lakes Boulevard suggesting the southern portion of the Project Site may have been impacted by excavations related to the installation of the pipeline. Sun Lakes Boulevard is a modern addition to the area.

No prehistoric or historic cultural resources were identified within the Project Site. However, the Project Site occurs within an area considered moderately sensitive for prehistoric archaeological resources, as the area is a part of the San Gorgonio Pass, which was a major pass used by the Native American populations. The Project Site is also within the boundaries of the historic Stewart Ranch, although not associated with any standing structures or structural remains. The Stewart building complex occurred approximately 0.5 miles west of the Project Site. Although unlikely, the younger alluvium on-site may yield evidence of prehistoric or historic archaeological resources. To ensure potential impacts are reduced to a less than significant level, the following mitigation measures shall be implemented:

**CR-1:** Prior to the issuance of grading permits, the developer shall enter into a Native American monitoring agreement with one of the consulting tribes for the project. The Native American Monitor shall be on-site during all initial ground
disturbing activities including clearing, grubbing, vegetation removal, grading and trenching. The Native American Monitor shall have the authority to temporarily divert, redirect or halt the ground disturbance activities to allow identification, evaluation, and potential recovery of cultural resources.

CR-2 In the event of discovery of human remains during grading or other ground disturbance, work in the immediate vicinity shall cease and the landowner shall comply with State Health and Safety Code §7050.5 and Public Resources Code §5097.98. In the event human remains are found and identified as Native American, the landowner shall also notify the City Planning Department so that the City can ensure PRC §5097.98 is followed.

CR-3 If cultural resources are found during project construction, all ground-disturbing activities within 100 feet of the find shall be halted. A Registered Professional Archaeologist shall prepare a Cultural Resources Management Plan in consultation with the consulting tribes and the City Planning Department to include relinquishment of all artifacts through one of the following methods:

- A fully executed reburial agreement with the appropriate culturally affiliated Native American tribe or band. This reburial area should be away from any future impacts. Reburial shall not occur until all cataloguing, analysis and any necessary special studies have been completed on the cultural resources. Details of contents and location of the reburial shall be documented in a Final Report.

- Curation at a Riverside County Curation facility that meets federal standards per 36 CFR Part 79 and therefore will be professionally curated and made available to other archaeologists/researchers and tribal members for further study. The collection and associated records shall be transferred, including title, and are to be accompanied by payment of the fees necessary for permanent curation. Evidence shall be provided in the form of a letter from the curation facility identifying that archaeological materials have been received and that all fees have been paid.

c) **Less Than Significant with Mitigation**: A paleontological overview was completed for the general area in 2004 and updated in 2017. The research confirmed that the area west of the Project Site consists of Mesozoic-aged granitic and meta-sedimentary rocks that are not conducive to yielding paleontological specimens. The County of Riverside GIS system identifies the Project Site and vicinity as being within an area of “Low Sensitivity” for paleontological specimens as it is dominated by the presence of metasedimentary deposits. However, older Quaternary alluvial deposits may be present in a shallow context and therefore, the Project Site does have a level of sensitivity. Nonetheless, previous development and infrastructure excavations in the surrounding area have failed to result in the identification of any fossil specimens. Therefore, the overall project area is not considered to be highly sensitive for fossil remains, but does have a potential to yield fossils in the event site preparation activities impact older alluvium. Consequently, to ensure potential impacts are reduced to a less than significant impact, Mitigation Measures CR-1 through CR-3 listed above shall be implemented:
d) **Less Than Significant with Mitigation:** Construction activities, particularly grading, soil excavation and compaction, could adversely affect unknown buried human remains. If remains are uncovered during excavation or site preparation, appropriate authorities would be contacted as required by State law. However, in the event remains are determined to be of Native American descent, Mitigation Measures CR-1 through CR-3 shall be implemented. With mitigation, potential impacts to human remains are considered less than significant.

<table>
<thead>
<tr>
<th>Issues and Supporting Information Sources:</th>
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<th>Less Than Significant With Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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<tbody>
<tr>
<td>6. GEOLOGY AND SOILS. <em>Would the project:</em></td>
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<tr>
<td>a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:</td>
<td></td>
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<tr>
<td>i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>ii) Strong seismic ground shaking?</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
<td>( )</td>
</tr>
<tr>
<td>iii) Seismic-related ground failure, including liquefaction?</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
<td>( )</td>
</tr>
<tr>
<td>iv) Landslides?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>b) Result in substantial soil erosion or the loss of topsoil?</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
<td>( )</td>
</tr>
<tr>
<td>c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
<td>( )</td>
</tr>
<tr>
<td>d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
</tbody>
</table>
Impact Discussion:

In September 2017, a report of Soils and Foundation Evaluations was prepared by Soils Southwest, Inc. A copy of the report is contained in Appendix C, which is available for review at the Community Development Department, Planning Division. Findings presented in the technical study are outlined in the following discussion.

a)  

i) **No Impact.** The San Gorgonio Pass Fault is the closest Alquist-Priolo Earthquake Fault Zone to the Project site as delineated in the latest State Earthquake Fault Zone maps and in Exhibit V-3 of the General Plan. The San Gorgonio Pass Fault is located approximately 2.5 miles north of Interstate 10. The San Gorgonio Pass fault zone is comprised of a series of north-dipping reverse and thrust faults connected by strike tear faults. The most recently active strands of faults occur at the base of the Banning Bench, in the north central part of Banning. The Highland Scarp along the western edge of the City is considered an active segment of the San Gorgonio Pass fault zone. The San Gorgonio Pass fault is capable of producing a maximum credible earthquake magnitude of 7.4 – 7.6 (M\text{max}). The Project Site is not located within an Alquist-Priolo Earthquake Fault Zone; therefore, no impacts from fault rupture on-site are anticipated and no mitigation measures are necessary.

ii) **Less Than Significant Impact.** The Proposed Project involves the construction and operation of a medical office complex (MOB) that would predominantly provide medical services to seniors. While the Project Site may be subject to strong seismic groundshaking associated with area faults, any groundshaking that might occur on-site would be typical of the area in general. In addition, all structures must comply with seismic building standards contained in the California Uniform Building Code. Consequently, potential adverse impacts from exposure to strong seismic groundshaking are considered less than significant and no mitigation measures beyond compliance with applicable regulations are necessary.

iii) **Less than Significant Impact.** Liquefaction occurs primarily in saturated, loose, fine to medium grained soils in areas where the groundwater table is within 50 feet of the surface. During liquefaction, involved soils behave like a liquid or semi-viscous substance and can cause structural distress or failure due to ground settlement, a loss of load-bearing capacity in foundation soils, and the buoyant rise of buried structures. Three general conditions induce liquefaction; 1) strong ground shaking for a sustained period of time, 2) presence of unconsolidated granular sediments, and 3) occurrence of water-saturated sediments within 50 feet of the ground surface.

There is a low potential for liquefaction at the Project Site (Riverside County Parcel Report for APN 419-140-059). The Soils and Foundation Evaluation prepared by Soils Southwest, Inc. for the Project Site, also determined that the potential for liquefaction at the site is considered low due to the presence of cohesive silty, sandy soils encountered during exploration and historical groundwater depth in excess of 50 feet below grade. Consequently, potential adverse effects related to seismically induced ground failure including liquefaction are considered less than...
significant and no mitigation measures beyond compliance with applicable regulations are necessary,

iv) **No Impact.** The City of Banning General Plan identifies an increased potential for landslides to occur where there is a high seismic potential, including areas with steep slopes and deeply incised canyons, rock with inherently weak components, or highly fractured and folded rock. The northernmost and southernmost portions of the City are described as highly susceptible to seismically induced slope failure due to the proximity to mountains and hillsides. Additionally, areas with slopes steeper than 15 degrees are described as generally subject to slope failure. Elevation at the Project site ranges from approximately 2,536 feet above mean sea level (amsl) at the northern end to approximately 2,544 feet amsl at the southern end; no hillsides with slopes greater than 15 degrees occur on-site or in the immediate vicinity. Consequently, no adverse effects related to on-site landslides are anticipated.

b) **Less than Significant Impact.** In September 2017, a Report of Soils and Foundation Evaluations was prepared by Soils Southwest, Inc. A copy of the report is on-file and available for review at the City of Banning Community Development Department. The purpose of the evaluation was to determine the nature and engineering properties of the near grade soils, and to provide geotechnical recommendations for foundation design, slab-on-grade, paving, parking, site grading, utility trench excavations and backfill, and inspections during construction. The evaluation included subsurface explorations, soils sampling, necessary laboratory testing, and engineering analysis. Field investigations included six (6) exploratory test borings to a maximum of 41 feet below the current grade surface. The report concluded that the Project Site is suitable for the proposed MOB provided that the recommendations presented in the report are incorporated into the Project and are implemented during site excavation and construction. Recommendations from the report would be incorporated into the Project final engineering designs and be included in final Project approvals as conditions of approval; therefore, less than significant impacts are anticipated.

c) **Less than Significant Impact.** The San Gorgonio Pass Fault is the closest Alquist-Priolo Earthquake Fault Zone to the Project Site as delineated in the latest State Earthquake Fault Zone maps and in Exhibit V-3 of the General Plan. The San Gorgonio Pass Fault is located approximately 2.5 miles north of Interstate 10. The San Gorgonio Pass fault zone is comprised of a series of north-dipping reverse and thrust faults connected by strike tear faults. The most recently active strands of faults occur at the base of the Banning Bench, in the central part of Banning. The Highland Scarp along the western edge of the City is considered an active segment of the San Gorgonio Pass fault zone. The San Gorgonio Pass Fault is capable of producing a maximum credible earthquake magnitude of 7.4 – 7.6 ($M_{\text{max}}$).

Elevations at the Project Site range from approximately 2,536 feet amsl at the northern end to approximately 2,544 feet amsl at the southern end; there are no hills or prominent landforms in the immediate vicinity. As concluded in the Soils and Foundation Evaluation, the potential for some total and differential settlements due to ground shaking may be expected; however, based on adjacent completed projects within the vicinity, earthquake induced settlement is considered to be within tolerable limits. Therefore, it is not
anticipated that implementation of the Proposed Project would result in soil that would become unstable as a result of the project or cause off-site landslide, lateral spreading, subsidence, liquefaction, or collapse. No impacts are anticipated.

d) **No Impact.** Expansive soils (shrink-swell) are fine grained clay soils generally found in historical floodplains and lakes. Expansive soils are subject to swelling and shrinkage in relation to the amount of moisture present in the soil. Structures built on expansive soils may incur damage due to differential settlements of the soil as expansion and contraction takes place. Information about shrink-swell classes and linear extensibility is available in the Natural Resource Conservation Service (NRCS) soil survey reports. A high shrink-swell potential indicates a hazard to maintenance of structures built in/on/or with material having this rating. Moderate to low ratings lessen the hazard. According to the NRCS the Ramona sandy loam soils class occurs at the Project Site. As identified by the NRCS, Ramona sandy loam does not have limitations related to expansive soils. In addition, the Report of Soils and Foundations, prepared by Soils Southwest, Inc., concluded that on-site soils were found to be sandy in nature and are not considered expansive. The Project would implement all recommendations included in the report as discussed in Section VI(b); therefore, no impacts related to expansive soils are anticipated.

e) **No Impact.** No septic tanks or alternative wastewater disposal is proposed. Upon approval of the Proposed Project, the MOB would connect to the City’s sewer collection system that currently serves the immediate vicinity. No impacts from soils incapable of adequately supporting septic tanks or alternative wastewater disposal systems would result.

<table>
<thead>
<tr>
<th>Issues and Supporting Information Sources:</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant Impact With Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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<tbody>
<tr>
<td>7. GREENHOUSE GAS EMISSIONS. <em>Would the project:</em></td>
<td></td>
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<tr>
<td>a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
<td>( )</td>
</tr>
<tr>
<td>b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
<td>( )</td>
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</table>

**Impact Discussion:**

a) **Less than Significant.** According to CEQA Guidelines Section 15064.4, when making a determination of the significance of greenhouse gas emissions, the “lead agency shall have discretion to determine, in the context of a particular project, whether to (1) use a model or methodology to quantify greenhouse gas emissions resulting from a project, and which model or methodology to use.” In addition, CEQA Guidelines section 15064.7(c) provides that “a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts” on the condition that “the decision of the lead agency to adopt such thresholds is supported by substantial evidence.”
The Global Warming Solutions Act of 2006 requires that by the year 2020, the Greenhouse Gas (GHG) emissions generated in California be reduced to the levels of 1990. The City of Banning has not adopted its own thresholds of significance for greenhouse gas emissions. However, the City finds persuasive and reasonable the approach to determining significance of greenhouse gas emissions established by the South Coast Air Quality Management District (SCAQMD), within which the City is located.

Many gases make up the group of pollutants that are believed to contribute to global climate change. However, three gases are currently evaluated and represent the highest concentration of GHG: Carbon dioxide (CO2), Methane (CH4), and Nitrous oxide (N2O). SCAQMD provides guidance methods and/or Emission Factors that are used for evaluating a project’s emissions in relation to the thresholds. A threshold of 3,000 MTCO2E (Metric tons of carbon dioxide equivalent) per year has been adopted by SCAQMD for non-industrial type projects as potentially significant for global warming (Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold, SCAQMD, October 2008).

The proposed MOB would require earthmoving, structural building and other activities such as asphalt paving. The project’s construction activities were screened for emission generation using the CalEEMod version 2016.3.2 emissions estimator model. Kunzman Associates, Inc. conducted a TIA for the Proposed MOB. The Proposed Project would generate approximately 1,259 daily trips. The modeled emissions anticipated from the Proposed Project compared to the SCAQMD threshold are shown below in Table 8 and Table 9.

<table>
<thead>
<tr>
<th>Source/Phase</th>
<th>CO₂</th>
<th>CH₄</th>
<th>N₂O</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Preparation</td>
<td>9.1</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Grading</td>
<td>11.3</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Building Construction</td>
<td>211.8</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Paving</td>
<td>16.7</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Architectural Coating</td>
<td>3.4</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td><strong>Total MTCO2e</strong></td>
<td>233.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SCAQMD Threshold</td>
<td>3,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Significant</strong></td>
<td>NO</td>
<td></td>
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</table>

Source: CalEEMod.2016.3.2 Annual Emissions.

<table>
<thead>
<tr>
<th>Source/Phase</th>
<th>CO₂</th>
<th>CH₄</th>
<th>N₂O</th>
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<tbody>
<tr>
<td>Area</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Energy</td>
<td>125.8</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Mobile</td>
<td>1,224.9</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td><strong>Total MTCO2e</strong></td>
<td>1,557.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SCAQMD Threshold</td>
<td>3,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Significant</strong></td>
<td>NO</td>
<td></td>
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</table>

Source: CalEEMod.2016.3.2 Annual Emissions
As shown in Table 8 and Table 9, site activities and improvements would not exceed the SCAQMD threshold for GHG. Consequently, less than significant project related GHG impacts are anticipated, and no mitigation measures are necessary.

b) **Less than Significant.** There are no GHG plans, policies, or regulations that have been adopted by the California Air Resources Board (CARB) or SCAQMD that would apply to the type of emissions source represented by the proposed project. It is possible that CARB may develop performance standards for project-related activities prior to project construction. In such an event, applicable performance standards would be implemented. The project, as proposed, does not conflict an existing applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases. Consequently, associated impacts would be less than significant, and no mitigation measures are necessary.

<table>
<thead>
<tr>
<th>Issues and Supporting Information Sources:</th>
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<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
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<tbody>
<tr>
<td>8. HAZARDS AND WASTE MATERIALS. <em>Would the project:</em></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
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<tr>
<td>b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident considerations involving the release of hazardous materials into the environment?</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
<td>( )</td>
</tr>
<tr>
<td>c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within 1/4 mile of an existing or proposed school?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
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<tr>
<td>e) For a project located within an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?</td>
<td>( )</td>
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<tr>
<td>f)</td>
<td>For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?</td>
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<td>g)</td>
<td>Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?</td>
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<tr>
<td>h)</td>
<td>Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?</td>
<td>()</td>
<td>()</td>
<td>✓</td>
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**Impact Discussion:**

a) **Less than Significant Impact.** Construction of the MOB would involve short-term use of petroleum-based fuels, lubricants, and other similar materials. The construction phase may also include the transport of gasoline and diesel fuel to the Project Site and onsite storage for the purpose of fueling construction equipment. Long-term operation of the proposed MOB would involve routine periodic use of pesticides, herbicides and fertilizers typically associated with landscape maintenance, a limited amount of bio-medical waste generation can also be anticipated with long term operations, in addition to routine use of cleaning solvents and similar substances associated with property maintenance necessary to a medical facility.

The Project Proponent would be required to submit all necessary applications for certification by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for the operation of the MOB. The Joint Commission's accreditation process would evaluate the Project's compliance with set standards and other accreditation requirements.

No activities using or generating an unusual amount of hazardous substances are anticipated. Use, transport, handling, and disposal of any hazardous substances must comply with all federal, State and local laws regulating their management and use. Consequently, potential impacts related to creating a significant hazard to the public or the environment through the routine transport, use or disposal of hazardous materials are considered less than significant, and no mitigation measures aside from compliance with applicable regulations are necessary.

b) **Less than Significant Impact.** Please refer to the preceding threshold discussion (8-a.) Bio-medical and other medical facility wastes would be generated at the MOB as part of the day-to-day operations. The waste materials would not create a significant hazard to the public because they would be handled and disposed of in accordance with applicable regulations.
Other aspects of the proposed project, as has been noted, would utilize common products for cleaning and maintenance. No activities that would involve the use of explosive, acutely toxic or caustic substances that could result in accident or upset conditions are anticipated. Consequently, the risk of accidental release of hazardous materials is considered less than significant, and no mitigation measures beyond compliance with applicable regulations are necessary.

c) **No Impact.** No school facilities are located within a quarter mile of the Project site; therefore, no impacts are anticipated. Pass Christian Preschool, located approximately one mile northeast of the Project Site, is the nearest school to the Project Site. Implementation of the Proposed Project would not emit hazardous emissions or involve the handling of hazardous or acutely hazardous materials, substances, or waste that would be a potential threat to the school. Consequently, no impacts to schools would result.

d) **No Impact.** The Project Site is not on any official list of hazardous materials sites. Pursuant to California Government Code Section 65962.5, the California Department of Toxic Substances Control (DTSC) compiles the Cortese List and updates it at least annually. The Cortese List includes hazardous waste facilities subject to corrective actions, land designated as hazardous waste property or border zone property, sites included in the abandoned site assessment program, and qualifying sites pursuant to Section 25356 of the Health and Safety Code. A copy of the most recent Cortese List was examined and the Project site is not identified on the list. Consequently, no impacts related to Government Code Section 65962.5 are anticipated.

e) **No Impact.** The Banning Municipal Airport is located approximately 4.5 miles east of the Project Site, at 600 South Hathaway Street, adjacent to the Southern Pacific Railroad and the I-10 freeway. The project site is also located outside the boundaries of the Banning Municipal Airport Land Use Plan, and is not subject to the jurisdiction of the Riverside County Airport Land Use Commission (ALUC.) The Proposed Project involves the construction and operation of a MOB, and as such, would not create conditions that would conflict with airport land uses or create an aviation safety hazard for people residing or working in the area. No impacts are anticipated.

f) **No Impact.** There are no private airstrips within the vicinity of the Project Site. The nearest airport, as noted previously, is the Banning Municipal Airport located approximately 4.5 miles east of the Project Site. Approval of the Proposed Project would not result in an aviation safety hazard for people residing or working in the Project area. No impacts are anticipated.

g) **No Impact.** The Emergency Preparedness Element of the General Plan identifies the potential for natural and man-made disasters that could affect the City and its Sphere of Influence. In 1996 the City adopted the Multi-Hazard Functional Planning Guidance document that includes: 1) the Banning Emergency Plan; 2) twelve functional annexes that describe emergency response organization; and 3) a listing of operational data such as resources, key personnel, and essential facilities and contacts. The City does not have an established evacuation route; however, depending on the location and extent of an emergency, major surface streets could be utilized to route traffic through the City. The I-10 Freeway and State Highway 243 to State Route 79 are also major regional access routes serving the City which could be used during disaster events.
Construction of the Proposed Project would not interfere with emergency response. Appropriate Banning Police Department, and Riverside County Sheriff’s Department access standards must be adhered to allow adequate emergency access. Operation of the MOB would not interfere with emergency response or with any adopted evacuation plans. No impacts are anticipated.

h) **Less Than Significant Impact.** The California Fire Plan was established in 1996 and is a cooperative effort between the State Board of Forestry and Fire Protection and the California Department of Forestry (CDF). Using four main criteria, the system ranks the fire hazard of the wildland areas of the State. The criteria used for evaluation include: fuels, weather, assets at risk, and level of service (a measure of Fire Department’s success in initial-attack fire suppression).

The City of Banning is divided into five fire threat zones: Extreme, Very High, High, Moderate, and No Fuel. The project site is located within the High Fire Hazard Zone, which includes most of the developed central portion of the City along the I-10. In this zone, relief is minimal and hardscape (concrete, asphalt and structures) and landscaping vegetation predominate. This zone also includes most of the bed of the San Gorgonio River, where some vegetation is present seasonally.

There are no significant areas of brush, grass or trees within the Project Area; the Project Site is surrounded by development and existing, paved roadways. Therefore, although located within a High Fire Threat Zone, construction and operation of the MOB would not expose people or structures to a significant risk of loss, injury or death involving wildland fires. Less than significant impacts are anticipated and no mitigation measures are necessary.

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<td><strong>9. HYDROLOGY AND WATER QUALITY.</strong> Would the project:</td>
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<tr>
<td>a) Violate any water quality standards or waste discharge requirements?</td>
<td>( )</td>
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<td>b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?</td>
<td>( )</td>
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<tr>
<td>c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner, which would result in substantial erosion or siltation on- or off-site?</td>
<td>( )</td>
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<td>d)</td>
<td>Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?</td>
<td>( )</td>
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<tr>
<td>e)</td>
<td>Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
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<tr>
<td>f)</td>
<td>Otherwise substantially degrade water quality?</td>
<td>( )</td>
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<td>(✓)</td>
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<td>g)</td>
<td>Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?</td>
<td>( )</td>
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<tr>
<td>h)</td>
<td>Place within a 100-year flood hazard area structures, which would impede or redirect flood flows?</td>
<td>( )</td>
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<td>i)</td>
<td>Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?</td>
<td>( )</td>
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<td>j)</td>
<td>Inundation by seiche, tsunami, or mudflow?</td>
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### Impact Discussion:

In September 2017, Joseph E. Bonadiman & Associates, Inc. prepared a Hydrology Study & Drainage Analysis for the Proposed Project. A copy of the report is contained in Appendix D, which is available for review at the Community Development Department, Planning Division. Findings presented in the technical study are outlined in the following discussion.

- **Less than Significant.** The Proposed Project would disturb approximately 3.31 acres and is therefore subject to the National Pollution Discharge Elimination System (NPDES) permit requirements. The State of California is authorized to administer various aspects of the NPDES. Construction activities covered under the State’s General Construction permit include removal of vegetation, grading, excavating, or any other activity that causes the disturbance of one acre or more. The General Construction permit requires recipients to reduce or eliminate non-storm water discharges into stormwater systems, and to develop and implement a Storm Water Pollution Prevention Plan (SWPPP). The purpose of a SWPPP is to: 1) identify pollutant sources that may affect the quality of discharges of stormwater associated with construction activities; and 2) identify, construct and implement stormwater pollution control measures to reduce pollutants in stormwater discharges from the construction site during and after construction.
The Regional Water Quality Control Board (RWQCB) has issued an area-wide NPDES Storm Water Permit for the County of Riverside, the Riverside County Flood Control and Water Conservation District, and the incorporated cities of the County. The City of Banning then requires implementation of measures for a project to comply with the area-wide permit requirements. A SWPPP is based on the principles of Best Management Practices (BMPs) to control and abate pollutants. The SWPPP must include BMPs so that construction of the Project would not pollute surface waters. BMPs may include, but are not limited to street sweeping of paved roads around the Project Site during construction, and the use of hay bales or sand bags to control erosion during the rainy season. BMPs may also include or require:

- The contractor to avoid applying materials during periods of rainfall and protect freshly applied materials from runoff until dry.
- All waste to be disposed of in accordance with local, state and federal regulations. The contractor to contract with a local waste hauler or ensure that waste containers are emptied weekly. Waste containers cannot be washed out on-site.
- All equipment and vehicles to be serviced off-site.

Preparation of a SWPPP as required by law and compliance with NPDES regulations would reduce the potential for storm water discharges during grading and construction from to a Less than Significant level. No other mitigation is necessary.

b) **No Impact.** The City of Banning is within the boundary of the Coachella Valley Hydrologic Unit. The Coachella Valley Groundwater Basin is underlain by several large subsurface aquifers, known as sub-basins, with boundaries that are generally defined by faults that restrict the lateral movement of water. The Basin extends from Banning easterly to the Salton Sea. The City of Banning is underlain by the San Gorgonio Pass Sub-basin. Within the City boundary, the San Gorgonio Pass Sub-basin is divided into a series of storage units: the Banning Canyon Storage Unit, the Banning Bench Storage Unit, the East and West Banning Storage Units, the Beaumont Storage Unit, and the Cabazon Storage Unit. To the west of the San Gorgonio Pass Sub-basin is the Beaumont Groundwater Basin. Groundwater basins are naturally recharged through the percolation of runoff, direct precipitation, subsurface inflow, and artificial recharge. The Banning Canyon area receives water from percolation of canyon flows through the gravelly soils of the canyon bottom. In addition, a stone ditch running southerly though the Banning Canyon provides intake areas to distribute water to spreading ditches, which interconnect with spreading ponds to enhance percolation. The San Gorgonio Sub-basin is also recharged naturally with runoff from the adjacent San Jacinto and San Bernardino Mountains. The Project Site is not designated as an area for groundwater recharge.

The City of Banning Public Works Department provides domestic water service to the City of Banning. The City owns and operates wells, reservoirs, and a distribution line system to deliver domestic water within the Banning planning area. The City provides municipal water service to an area of approximately 23 square miles, including approximately 30,500 people, via 10,650 metered service connections.

The Project Site would be serviced by the City Water Department. Water demand of the MOB, as estimated from actual water use records retrieved from another similar facility
owned by the Project Proponent, is expected to be approximately 109,200 gallons per month or 1.3 million gallons per year which is equivalent to 4.00 acre-feet per year. The Proposed Project when compared to the existing General Plan High Density residential land use designation on the Project Site, would generate less demand for water resources based on the assumption of 66 high density units. The Proposed Project would not substantially deplete groundwater supplies nor would it interfere substantially with recharge since it is not within an area designated as a recharge basin or spreading ground. No adverse impact is anticipated.

c-e) **Less than Significant.** The Drainage Analysis conducted by Bonadiman & Associates identified off-site (tributary) drainages areas, existing on-site drainage areas, developed conditions and calculation of peak flow rates and runoff volumes, examined the sizing of on-site detention facilities in accordance with City of Banning and Riverside County requirements, and identified the floodplain for the Project Site.

The 3.31-acre Project Site is impacted by existing flows from approximately 14.6 acres of tributary off-site drainage areas. These flows originate south of the A.T.S.F. railroad berm/ditch to the north of the site, and drain southeasterly through approximately 13.0 acres of undeveloped land to a break in the perimeter wall at the northeast corner of the existing 1.5-acre memory care facility located directly north of and adjacent to the Project Site. Flows then drain southerly down the existing driveway to existing rip-rap at the northeast corner of the Project Site. The off-site flows drain southerly through an existing earthen ditch along the eastern edge of the Project Site to two,12-inch pipes located at the southeast corner of the site, which subsequently drain to an existing four-foot parkway culvert that discharges to Sun Lakes Boulevard. On site flows drain southerly and southeasterly to the existing earthen ditch and the 12-inch pipes at the southeast corner of the site.

The calculated 100-year, 1-hour peak off-site (tributary) flow to the northeast corner of the Project Site is estimated to be approximately 9.49 cubic feet per second (cfs). These off-site flows will be routed along the eastern edge of the property via a 10-foot (at the narrowest point) landscape swale to the existing 12-inch pipes at the southeastern corner of the property. A flow calculation of the existing swale, indicates that it is of adequate size to convey the off-site flows. The Project provides for a six-inch curb along the western edge of this swale; and therefore, will effectively provide six inches of freeboard.

For storm water flows on-site, the Proposed Project will provide an underground infiltration system that will capture approximately 0.68 acre-feet (AF). The system will provide retention of the calculated developed conditions 100-year, 3-hour volume of 0.49 AF (per City of Banning requirements) and will provide adequate capacity to completely retain or mitigate to existing conditions all flows up to and including the 100-year, 6-hour event. The system will discharge to a proposed landscape swale that will route flows to the existing off-site discharge location. With planned project drainage improvements, impacts related to the alteration of drainage patterns and surface run-off are anticipated to be less than significant and no other mitigation measures are necessary.

**g,h) No Impact.** Per FEMA Flood Insurance Rate Map (FIRM) Panel No. 06065C0812G (effective date: August 28, 2008) and Panel No. 06065C0816G (effective date: August 28, 2008), the Project Site lies within an unshaded Zone “X” floodplain. Unshaded Zone “X” is defined as “areas determined to be outside the annual 2% chance floodplain). The Project would not place unprotected housing within a 100-year flood hazard area as mapped on
a Federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard
delineation map, because no housing is proposed as part of the Project. No impacts are
anticipated.

i) **No Impact.** A Dam Inundation Zone refers to the area downstream that would be
subjected to flood waters in the event of a failure to a dam or body of impounded water.
The State of California designates areas of potential flooding in the event of sudden or
total failure of any dam. There are no dams within the vicinity of the City. According to
Figure S-16 of the County of Riverside General Plan, the nearest dam is located near
Calimesa/Moreno Valley, approximately 15 miles west/northwest of the project site.

A levee generally refers to structures that hold flood water during storm events. The
Banning Levee, located approximately four miles northeast of the project site, was
constructed along the south side of the San Gorgonio River, about 900 feet north of the
intersection of Banning Canyon Road and Summit Drive. According to County of Riverside
General Plan Figure S-10, the project site does not occur within an area susceptible to
inundation from failure of a dam or levee. No impacts are anticipated.

j) **No Impact.** Due to the inland distance from the Pacific Ocean and any other significant
body of water, tsunamis and seiching are not potential hazards; therefore, impacts from
seiche and tsunami are not anticipated.

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<tr>
<td>10. <strong>LAND USE AND PLANNING.</strong> Would the project:</td>
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<td>a) Physically divide an established community?</td>
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<tr>
<td>b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, a general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?</td>
<td>( )</td>
<td>( )</td>
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<tr>
<td>c) Conflict with any applicable habitat conservation plan or natural community conservation plan?</td>
<td>( )</td>
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**Impact Discussion:**

a) **No Impact.** The 3.31-acre Project Site is currently vacant and is located on the north side
of Sun Lakes Boulevard between Sun Lakes Village Drive and Silver Lakes Avenue. The
Project Site is surrounded by “The Lakes Independent Living and Memory Care” to the
west, multi-family residential to the north, and single family residential development to the
east and south (across Sun Lakes Boulevard). Since surrounding parcels are developed,
the Proposed Project would not physically divide an established community. No impacts
would result.
b) **Less than Significant Impact.** The Proposed Project includes a General Plan Amendment (GPA) and a Zone Change (ZC) from High Density Residential to Professional Office. Upon City Council approval of the requested General Plan Amendment and Zone Change, the site’s zoning would be changed to Professional Office (PO), and the proposed development would be consistent with uses permitted within the Professional Office Zone.

The project site is a part of the Sun Lakes Specific Plan and was designated for High Density Residential (HDR-20) land use with an Affordable Housing Opportunity (HDR - 20/AHO 20-24) by a zoning code text amendment. There will not be a conflict with the Sun Lakes Specific Plan with the General Plan Amendment and Zone Change for the proposed project.

The land use designation in the Land Use Element will be changed from High Density Residential to Professional Office, consistent with the proposed project. Because the City identified excess land capacity to meet the most recent RHNA allocation, no conflict with the Housing Element will occur with the proposed project.

In consideration of the preceding factors, a less than significant impact related to established land use plans and policies would result with the proposed project. No mitigation measures are necessary.

c) **No Impact.** Please refer to the Biological Resources section, (Threshold 4 of this Initial Study. The Project Site is not located within or adjacent to any MSHCP Criteria Cells. Therefore, the Project would not conflict with the provisions of an adopted Habitat Conservation Plan. No impacts would result.

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<td>11. MINERAL RESOURCES. Would the project:</td>
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<td>a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the State?</td>
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<tr>
<td>b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?</td>
<td>()</td>
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**Impact Discussion:**

a) **No Impact.** The Project site is located within a mineral resource zone area classified as MRZ-3 as identified in Exhibit IV-8 in the City of Banning General Plan. Areas classified as MRZ-3 are defined as containing mineral deposits, the significance of which cannot be evaluated from available data. The City of Banning General Plan identifies one aggregate producer within its planning area; the Banning Quarry which is located in the eastern portion of the City approximately 1.25 miles northeast of the Proposed Project. Implementation of the Proposed Project would not result in the loss of known mineral
resources because the site is not locally identified as an important mineral resource recovery site.

b) **No Impact.** Implementation of the Proposed Project would not result in the loss of known mineral resources because the site is not locally identified as an important mineral resource recovery site. No impacts would result.

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<td><strong>12. NOISE. Would the project result in:</strong></td>
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<td>a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?</td>
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<tr>
<td>b) Exposure of persons to or generation of excessive ground borne vibration or ground borne noise levels?</td>
<td>( )</td>
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<tr>
<td>c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?</td>
<td>( )</td>
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<tr>
<td>d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?</td>
<td>( )</td>
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<td>( )</td>
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<tr>
<td>e) For a project located within an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?</td>
<td>( )</td>
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<tr>
<td>f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?</td>
<td>( )</td>
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**Impact Discussion:**

In December 2017, a Noise Impact Assessment was prepared for the Proposed Project by Urban Crossroads. A copy of the report is contained in Appendix E, which is available for review at the Community Development Department, Planning Division. Findings presented in the technical study are outlined in the following discussion.
Less than Significant Impact with Mitigation.

The primary source of traffic noise affecting the Project Site is anticipated to be from the I-10 Freeway and Sun Lakes Boulevard, and the primary source of railroad-related noise would be from the Union Pacific Railroad lines conveying freight and passenger trains. The on-site transportation noise level impacts indicate that the unmitigated exterior noise levels will range from 58.9 to 64.6 dBA CNEL at the Project first-floor building façade. No exterior noise mitigation is required to satisfy the City of Banning General Plan Noise Element 70 dBA CNEL normally acceptable exterior noise level criteria for medical office uses.

To present a conservative approach, the interior noise levels of the Project building based on the City of Banning 45 dBA CNEL interior noise level standard for residential land use were evaluated. On that basis, the Project building was determined to need a noise reduction of up to 13.9 dBA and a windows-closed condition requiring a means of mechanical ventilation (e.g. air conditioning). To meet the City of Banning 45 dBA CNEL interior noise standards the following mitigation measures shall be implemented:

N-1: During final building inspection, and prior to the issuance of building occupancy permits, the City Building Official shall ensure that the Project Proponent has equipped all first and second-floor windows with well-fitted, well-weather stripped assemblies with a minimum sound transmission class (STC) ratings of 27.

N-2: During final building inspection and prior to the issuance of building occupancy permits, the City Building Official shall ensure that the Project Proponent has well weather-striped all exterior doors with a minimum STC ratings of 25.

N-3: During final building inspection and prior to the issuance of building occupancy permits, the City Building Official shall examine all penetrations of exterior walls by pipes, ducts, or conduits, and ensure that the space between the wall and pipes, ducts, or conduits are caulked or filled with mortar to form an airtight seal.

N-4: During final building inspection and prior to the issuance of building occupancy permits, the City Building Official shall ensure that any roof sheathing of wood construction is well fitted or caulked plywood of at least one half-inch thick. Ceilings shall be well fitted, well-sealed gypsum board of at least one-half inch thick. Insulation with at least a rating of R-19 shall be used in the attic space.

N-5: During final building inspection and prior to the issuance of building occupancy permits, the City Building Official shall ensure that any exterior door or window to a habitable room can be kept closed when the room is in use and still receive circulated air. A forced air circulation system (e.g. air conditioning) or active ventilation system (e.g. fresh air supply) shall be provided in accordance with the requirements of the Uniform Building Code.
Implementation of the above mitigation measures would ensure that the Project will satisfy the 45 dBA CNEL interior noise level standard with standard building construction and windows with minimum STC ratings of 27. Impacts from project related noise increases would be less than significant with the recommended mitigation measures incorporated.

b) **No Impact.** Typically, ground-borne vibration generated by man-made activities attenuates rapidly with distance from the source of the vibration. Sensitive receivers for vibration include structures (especially older masonry structures), people (especially residents, the elderly, and sick), and vibration-sensitive equipment.

The background vibration-velocity level in residential areas is generally 50 VdB (vibration decibel notation). Ground-borne vibration is normally perceptible to humans at approximately 65 VdB. For most people, a vibration-velocity level of 75 VdB is the approximate dividing line between barely perceptible and distinctly perceptible levels. Typical outdoor sources of perceptible ground-borne vibration are construction equipment, steel-wheeled trains, and traffic on rough roads. If a roadway is smooth, the ground-borne vibration is rarely perceptible. The range of interest is from approximately 50 VdB, which is the typical background vibration-velocity level, to 100 VdB, which is the general threshold where minor damage can occur in fragile buildings. Typically, vibration levels must exceed 100 V dB before any building damage occurs.

**Construction Vibration** - At distances ranging from 20 to 1,490 feet from Project construction activity, construction vibration velocity levels are estimated to range from 0.000 to 0.124 in/sec PPV (peak particle velocity) at the nearby sensitive receiver locations including: the Lakes Retirement Community and residences located along the project site’s northern and eastern boundaries. The construction vibration would remain below the Caltrans 0.3 in/sec PPV building damage threshold for older residential structures. Vibration levels at this location are unlikely to be sustained during the entire construction period, but will occur only during the times that heavy construction equipment is operating simultaneously adjacent to the Project site perimeter. Construction at the Project site will be restricted to daytime hours consistent with City requirements thereby eliminating potential vibration impacts during sensitive nighttime hours. Consequently, vibration impacts due to Project construction are anticipated to be less than significant.

**On-Site Transportation/Railroad related Vibration** - The Federal Transportation Agency (FTA) Transit Noise and Vibration Impact Assessment identifies land use categories for railroad-related vibration thresholds. Based on the medical office use of the Project, the FTA classification closest to the Project use is Category 1, for buildings where “vibration would interfere with interior operations, such as optical microscopes”. The FTA Transit Noise and Vibration Impact Assessment identifies screening distances for vibration assessment based on the land use categories. For Category 1 uses, such as the Proposed Project, the screening distances range from 100 to 600 feet from transit projects such as buses, light and rapid transit, and conventional commuter rail. The Project site is located roughly 850 feet south of the existing Union Pacific Railroad lines, and therefore, over 200 feet beyond the FTA’s screening distance for Category 1 uses. Consequently, no further on-site vibration analysis is necessary under FTA guidelines. Potential on-site vibration impacts due to Union Pacific Railroad-related vibration levels are thus considered less than significant and no vibration related mitigation measures are necessary.

Operation of the MOB would not require the use of equipment that would generate excessive ground borne vibration or ground-borne noise levels. In consideration of the
preceding factors, no impacts from operational ground-borne noise or vibration would result.

c) **Less than Significant Impact.** Traffic generated by the operation of the Proposed Project would influence the traffic noise levels in surrounding off-site areas. To assess the off-site transportation CNEL noise level impacts associated with development of the project, noise contours were developed based on *Careage Healthcare Traffic Impact Analysis*. (Detailed Methodology to analyze traffic noise generation is described in Appendix E.) Noise contour boundaries represent the equal levels of noise exposure and are measured in CNEL from the center of the roadway. Noise contours were developed for the following traffic scenarios:

- **Existing Conditions Without/With Project:** This scenario refers to the existing present-day noise conditions without and with the proposed project.

- **Existing plus Ambient Growth (EA) Without/With the Project:** This scenario refers to EA noise conditions without and with the proposed project plus ambient growth.

- **EA plus Cumulative Development (EAC) Without/With the Project:** This scenario refers to future year noise conditions without and with the proposed project plus ambient growth. This scenario includes all cumulative projects identified in the Traffic Impact Analysis prepared for the project.

To quantify the project's traffic noise impacts on the surrounding areas, the changes in traffic noise levels on roadway segments surrounding the project were calculated based on the changes in the average daily traffic volumes. Based on the noise impact significance criteria, a significant off-site traffic noise level impact occurs when the noise levels at existing and future noise-sensitive land uses (e.g. residential, etc.) are less than 60 dBA CNEL and the Project creates a *readily perceptible* 5 dBA CNEL or greater Project-related noise level increase; or range from 60 to 65 dBA CNEL and the project creates a *barely perceptible* 3 dBA CNEL or greater project-related noise level increase; or already exceed 65 dBA CNEL, and the project creates a community noise level impact of greater than 1.5 dBA CNEL (FICON, 1992).

**Existing without Project conditions CNEL noise levels:** The without Project exterior noise levels are expected to range from 58.7 to 71.5 dBA CNEL, without accounting for any noise attenuation features such as noise barriers or topography. The Existing with Project conditions will range from 58.9 to 71.6 dBA CNEL. The Project will generate a noise level increase of up to 1.3 dBA CNEL on the study area roadway segments. Based on the significance criteria, the Project-related noise level increases are considered *less than significant* under Existing with Project conditions at the land uses adjacent to roadways conveying project traffic.

**Existing Plus Ambient Growth Project (EA) Traffic Noise Level Contributions:** The EA without Project conditions CNEL noise levels are expected to range from 58.9 to 71.7 dBA CNEL, without accounting for any noise attenuation features such as noise barriers or topography. The EA with Project conditions will range from 59.1 to 71.8 dBA CNEL. The project will generate a noise level increase of up to 1.2 dBA CNEL on the study area roadway segments. Based on the significance criteria, the Project-related noise level
increases are considered **less than significant** under EA with Project conditions at the land uses adjacent to roadways conveying Project traffic.

**EA Plus Cumulative (EAC) Development Project Traffic Noise Level Contributions**

The EAC without Project conditions CNEL noise levels are expected to range from 58.9 to 71.9 dBA CNEL, without accounting for any noise attenuation features such as noise barriers or topography, and the EAC with Project conditions will range from 59.1 to 72.0 dBA CNEL. The project will generate a noise level increase of up to 1.2 dBA CNEL on the study area roadway segments. Based on the significance criteria, the Project-related noise level increases are considered **less than significant** under EAC with project conditions at the land uses adjacent to roadways conveying project traffic.

d) **Less than Significant Impact.** The highest construction noise levels would occur when construction activities take place at the closest point from the edge of primary construction activity to each of the nearby receiver locations. The unmitigated exterior construction noise levels are expected to range from 44.0 to 77.3 dBA Leq at nearby sensitive receptors. To evaluate whether the Project will generate potentially significant short-term noise levels at off-site sensitive receptor locations. The City of Banning Municipal Code interior construction noise level limit for residential uses of 55 dBA Leq was used as the acceptable threshold for construction noise at the nearby sensitive receiver locations. The results of the analysis show that the highest construction noise levels with the estimated interior noise reduction of the existing residential homes of 25 dBA Leq will range from 19.0 to 52.3 dBA Leq, and will satisfy the 55 dBA Leq City of Banning interior construction noise level standard. The noise impact due to unmitigated Project construction noise levels is, therefore, considered to be **less than significant** at all nearby sensitive receiver locations and no mitigation measures are necessary.

Project-related operational noise sources are expected to include roof-top air conditioning units and parking lot vehicle movements. Project-related operational (stationary source) noise levels are considered significant if they exceed the exterior 55 dBA L50 daytime or 45 dBA L50 nighttime noise level standards for sensitive residential land uses. These standards shall not be exceeded for a cumulative period of 30 minutes (L50), or plus 5 dBA cannot be exceeded for a cumulative period of more than 15 minutes (L25) in any hour, or the standard plus 10 dBA for a cumulative period of more than 5 minutes (L8) in any hour, or the standard plus 15 dBA for a cumulative period of more than 1 minute (L2) in any hour, or the standard plus 20 dBA at any time (Lmax) (City of Banning Municipal Code, Sections 8.44.050 & 8.44.070); or if the existing ambient noise levels at the nearby noise-sensitive receivers near the Project site are less than 60 dBA L50 and the Project creates a **readily perceptible** 5 dBA L50 or greater Project-related noise level increase; or range from 60 to 65 dBA L50 and the Project creates a **barely perceptible** 3 dBA L50 or greater Project-related noise level increase; or already exceed 65 dBA L50, and the Project creates a community noise level impact of greater than 1.5 dBA L50 (FICON, 1992).

The Project will contribute an operational noise level increase during the daytime hours of up to 0.3 dBA L₅₀ and during the nighttime hours of up to 0.3 dBA L₅₀. The Project-related operational noise level contributions of up to 0.3 dBA L₅₀ on the existing ambient noise environment satisfy the significance criteria discussed above, and the increases at the sensitive receiver locations will be less than significant. On this basis, Project operational stationary-source noise would not result in a substantial temporary/periodic, or permanent
increase in ambient noise levels in the project vicinity above levels existing without the Project, and impacts therefore are considered less than significant.

e) **No Impact.** The Project Site is not located within an airport land use plan and is not within two miles of a public airport. The nearest airport is the Banning Municipal Airport, located approximately 4.5 miles east of the Project Site. The Proposed Project includes the construction and operation of a MOB; its location and use would not expose people working or visiting the site to excessive aviation related noise levels. No impacts are anticipated.

f) **No Impact.** There are no private airstrips within the vicinity of the Project Site. No impacts from aircraft noise are anticipated.

<table>
<thead>
<tr>
<th>Issues and Supporting Information Sources:</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant Impact With Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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<tbody>
<tr>
<td><strong>13. POPULATION AND HOUSING. Would the project:</strong></td>
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<tr>
<td>a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
</tbody>
</table>

**Impact Discussion:**

a) **No Impact.** Construction activity at the Project Site would be short-term and would not create any new long-term jobs. Operation of the MOB is estimated to result in a total of approximately 50 new full-time employees, a portion of which would likely be filled by the existing employment pool in the community or surrounding area, and a portion which could represent new residents to the local area. Thus, the potential for population directly related to the proposed project is anticipated to be less than significant. The project site is an infill site, thus no new infrastructure of any consequence is required. No substantial population growth in the area, either directly or indirectly would result from project implementation. No mitigation measures are necessary.

b) **No Impact.** The Project Site is currently vacant; therefore, the Proposed Project would not displace any existing housing units to accommodate the Project. No impacts would result and no mitigation measures are necessary.
c) **No Impact.** The Project Site is currently vacant and would not displace any existing housing or residents. No impacts would result and no mitigation measures are necessary.

<table>
<thead>
<tr>
<th>Issues and Supporting Information Sources:</th>
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<tbody>
<tr>
<td>14. <strong>PUBLIC SERVICES.</strong> Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:</td>
</tr>
<tr>
<td>a) Fire protection?</td>
</tr>
<tr>
<td>b) Police protection?</td>
</tr>
<tr>
<td>c) Schools?</td>
</tr>
<tr>
<td>d) Parks?</td>
</tr>
<tr>
<td>e) Other public facilities? [Roads and Infrastructure]</td>
</tr>
</tbody>
</table>

**Impact Discussion:**

The following analysis is based on information contained in the City of Banning's General Plan, and City website (http://banning.ca.us/), the Banning Police Department staff and website (http://www.banningpolice.org/), and telephone consultation with the Banning Unified School District.

a) **Less than Significant Impact.** Fire protection services for the Project would be provided by the City of Banning through a contractual agreement with the Riverside County Fire Department, which contracts with the California Department of Forestry. Through a mutual aid agreement with surrounding communities, including Beaumont, Calimesa and Cabazon, each city has access to and benefits from the services provided by fire stations in other cities. The Riverside County Fire Department provides full service including: fire protection, paramedic response, hazardous materials response, search and rescue, swift water rescue, and disaster preparedness. Currently, a total of 12 fire personnel are stationed in the City of Banning. A Fire personnel ratio of 1:2,570 persons currently exists in the City.

The City is served by one fire station (Station No. 89) located at 172 North Murray approximately 3.6 miles east of the Project Site. The planning area is also served by a fire station located in the City of Beaumont, approximately one-mile northwest of the Project Site.
The proposed MOB would be required to comply with City fire suppression standards including building sprinklers and adequate fire access. No activities that would involve the use of explosive, extremely flammable or hazardous substances are anticipated with the proposed project. (See Section XVIII- Hazards and Hazardous Materials). Approval of the Project would result in a firefighter to citizen ratio of approximately 1:2,574; this represents a 0.175 percent increase if all the 50 new jobs were filled by new residents to the City. All new development must pay fire protection impact fees, which will be a Condition of Approval. Potential impacts to fire protection services are, thus, considered less than significant and no mitigation measures are necessary.

b) **Less than Significant Impact.** The Project Site is currently serviced by the City of Banning Policy Department which is located approximately 6.1 miles east of the Project Site at 125 E Ramsey Street in Banning. Services offered by the department include: field patrol, detective bureau, an emergency tactical unit, a gang task force (a regional task force that monitors gang activity, provides gang suppression and conducts search warrants) school resource officer, and a reserve police officer program. The Banning Police Department's Communications Center is staffed with 12 Public Safety Dispatchers that are responsible for answering emergency and non-emergency calls for service. The 35 sworn positions include the Chief of Police, 2 Commanders, 6 Sergeants, 6 Corporals, and 20 Officers. Banning Police Department officers respond to high priority calls within three to seven minutes, depending on the time of the day and traffic flow, [http://www.banningpolice.org](http://www.banningpolice.org). The current level of law enforcement staffing in the City is approximately 1.4 sworn officers for every 1,000 residents. The City has historically maintained a goal of 1.8 police officers per 1,000 residents.

The proposed MOB would generate approximately 50 new jobs. Assuming all employees are new residents to the City, this would result in a demand increase of less than a one percent in total officers to maintain the City’s current level of service. Since the Department currently achieves a three to seven-minute response time, a negligible change in police protection services is anticipated. All new development must pay police protection impact fees, which will be included as a Condition of Approval. With payment of impact fees, the impact to police protection services is considered less than significant and no other mitigation measures are necessary.

c) **Less than Significant Impact.** The Banning Unified School District (BUSD), one of the oldest districts in Riverside County, currently provides school services for a 200 square-mile area. The District encompasses Banning, Cabazon, White Water, Poppet Flats, and the Morongo Indian Reservation.

The proposed MOB is estimated to generate 50 new jobs for the area. At worst case, if all new employees are assumed to be new residents to the City, approximately 50 new school students could be generated, currently the School District is under capacity, and therefore any new students would be accommodated within the District. The School District mitigates impacts on school facilities and services through development impact fees. Under Section 65995 of the California Government Code, school districts may charge development fees to help finance local school services. However, the code prohibits State or local agencies from imposing school impact fees, dedications, or other requirements in excess of the maximum allowable fee, which currently are $0.56 per square foot of new commercial and other non-residential development. As a Condition of Approval, the Project Proponent must pay current developer fees prior to issuance of building permits,
as required by the BUSD. With payment of appropriate impact fees, a less than significant impact is anticipated and no mitigation measures are necessary.

d) **No Impact.** The City of Banning Parks and Recreation Department provides recreational facilities and amenities for the citizens within the community. According to the City of Banning General Plan, the City has eight developed parks totaling approximately 200 acres.

With an estimated population of 30,834 people and a total of approximately 200 acres of parkland, the City currently has a ratio of approximately 6.49 acres of park land per 1,000 population. The proposed MOB is estimated to generate approximately 50 new jobs for the area. At worst case, assuming that all jobs would be filled by new residents, the additional demand on City parks would result in less than a one percent increase (6.48 acres per 1,000 population) on park services. All new non-residential development must pay park land impact fees on a per acre basis, which will be a Condition of Approval. Consequently, no impacts to park services or facilities are anticipated and no mitigation measures are necessary.

e) **Less Than Significant Impact.** The Project is to be developed on an infill site, is limited in scale and is located within an area that is currently served by existing City-maintained roads (i.e., Sun Lakes Boulevard), sewer, water and utility services, new service connections and payment of service impact fees are required and will be a Condition of Approval. Development of the Project Site is not anticipated to create a significant amount of additional demand on public facilities. A less than significant impact would result, and no other mitigation measures are necessary.

<table>
<thead>
<tr>
<th>Issues and Supporting Information Sources:</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant Impact Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>15. RECREATION. Would the project:</strong></td>
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<tr>
<td>a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
</tbody>
</table>

**Impact Discussion:**

a) **No Impact.** Please refer to discussion under threshold 14 (d). The City of Banning Parks and Recreation Department provides recreational facilities and amenities for the community, and has eight developed parks totaling approximately 200 acres. In addition
to these existing facilities, the City has dedicated another 150 plus acres of land for future park development.

With an estimated population of 30,834 people and a total of approximately 200 acres of parkland, the City currently has a park ratio of approximately 6.49 acres per 1,000 population. The proposed MOB would create 50 new jobs. Assuming that all jobs would be filled by new residents, the demand on City parks would result in less than a one percent increase (6.48 acres per 1,000 population) on park services. No impacts to park services are anticipated.

b) **No Impact.** The Proposed Project is the development and operation of a 36,174 square-foot MOB and does not include the construction of recreation facilities. No impacts from the development of recreation facilities would result.

<table>
<thead>
<tr>
<th>Issues and Supporting Information Sources:</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant With Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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</thead>
<tbody>
<tr>
<td>16. TRANSPORTATION/TRAFFIC. Would the project:</td>
<td></td>
<td></td>
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<tr>
<td>a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
<td>( )</td>
</tr>
<tr>
<td>b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?</td>
<td>( )</td>
<td>(✓)</td>
<td>( )</td>
<td>( )</td>
</tr>
<tr>
<td>e) Result in inadequate emergency access?</td>
<td>( )</td>
<td>(✓)</td>
<td>( )</td>
<td>( )</td>
</tr>
<tr>
<td>f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety facilities?</td>
<td>( )</td>
<td>( )</td>
<td>( )</td>
<td>(✓)</td>
</tr>
</tbody>
</table>
Impact Discussion:

In April 2018, a Traffic Impact Analysis (TIA) was prepared for the Proposed Project by Kunzman Associates. The TIA provides an assessment of the traffic impacts that may result from the approval and development of the Proposed Project. Detailed methodology to analyze traffic generation and related impacts is detailed in Appendix F, which is available for review at the Community Development Department, Planning Division. Findings presented in the technical study are outlined in the following discussion.

a/b) Less Than Significant Impact. Study objectives include (1) documentation of Existing traffic conditions in the vicinity of the site; (2) calculation of Existing Plus Project traffic conditions; (3) analysis of Existing Plus Ambient Growth Plus Project traffic conditions; (4) evaluation of traffic conditions for Existing Plus Ambient Growth Plus Project Plus Cumulative; and (5) determination of on-site and off-site improvements and system management actions needed to achieve City of Banning level of service requirements. In order to achieve City of Banning level of service requirements the proposed project shall not cause traffic deficiencies or other significant impacts to the transportation infrastructure.

As stated in the City of Banning General Plan - Circulation Element roadway capacity is defined as the number of vehicles that may pass over a section of roadway in a given time period under prevailing conditions. Roadway capacity is most restricted by intersection design and operation. The capacity of a roadway and the degree to which that capacity is being utilized is typically described as the roadway's Level of Service (LOS). LOS is a qualitative measure of the efficiency of traffic flow and is defined by alphabetical connotations, ranging from “A” through “F,” that characterize roadway operating conditions. LOS A represents an optimum or free-flowing condition, and LOS F indicates extremely slow speeds and system failure. For General Plan purposes, LOS C was assumed to be the “acceptable” LOS for all General Plan roadways within the City, and LOS D at freeway interchanges. Roadway LOS descriptions are provided below in Table 10.

The definition of an intersection deficiency has been obtained from the City of Banning General Plan Circulation Element. The General Plan states that the City shall maintain peak hour LOS D or better on all local roadways and intersections. The definition of an intersection deficiency has been obtained from the City of Beaumont General Plan, which states that LOS D is the maximum acceptable threshold for intersections.

In the City of Banning, an impact is considered significant if the project-related traffic causes an intersection to move from an acceptable LOS to an unacceptable LOS. If a significant impact occurs, mitigation is required to bring the intersection back to an
acceptable LOS, or to no-project conditions if the intersection is projected to operate an unacceptable LOS for no-project conditions.

The site is currently vacant and not generating trips. Based upon the County of Riverside Traffic Impact Analysis Preparation Guide requirements and discussion with the City of Banning engineering staff, the study area included:

Highland Springs Avenue (NS) at:
• 8th Street/Wilson Street (EW)
• 6th Street/Ramsey Street (EW)
• I-10 Freeway WB Ramps (EW)
• I-10 Freeway EB Ramps (EW)
• 2nd Street/Sun Lakes Village Drive (EW)
• 1st Street/Sun Lakes Boulevard (EW)
• Project Access (NS) at:
  Sun Lakes Boulevard (EW)
• Silver Lakes Avenue (NS) at:
  Sun Lakes Boulevard (EW)

For the purposes of the TIA, the Proposed Project is anticipated for opening in Year 2019 and is proposed to be built in one continuous phase. This traffic impact analysis is based upon 2 years of background traffic growth (2017-2019).
Table 10
Roadway LOS Description

<table>
<thead>
<tr>
<th>LOS</th>
<th>Quality of Traffic Flow</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Primarily free-flow operations at average travel speed usually about 90 percent of the free-flow speed for the arterial classification. Vehicles are completely unimpeded in their ability to maneuver within the traffic stream. Stopped delay at signalized intersections is minimal.</td>
</tr>
<tr>
<td>B</td>
<td>Reasonably unimpeded operations at average travel speeds usually about 70 percent of the free-flow speed of the arterial classification. Ability to maneuver within the traffic stream is only slightly restricted. Stopped delays are not bothersome, and drivers generally are not subject to appreciable tension.</td>
</tr>
<tr>
<td>C</td>
<td>Traffic operations are stable. However, mid-block maneuverability may be more restricted than in LOS B. Longer queues, adverse signal coordination, or both may contribute to lower average travel speeds of about 50 percent of the average free-flow speed for the arterial classification. Motorists will experience some appreciable tensions while driving.</td>
</tr>
<tr>
<td>D</td>
<td>Borders on range where small increases in flow may cause substantial increases in approach delay and decreases in arterial speed. LOS D may be due to adverse signal progression, inappropriate signal timing, high volumes, or some combination of these factors. Average travel speeds are about 40 percent of the free-flow speed. For planning purposes, this LOS is the lowest that is considered acceptable.</td>
</tr>
<tr>
<td>E</td>
<td>Characterized by significant approach delays and average travel speeds of one-third or less of the free-flow speed. Typically caused by some combination of adverse progression, high signal density (more than two signalized intersection per mile), high volumes, extensive queuing, delays at critical intersections, and/or inappropriate signal timing.</td>
</tr>
<tr>
<td>F</td>
<td>Arterial flow at extremely slow speeds, below one-third to one-fourth of the free-flow speed. Intersection congestion is likely at critical signalized intersections, with high approach delays and extensive queuing. Adverse progression is frequently a contributor to this condition.</td>
</tr>
</tbody>
</table>

Source: City of Banning General Plan Circulation Element

Trip generation estimates were based on the Institute of Transportation, Trip Generation, 9th Edition, 2012. Trip generation rates were determined for daily traffic and morning peak hour inbound and outbound traffic, and evening peak hour inbound and outbound traffic for the proposed land use. The Proposed Project is anticipated to generate approximately 1,259 daily vehicle trips of which 101 will occur during the morning peak hour and 125 will occur during the evening peak hour, as demonstrated by Table 11, below. Additionally, project average daily traffic volumes are shown on Figure 4.
Table 11
Project Trip Generation

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Quantity</th>
<th>Units¹</th>
<th>Peak Hour</th>
<th></th>
<th></th>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Morning</td>
<td>Evening</td>
<td>Morning</td>
<td>Evening</td>
<td>Daily</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Inbound</td>
<td>Outbound</td>
<td>Total</td>
<td>Inbound</td>
<td>Outbound</td>
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<tr>
<td>Trip Generation Rates</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medical Office Building</td>
<td></td>
<td></td>
<td>2.17</td>
<td>0.61</td>
<td>2.78</td>
<td>0.97</td>
<td>2.49</td>
</tr>
<tr>
<td>Trips Generated</td>
<td></td>
<td></td>
<td>36.171</td>
<td>TSF</td>
<td>78</td>
<td>23</td>
<td>101</td>
</tr>
</tbody>
</table>


The Existing average daily traffic volumes have been obtained from the 2016 Traffic Volumes on California State Highways by the California Department of Transportation and factored from peak hour intersection turning movement counts obtained by Kunzman Associates. Existing intersection traffic conditions were established through morning and evening peak hour intersection turning movement counts obtained by Kunzman Associates. The morning and evening peak hour traffic volumes were identified by counting the two-hour periods from 7:00 AM – 9:00 AM and 4:00 PM – 6:00 PM.

The methodology used to assess the capacity needs of an intersection is known as the Intersection Delay Method based on the Highway Capacity Manual – Transportation Research Board Special Report 209. To calculate delay, the volume of traffic using the intersection is compared with the capacity of the intersection. As stated in the TIA, the study intersections currently operate within acceptable LOS during peak hours for existing traffic conditions.

For Existing Plus Project traffic conditions, existing traffic volumes are combined with project trips. The Existing Plus Project average daily traffic volumes are shown on Figure 4. The Existing Plus Project delay and LOS for the study area roadway network are shown in Table 12, below. Table 12 shows delay values based on the geometrics at the study intersections without and with improvements. For Existing Plus Project Traffic conditions, the study intersections are projected to operate within acceptable LOS A, B and C during both the morning and evening peak hours.
Legend
16.4 = Vehicles Per Day (1,000's)


EXISTING PLUS PROJECT
AVERAGE DAILY TRAFFIC VOLUMES
Careage Healthcare
Banning, CA

FIGURE 5
Table 12
Existing Plus Project Intersection Delay and Level of Service

<table>
<thead>
<tr>
<th>Intersection Control( ^{0} )</th>
<th>Traffic</th>
<th>Intersection Approach Lanes(^ {1} )</th>
<th>Peak Hour Delay-LOS(^ {2} )</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Northbound</td>
<td>Southbound</td>
</tr>
<tr>
<td>Highland Springs Avenue (NS) at:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8th Street / Wilson Street (EW) - #1</td>
<td>TS</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>6th Street / Ramsey Street (EW) - #2</td>
<td>TS</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>I-10 Freeway WB Ramps (EW) - #3</td>
<td>TS</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>I-10 Freeway EB Ramps (EW) - #4</td>
<td>TS</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>2nd Street / Sun Lakes Village Drive (EW) - #5</td>
<td>TS</td>
<td>1</td>
<td>2.5</td>
</tr>
<tr>
<td>1st Street / Sun Lakes Boulevard (EW) - #6</td>
<td>TS</td>
<td>1</td>
<td>1.5</td>
</tr>
<tr>
<td>Project Access (NS) at:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sun Lakes Boulevard (EW) - #7</td>
<td>CSS</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Silver Lakes Avenue (NS) at:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sun Lakes Boulevard (EW) - #8</td>
<td>CSS</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Table 4 of the Traffic Impact Analysis (2018)

For Existing Plus Ambient Growth Plus Project traffic conditions, existing traffic volumes are combined with ambient growth and project trips. The Existing Plus Ambient Growth Plus Project average daily traffic volumes are shown on Figure 6. The Existing Plus ambient Growth Plus Project delay and LOS for the study area roadway network are shown in Table 13 below. Table 13 shows delay values based on the geometrics at the study intersections without and with improvements. For Existing Plus Ambient Growth Plus Project traffic conditions, the study intersections are projected to operate within acceptable LOS A, B and C during both the morning and evening peak hours.
### Table 13
**Existing Plus Ambient Growth Plus Project Intersection Delay and Level of Service**

<table>
<thead>
<tr>
<th>Intersection</th>
<th>Traffic Control</th>
<th>Intersection Approach Lanes</th>
<th>Peak Hour Delay/LOS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highland Springs Avenue (NS) at:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8th Street / Wilson Street (EW) - #1</td>
<td>TS</td>
<td>L 1 T 1 R 1 &gt; 1 1.5 0.5</td>
<td>Morning 24.6-C</td>
</tr>
<tr>
<td>6th Street / Ramsey Street (EW) - #2</td>
<td>TS</td>
<td>L 1 2 1 1 2 1 1 2 1</td>
<td>Evening 20.5-C</td>
</tr>
<tr>
<td>I-10 Freeway WB Ramps (EW) - #3</td>
<td>TS</td>
<td>L 1 2 0 0 2 1 0 0 0</td>
<td></td>
</tr>
<tr>
<td>I-10 Freeway EB Ramps (EW) - #4</td>
<td>TS</td>
<td>L 0 2 1 1 2 0 0.5 0.5 1</td>
<td></td>
</tr>
<tr>
<td>2nd Street / Sun Lakes Village Drive (EW) - #5</td>
<td>TS</td>
<td>L 1 2.5 0.5 1 3 d 2 &lt;1&gt; 0</td>
<td></td>
</tr>
<tr>
<td>1st Street / Sun Lakes Boulevard (EW) - #6</td>
<td>TS</td>
<td>L 1 1.5 0.5 1 2 1 &gt; 1 1.5 0.5 1 1</td>
<td>12.5-B 12.2-B</td>
</tr>
<tr>
<td>Project Access (NS) at:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sun Lakes Boulevard (EW) - #7</td>
<td>CSS</td>
<td>0 0 0 0 0 0 1 0 2 0</td>
<td>Morning 9.1-A</td>
</tr>
<tr>
<td>Silver Lakes Avenue (NS) at:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sun Lakes Boulevard (EW) - #8</td>
<td>CSS</td>
<td>0 0 0 1 0 1 1 2 0 0 2 1</td>
<td>Evening 12.6-B</td>
</tr>
</tbody>
</table>

Source: Table 5 of the Traffic Impact Analysis (2018)

For Existing Plus Ambient Growth Plus Project Plus Cumulative traffic conditions, existing traffic volumes are combined with ambient growth, project trips, and other development trips. The Existing Plus Ambient Growth Plus Project Plus Cumulative average daily traffic volumes are shown on Figure 7. The Existing Plus Ambient Growth Plus Project Plus Cumulative delay and LOS for the study area roadway network are shown in Table 14, below. Table 14 shows delay values based on the geometrics at the study intersections without and with improvements. For Existing Plus Ambient Growth Plus Project Plus Cumulative traffic conditions, the study intersections are projected to operate within acceptable LOS A, B and C during both the morning and evening peak hours.
EXISTING PLUS AMBIENT GROWTH PLUS
PROJECT AVERAGE DAILY TRAFFIC VOLUMES

Careage Healthcare
Banning, CA

FIGURE 6
Legend
18.1 = Vehicles Per Day (1,000's)

EXISTING PLUS AMBIENT GROWTH PLUS PROJECT PLUS CUMULATIVE PROJECT AVERAGE DAILY TRAFFIC VOLUMES
Careage Healthcare
Banning, CA

FIGURE 7
Table 14
Existing Plus Ambient Growth Plus Project Plus Cumulative Intersection Delay and Level of Service

<table>
<thead>
<tr>
<th>Intersection</th>
<th>Traffic Control</th>
<th>Interception Approach Lanes</th>
<th>Peak Hour Delay-LOS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Traffic</td>
<td>Northbound</td>
<td>Southbound</td>
</tr>
<tr>
<td></td>
<td>Control</td>
<td>L</td>
<td>T</td>
</tr>
<tr>
<td>Highland Springs Avenue (NS) at: 8th Street / Wilson Street (EW) - #1</td>
<td>TS</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>6th Street / Ramsey Street (EW) - #2</td>
<td>TS</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>I-10 Freeway WB Ramps (EW) - #3</td>
<td>TS</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>I-10 Freeway EB Ramps (EW) - #4</td>
<td>TS</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>2nd Street / Sun Lakes Village Drive (EW) - #5</td>
<td>TS</td>
<td>1</td>
<td>2.5</td>
</tr>
<tr>
<td>1st Street / Sun Lakes Boulevard (EW) - #6</td>
<td>TS</td>
<td>1</td>
<td>1.5</td>
</tr>
<tr>
<td>Project Access (NS) at: Sun Lakes Boulevard (EW) - #7</td>
<td>CSS</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Silver Lakes Avenue (NS) at: Sun Lakes Boulevard (EW) - #8</td>
<td>CSS</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Table 6 of the Traffic Impact Analysis (2018)

As demonstrated in the preceding discussion, the Existing Plus Ambient Growth Plus Project, and the Existing Plus Ambient Growth Plus Project Plus Cumulative traffic conditions would occur within LOS A, B, and C in both the morning and evening peak hours. As stated in the Circulation Element of the City of Banning General Plan, LOS C is assumed to be the “acceptable” LOS for all General Plan roadways within the City. Consequently, it is demonstrated that the project’s traffic impacts would not exceed these thresholds. As such, the proposed Project would occur in compliance with the Circulation Element of the City of Banning General Plan, and less than significant traffic impacts would result from implementation of the Proposed Project.

The Riverside County Congestion Management Program (CMP) is recognized by the City of Banning as the framework for the assessment of regional impacts. The intent of the CMP is to more directly link land use, transportation, and air quality, thereby prompting reasonable growth management programs that will effectively utilize new transportation funds, alleviate traffic congestion and related impacts, and improve air quality. As stated in the 2011 Riverside County CMP, the minimum LOS standard for intersections and segments along the CMP System of Highways and Roadways is LOS E, unless the intersection or segment had a lower LOS (LOS F) in 1991. Traffic analyses conducted for the proposed project demonstrated that all the study area intersections are forecast to operate at Level of Service C or better for Buildout (Existing Plus Ambient Growth Plus Project) traffic conditions during both morning and evening peak hours. Therefore, there is no conflict with the CMP. No impacts would result.

c) **No Impact.** The Banning Municipal Airport is located approximately 4.5 miles east of the Project Site, at 600 South Hathaway Street, adjacent to the Southern Pacific Railroad and
the I-10 Freeway. The approximately 295-acre airport site includes 65 hangars and 32 tie downs. It includes a 5,100-foot runway and is capable of handling most private single engine and corporate jet aircraft. According to the City of Banning General Plan the airport averages approximately 10 to 15 takeoffs and landings daily, and about 12,000 operations per year. Air traffic at the Municipal Airport is comprised primarily of private, single engine fixed-wing aircraft.

The project site is not located within the boundaries of the Airport Land Use Plan (ALUC) for the Municipal Airport and, therefore, is not subject to the jurisdiction of the Riverside County Airport Land Use Commission. The Proposed Project involves the construction and operation of a MOB which would not be expected to alter operations, change air traffic patterns or conflict with the airport land uses for people residing or working in the area. No aviation impacts are anticipated.

d) **Less Than Significant Impact with Mitigation.** A Sight Distance Analysis was performed as part of the TIA. The posted speed limit along Sun Lakes Boulevard adjacent to the Project is currently 35 miles per hour. The minimum stopping sight distance requires 250 feet of unobstructed line of sight for a 35 mile per hour posted speed limit on Sun Lakes Boulevard (Table 201.1 in the Highway Design Manual). For a vehicle located at the Project access intending to head westbound on Sun Lakes Boulevard, the driver’s eye would be situated 42 inches above the pavement and 15 feet back from the edge of the travel way. Similarly, a driver must have a minimum unobstructed sight line of 250 feet looking eastbound at an object 42 inches above the pavement situated in the center of the westbound travel lane. Sun Lakes Boulevard and the surrounding terrain at and adjacent to the Project Site is relatively flat with minimal changes in gradient. Consequently, vertical sight distance concerns are not anticipated, and existing conditions are anticipated to satisfy vertical sight distance requirements. In addition, there are no sharp curves or dangerous intersections, or incompatible uses) on-site or within the vicinity of the Project Site which would present hazards to vehicular traffic.

Although impacts related to design hazards are anticipated to be less than significant, recommendations presented in the TIA are presented as mitigation measures to satisfy City requirements. Impacts would be further minimized with the design measures listed below.

**TR-1:** Construct Sun Lakes Boulevard from the west project boundary to the east project boundary at its ultimate half-section width including landscaping and parkway improvements in conjunction with development, as necessary to the satisfaction of the Department of Public Works.

**TR-2:** The Project Proponent shall ensure that final site plans address safe access to the Project Site from Sun Lakes Boulevard via a right turns in/out only driveway.

**TR-3:** The Project Proponent shall ensure that the access to the Project Site from Sun Lakes Boulevard has a stopping sight distance of 250 feet of unobstructed line of sight.
e) **Less Than Significant with Mitigation.** The Emergency Preparedness Element of the General Plan outlines the potential for natural and man-made disasters that could affect the City and its Sphere of Influence. According to the General Plan, in 1996 the City adopted the Multi-Hazard Functional Planning Guidance document that includes: 1) the Banning Emergency Plan; 2) twelve functional annexes that describe an emergency response organization; and 3) a listing of operational data such as resources, key personnel, and essential facilities and contacts. The City does not have an established evacuation route; however, depending on the location and extent of an emergency, major surface streets could be utilized to route traffic through the City. For example, Highland Springs Avenue, Hargrave Street, Sunset Avenue, 22nd Street, Eighth Street, and San Gorgonio Avenue are major intra-city north-south roadways, and Wilson Street, Ramsey Street, Lincoln Street and Westward Avenue are major inter-city east-west roadways. The I-10 Freeway and State Highway 243 to State Route 79 are major regional access routes serving the City and the planning area.

Construction of the Proposed Project would not alter or interfere with emergency response operations or an adopted emergency evaluation plan. Banning Police Department, and Riverside County Sheriff’s Department access standards shall be followed to allow adequate emergency access. To ensure appropriate secondary access is provided the following mitigation measure shall be implemented. With recommended Mitigation, potential impacts related to emergency access on the Project Site are reduced to a less than significant level.

**TR-4:** The Project Proponent shall provide a secondary emergency access point for the Project Site. The Project Proponent shall identify a second emergency access on final site plans, which shall be reviewed and approved by City staff. Prior to issuance of grading permits, the Project Proponent shall record an access agreement reflecting this condition within the grant deeds of all properties.

f) **No Impact.** The Riverside Transit Agency System Map depicts Transit Route 31 as operating on Highland Springs Avenue south of the I-10 Freeway, 2nd Street, and Sun Lakes Boulevard. Transit Route 210 operates on Highland Springs Avenue south of the I-10 Freeway, on 2nd Street, and on 1st Street. There are no bus stops adjacent to the Project Site. According to the County of Riverside General Plan Trail and Bikeway Plan, there are no existing or planned pedestrian trails in the vicinity or adjacent to the Project Site. In addition, the Circulation Element of the City of Banning General Plan does not specify any planned pedestrian trails in the vicinity or adjacent to the Project Site., and none are existing. In consideration of these factors, implementation of the Proposed Project would not conflict with any adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities. No impacts would result; thus no mitigation measures are necessary.
17. **TRIBAL CULTURAL RESOURCES.** Would the project:

<table>
<thead>
<tr>
<th>a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant Impact With Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>()</td>
<td>(✓)</td>
<td>()</td>
<td>()</td>
<td></td>
</tr>
</tbody>
</table>

**Impact Discussion:**

a) California Assembly Bill 52 (AB 52) was approved in 2014. AB 52 specifies that projects subject to the California Environmental Quality Act (CEQA) which may cause a substantial adverse change in the significance of a tribal cultural resource may have a significant effect on the environment. As such, the bill requires lead agency consultation with the Native American Historical Commission (NAHC) and California Native American tribes traditionally and culturally affiliated with the geographic area of a proposed project. The legislation further requires that potentially affected tribes may request formal consultation with the public agency, prior to the determination of the form of CEQA documentation appropriate for a project.

In accordance with AB 52, tribes must first request to be on the Lead Agency’s notification list to receive information about a known project and to request consultation. In accordance with AB 52, a records search at California State University Fullerton was conducted to determine potential tribal cultural resources that may occur at the Project Site and in the vicinity, as well as an assessment of potential impacts to archaeological and paleontological resources and human remains. Please refer to Section V - Cultural Resources and Appendix B (available at the Planning Department) for additional information.

The City of Banning has provided the full Cultural Resources investigation to all tribes who have requested it, and held consultations with all tribal representatives who requested to receive additional information. Results of the cultural resources investigation and tribal consultations are reflected in the impact discussion and Mitigation Measures contained in Section 5 – Cultural Resources. With mitigation contained in Section 5 of this Initial Study, impacts to tribal cultural resources are considered reduced to a less than significant level.
<table>
<thead>
<tr>
<th>Issues and Supporting Information Sources:</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant Impact with Mitigation Incorporated</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>18. UTILITIES AND SERVICE SYSTEMS. Would the project:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?</td>
<td>( )</td>
<td></td>
<td>(x)</td>
<td>( )</td>
</tr>
<tr>
<td>b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?</td>
<td>( )</td>
<td></td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?</td>
<td>( )</td>
<td></td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?</td>
<td>( )</td>
<td></td>
<td>(x)</td>
<td>( )</td>
</tr>
<tr>
<td>e) Result in a determination by the wastewater treatment provider, which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?</td>
<td>( )</td>
<td></td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?</td>
<td>( )</td>
<td></td>
<td>( )</td>
<td>(✓)</td>
</tr>
<tr>
<td>g) Comply with Federal, State, and local statutes and regulations related to solid waste?</td>
<td>( )</td>
<td></td>
<td>( )</td>
<td>(✓)</td>
</tr>
</tbody>
</table>

**Impact Discussion:**

a,e) **Less Than Significant Impact.** The City of Banning Public Works Wastewater Division provides sanitary wastewater services to the City of Banning. The City Public Works Department is located at 99 East Ramsey Street. 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 of secondary treatment capacity to 3.6 million gallons-per-day, including improvements that could accommodate future capacity to approximately 5.8 million gallons-per-day. On a daily basis the, plant currently receives an average flow of approximately 2.3–2.4 million gallons-per-day.

Water demand of the MOB, as estimated from actual water use records from another similar facility owned by the Project Proponent, is expected to be approximately 109,200 gallons per month or 1.3 million gallons per year, which is equivalent to 4.02 acre-feet per year. A conservative estimate of 95 percent of the total water use returning to wastewater
flow results in 0.003 MGD in additional flow to the City of Banning Public Works Wastewater facility. The Project would be required to meet the requisites of the City of Banning and the Regional Water Quality Control Board (RWQCB) regarding wastewater quality. The Proposed Project would not require the construction of new wastewater facilities, exceed wastewater treatment requirements, or exceed wastewater treatment capacities. Therefore, impacts related to wastewater treatment requirements of the RWQCB are considered to be less than significant and no mitigation measures are necessary.

b) **No impact.** Please refer to discussion in item 18–a. above. There is sufficient capacity available in existing water and wastewater treatment facilities to accommodate the additional flow estimated to be generated by the Proposed Project. The project would not require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects. No mitigation measures are necessary.

c) **No Impact.** Currently, offsite flows drain southerly through an existing earthen ditch along the eastern edge of the project site to two 12-inch pipes located at the southeast corner of the site, which subsequently drain to an existing 4-foot parkway culvert that discharges to the curb and gutter at Sun Lakes Boulevard. On site flows drain southerly and southeasterly to the existing earthen ditch and the 12-inch pipes at the southeast corner of the site.

Pursuant to City of Banning Ordinance No. 1415, Section 6, retention of the entire calculated developed conditions 100-year, 3-hour volume of 0.49 acre feet (AF) is required. County of Riverside policy is reduction of peak flows for all storm events up to and including the 10-year, 24-hour event. An underground infiltration system is proposed for the project. In order to reduce the developed conditions peak 10-year, 24-hour flow of 1.38 cubic feet per second (CFS) to match the existing conditions peak 10-year, 24-hour flow of 0.82 CFS, the underground infiltration system has been sized to capture 0.68 AF, as this eliminates all discharge until the 15+35-hour point, past the peak of the hydrograph and at a discharge of 0.77 CFS. Based on this capture volume, the proposed underground infiltration system will retain and infiltrate the entire developed conditions volumes for all events, except for the 10-year, 24-hour and 100-year, 24-hour events, and peak flow for the developed conditions 10-year, 24-hour event will be reduced to the existing conditions peak flow.

The peak developed conditions flow for the 10-year, 24-hour event will be mitigated to lower than the existing conditions 10-year, 24-hour peak flow. Mitigation for the peak developed conditions flow for the 100-year, 24-hour event is not required per County of Riverside standards. Overflow discharge from the underground infiltration system for the 10-year, 24-hour and 100-year, 24-hour events will overflow the proposed catch basin at the southeast corner of the property and join the routed offsite flows draining to the two existing 12" pipes and 4-foot parkway culvert to the Sun Lakes Boulevard curb and gutter (where all on-site and off-site flows currently drain). The proposed underground infiltration system shall be designed to capture and infiltrate 0.68 AF.

The calculated 100-year, one-hour peak offsite (tributary) flow to the northeast corner of the project site is 19.49 CFS. Per the project site plan, these offsite flows shall be routed along the eastern edge of the property via a 10-foot (at the narrowest point) landscape swale to the existing 12-inch pipes at the southeastern corner of the property. The 6-inch
curb shall be provided along the western edge of this swale; and will effectively provide 6-inches of freeboard.

The proposed project will provide a retention system sized to retain 0.68 AF. This will provide retention of the calculated developed conditions 100-year, 3-hour volume of 0.49 AF. (per City of Banning requirements) and will provide adequate volume to completely retain or mitigate to existing conditions all flows up to and including the 100-year, 6-hour event. The proposed landscape swale will route offsite flows to the existing conditions discharge location. No impacts are anticipated.

d) **Less Than Significant Impact:** The City of Banning Public Works and Utilities Department provides domestic water services to the City of Banning, and to unincorporated Riverside County lands located southwesterly of the City limits. The various storage units of the San Gorgonio Pass groundwater basin serve as the main water source for the City. There are 22 operating groundwater wells from which the City obtains its water. These are located in Banning Water Canyon and in residential and commercial districts throughout the City. The City also owns six unequipped groundwater wells, three of which could be used as a future water source.

The distribution line system serving the City consists of water lines ranging from 2” to 30” in diameter. The City operates its water services with guidance from its Urban Water Management Plan. Water demand of the MOB, as estimated from actual water use records retrieved from another similar facility owned by the Project Proponent, is expected to be 109,208 gallons per month or 1.3 million gallons per year which is equivalent to 4.02 acre-feet per year. The year 2015 population within the water service area is estimated at 30,491 and is projected to increase to 37,700 based on a factor of 3.12 persons per water service connection. The year 2040 projected population increases to 56,685 if two major proposed Specific Plan developments within the City’s service area are approved and constructed. Based on the City of Banning Final 2015 Urban Water Management Plan, adopted in 2016, for the Planning Period of 2020 – 2040, adequate water supply is projected for meeting demands. The Multiple Dry Years Supply and Demand Comparison (UWMP Table 6-6) shows that in the first and third years of multiple year dry conditions, there is a shortfall of 311 acre-feet per year to meet demands. However, the UWMP indicates that the 46,774 acre-feet of water stored in the Beaumont Basin storage account is not included in the supply totals and concludes that the City has ample water supplies to meet projected demands through 2040. Therefore, the City has sufficient water supplies available to serve the Project based on existing entitlements and resources; a less than significant impact would result.

f) **No Impact.** The City of Banning contracts with Waste Management Inland Empire for solid waste and disposal services. Solid waste that is not diverted to recycling or composting facilities is transported to the Lamb Canyon Sanitary Landfill. The Lamb Canyon Sanitary Landfill is located in the City of Beaumont, approximately three miles southwest of the City of Banning. It is owned and operated by the Riverside County Waste Management Department and accepts solid waste collected from the communities of Banning, Beaumont, Hemet and San Jacinto. It may also accept solid waste generated from anywhere within Riverside County.

The Lambs Canyon Sanitary Landfill has a design capacity of 33,041,000 cubic yards and can receive a maximum permitted tonnage of 5,000 tons per day. The facility has an estimated closure year of 2021. The proposed MOB would generate approximately one
(1) ton of solid waste per day\(^2\), which is approximately 0.020 percent of the permitted capacity of the landfill. The Proposed Project would not place a significant demand on solid waste services and would not be served by a landfill with insufficient permitted capacity. No impacts are anticipated.

\(g\) **No Impact.** As required by Assembly Bill 939 (AB939), the California Integrated Waste Management Act, all cities and counties within the state must divert 50 percent of their wastes from landfills by the year 2000. Construction and Demolition (C&D) debris represents a large portion of materials being disposed of at landfills. To achieve the State-mandated diversion goal, the City has implemented a variety of programs that seek to reduce the volume of solid waste generated, encourage reuse, and support recycling efforts. Collected green waste from the Banning area is taken to a green waste recycling station in Romoland. Other recyclable materials, such as glass, plastic, and paper are transported to a third-party recycler in the City of Pico Rivera. Construction and operation of the MOB must comply with all federal, State, and local statutes and regulations related to solid waste. No impacts are anticipated and no mitigation measures are necessary.

<table>
<thead>
<tr>
<th>Issues and Supporting Information Sources:</th>
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<tbody>
<tr>
<td>Potentially Significant Impact</td>
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<td>--------------------------------------------</td>
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<tr>
<td><strong>19. MANDATORY FINDINGS OF SIGNIFICANCE</strong></td>
</tr>
<tr>
<td>a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?</td>
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<tr>
<td>b) Does the project have impacts that are individually limited, but cumulatively considerable? (&quot;Cumulatively considerable&quot; means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?</td>
</tr>
<tr>
<td>c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?</td>
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</table>

\(^2\) Based on the California Integrated Waste Management Board Estimated Solid Waste Generation Rates for Institutions (Medical offices/hospitals).
Impact Discussion:

a) **Less Than Significant with Mitigation.** The Project site has been previously disturbed by rough grading activities and contains minimal vegetation or other natural features. A general biological assessment of the project site was conducted under the requirements of the Western Riverside County Multiple Species Habitat Conservation Plan (MSCHP). A field survey of the Project Site was also conducted which included an evaluation of habitats. In addition, records of the general and sensitive biological resources present on-site and in the surrounding area were consulted.

No amphibian or reptile species were observed during surveys. Four bird species were observed, none of which are listed as rare or endangered. No sign of mammal species was observed. Compliance with the MSHCP required an assessment for Narrow Endemic Plant Species, presence of burrowing owl habitat, riverine and riparian habitats, as well as vernal pools and fairy shrimp habitat, and jurisdictional waters. The Narrow Endemic Plant Species identified two candidate plant species as potentially present in the area. Neither of these plant species were identified on the project site, and no suitable habitat or soils are present. The Project Site does not provide suitable habitat for burrowing owls, and it is not located within the Stephen’s Kangaroo Rat fee area. No significant impacts to biological resources were identified.

No prehistoric or historic cultural resources were identified within the Project Site. The Project Site is, however, located within an area considered moderately sensitive for prehistoric archaeological resources. Implementation of Mitigation Measure CUL – 1 will ensure potential impacts to archeological resources are reduced to a less than significant level. In consideration of the foregoing information, the project does not have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory.

(b) **Less than Significant with Mitigation.** The Project is not anticipated to generate significant impacts from generation of air pollutants, traffic or noise with mitigation. Mitigation Measures N-1 through N-5, and TR-1 through TR-4 have been incorporated for any impacts that have been assessed as potentially significant. No significant air quality of GHG impacts were identified. Thus, all project specific impacts have been reduced to a less than significant level. Consequently, no significant cumulative adverse impacts are expected with implementation of the proposed development.

c) **Less than Significant with Mitigation.** Noise impacts from traffic and other existing sources would be the primary impacts to human beings. No potentially significant impacts have been identified in any other subject area that would affect Traffic noise affecting the Project site is anticipated to be from I-10 and Sun Lakes Boulevard, and the primary source of railroad-related noise would be from the Union Pacific Railroad lines conveying freight and passenger trains. The on-site transportation noise level impacts indicate that the unmitigated exterior noise levels will range from 58.9 to 64.6 dBA CNEL at the Project first-floor building façade. No exterior noise mitigation is required to satisfy the City of
Banning General Plan Noise Element 70 dBA CNEL acceptable exterior noise level criteria for medical office uses.

Interior noise levels of the medical building were evaluated based on the City of Banning 45 dBA CNEL interior noise level standard for residential land use. The Project building is shown to require a Noise Reduction (NR) of up to 13.9 dBA and a windows-closed condition requiring a means of mechanical ventilation (e.g. air conditioning). To meet the City of Banning 45 dBA CNEL interior noise standards, **Mitigation Measures N-1 through N-5.** No significant adverse effects on human beings are foreseen as a result of the Proposed Project with required Mitigation Measures.
REFERENCES


2011 Riverside County Congestion Management Program, Riverside County Transportation Commission, December 14, 2011.

Phase I Cultural Resources Investigation for the Proposed Careage Banning Medical Offices Project Area on Sun Lakes Blvd., City of Banning, Riverside County, California, McKenna, et.al, November 25, 2017.


City of Banning General Plan, City of Banning Community Development Department and Terra Nova Planning & Research, Inc., adopted January 31, 2006.


Profile of the City of Banning, Southern California Association of Governments (SCAG), May 2017.
LIST OF PREPARERS

City of Banning (Lead Agency)
99 East Ramsey Street, Banning, CA 92220
Community Development Department
  Marie Gilliam, Contract Planner
  Sonia Pierce, Senior Planner

Lilburn Corporation
1905 Business Center Drive, San Bernardino, CA 92408
  Natalie Patty, Project Manager
  Cheryl Tubbs, Vice President
  Frank Amendola, Project Manager
  Danny Macias, Environmental Analyst
<table>
<thead>
<tr>
<th>Mitigation Measures</th>
<th>Timing</th>
<th>Verification</th>
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<tbody>
<tr>
<td><strong>Aesthetics</strong></td>
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<tr>
<td>Mitigation Measure AES-1</td>
<td>Prior to Issuance of Building Permits</td>
<td>Planning Department</td>
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<tr>
<td>Installation of lighting within the parking area and building entries shall be designed in a manner to control spillage of light from the Project Site, as required by the City of Banning Municipal Code. Attention will be made to assure no spillage of light onto adjacent residential properties to the west, north and east.</td>
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<tr>
<td><strong>Cultural Resources</strong></td>
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<td>Mitigation Measure CR-1:</td>
<td>Prior to the Issuance of Grading Permits.</td>
<td>Planning Department</td>
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<td>Prior to the issuance of grading permits, the developer shall enter into a Native American monitoring agreement with one of the consulting tribes for the project. The Native American Monitor shall be on-site during all initial ground disturbing activities including clearing, grubbing, vegetation removal, grading and trenching. The Native American Monitor shall have the authority to temporarily divert, redirect or halt the ground disturbance activities to allow identification, evaluation, and potential recovery of cultural resources.</td>
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<tr>
<td>Mitigation Measure CR-2:</td>
<td>During Grading and Construction</td>
<td>Planning Department</td>
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<tr>
<td>In the event of discovery of human remains during grading or other ground disturbance, work in the immediate vicinity shall cease and the landowner shall comply with State Health and Safety Code §7050.5 and Public Resources Code §5097.98. In the event human remains are found and identified as Native American, the landowner shall also notify the City</td>
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<td>Mitigation Measure</td>
<td>Timing</td>
<td>Department</td>
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<td>Planning Department so that the City can ensure PRC §5097.98 is followed.</td>
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<tr>
<td><strong>Mitigation Measure CR-3</strong> If cultural resources are found during project construction, all ground-disturbing activities within 100 feet of the find shall be halted. A Registered Professional Archaeologist shall prepare a Cultural Resources Management Plan in consultation with the consulting tribes and the City Planning Department to include relinquishment of all artifacts through one of the following methods:</td>
<td>During Grading and Construction</td>
<td>Planning Department</td>
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<tr>
<td>• A fully executed reburial agreement with the appropriate culturally affiliated Native American tribe or band. This reburial area should be away from any future impacts. Reburial shall not occur until all cataloguing, analysis and any necessary special studies have been completed on the cultural resources. Details of contents and location of the reburial shall be documented in a Final Report.</td>
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<td>• Curation at a Riverside County Curation facility that meets federal standards per 36 CFR Part 79 and therefore will be professionally curated and made available to other archaeologists/researchers and tribal members for further study. The collection and associated records shall be transferred, including title, and are to be accompanied by payment of the fees necessary for permanent curation. Evidence shall be provided in the form of a letter from the curation facility identifying that archaeological materials have been received and that all fees have been paid.</td>
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<td>Mitigation Measure</td>
<td>Timing</td>
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<td><strong>NOISE</strong></td>
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<td><strong>Mitigation Measure N-1:</strong> During final building inspection, and prior to the issuance of building occupancy permits, the City Building Official shall ensure that the Project Proponent has equipped all first and second-floor windows with well-fitted, well-weather stripped assemblies with a minimum sound transmission class (STC) ratings of 27.</td>
<td>Prior to the issuance of Occupancy Permits</td>
<td>Building &amp; Safety Department</td>
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<tr>
<td><strong>Mitigation Measure N-2:</strong> During final building inspection and prior to the issuance of building occupancy permits, the City Building Official shall ensure that the Project Proponent has well weather-stripped all exterior doors with a minimum STC ratings of 25.</td>
<td>Prior to the issuance of Occupancy Permits</td>
<td>Building &amp; Safety Department</td>
</tr>
<tr>
<td><strong>Mitigation Measure N-3:</strong> During final building inspection and prior to the issuance of building occupancy permits, the City Building Official shall examine all penetrations of exterior walls by pipes, ducts, or conduits, and ensure that the space between the wall and pipes, ducts, or conduits are caulked or filled with mortar to form an airtight seal.</td>
<td>Prior to the issuance of Occupancy Permits</td>
<td>Building &amp; Safety Department</td>
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<td><strong>Mitigation Measure N-4:</strong> During final building inspection and prior to the issuance of building</td>
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<td>Mitigation Measure</td>
<td>Timing</td>
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<td>occupancy permits, the City Building Official shall ensure that any roof sheathing of wood construction is well fitted or caulked plywood of at least one half-inch thick. Ceilings shall be well fitted, well-sealed gypsum board of at least one-half inch thick. Insulation with at least a rating of R-19 shall be used in the attic space.</td>
<td>Prior to the issuance of Occupancy Permits</td>
<td>Building &amp; Safety Department</td>
</tr>
<tr>
<td>Mitigation Measure N-5: During final building inspection and prior to the issuance of building occupancy permits, the City Building Official shall ensure that any exterior door or window to a habitable room can be kept closed when the room is in use and still receive circulated air. A forced air circulation system (e.g. air conditioning) or active ventilation system (e.g. fresh air supply) shall be provided in accordance with the requirements of the Uniform Building Code.</td>
<td>Prior to the issuance of Occupancy Permits</td>
<td>Building &amp; Safety Department</td>
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<td>TRAFFIC</td>
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<td>Mitigation Measure TR-1: Construct Sun Lakes Boulevard from the west project boundary to the east project boundary at its ultimate half-section width including landscaping and parkway improvements in conjunction with development, as necessary to the satisfaction of the Department of Public Works.</td>
<td>Prior to the issuance of Occupancy Permits</td>
<td>Department of Public Works</td>
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<tr>
<td>Mitigation Measure</td>
<td>Timing</td>
<td>Department</td>
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<td><strong>Mitigation Measure TR-2:</strong> The Project Proponent shall ensure that final site plans address safe access to the Project Site from Sun Lakes Boulevard via a right turns in/out only driveway.</td>
<td>Prior to Issuance of Building Permits</td>
<td>Department of Public Works</td>
</tr>
<tr>
<td><strong>Mitigation Measure TR-3:</strong> The Project Proponent shall ensure that the access to the Project Site from Sun Lakes Boulevard has a stopping sight distance of 250 feet of unobstructed line of sight.</td>
<td>Prior to Issuance of Building Permits</td>
<td>Department of Public Works</td>
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</table>
ATTACHMENT 4

Public Hearing Notice
NOTICE OF AVAILABILITY/NOTICE OF INTENT
MITIGATED NEGATIVE DECLARATION

Project Title: General Plan Amendment GPA 17-2504, Zone Change 17-3503 and Design Review

NOTICE IS HEREBY GIVEN that the City of Banning (City), as Lead Agency under the California Environmental Quality Act (CEQA), has prepared a Notice of Availability (NOA) and Notice of Intent (NOI) to adopt a Mitigated Negative Declaration (MND) for a proposed General Plan Amendment (17-2503), Zone Change (17-3503) and Design Review (17-7004) (“Project”). The MND 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 cited below.

Project Location and Description: The Project is located on the north side of Sun Lakes Boulevard between Sun Lakes Village Drive and Silver Lakes Avenue in the City of Banning. Assessor’s Parcel Number (APN): 419-140-059. The Project proposes to construct a medical office building on a vacant 3.31-acre site. The two-story building is proposed to have a gross floor area 36,174 square-feet and would include ancillary pharmaceutical and optical sales. The Project requires concurrent processing of a General Plan Amendment (GPA), Zone Change (ZC), and Design Review (DR).

Environmental Effects: The Initial Study Checklist determined that the proposed Project could result in potentially significant effects, but the Project Applicant will incorporate mitigation measures that would avoid or mitigate effects to a point where clearly no significant environmental impacts will occur. Mitigation has been included to address Aesthetics, Cultural Resources, Noise, Transportation / Traffic and Tribal Cultural Resources.

Public Review Period: The MND will be available for a 20-day public review period from May 11, 2018 to May 31, 2018.

Written comments on this MND should be addressed to:
City of Banning
Community Development Department
99 E. Ramsey Street, Banning, CA 92220
Attn: Patty Nevins, Community Development Director

A copy of the Public Review of the Mitigated Negative Declaration is available at the above address and at the Banning Public Library, 21 W. Nicolet Street, Banning CA 92220, as well as at the City Community Development Department’s website at http://www.ci.banning.ca.us/DocumentCenter.aspx?FID=19.

All comments must be received in writing at the address below no later than 5 p.m. on May 31, 2018. Comments received and issues and concerns raised will be evaluated to determine if the mitigation and project conditions of approval have adequately addressed the concerns. All comments received will be included as part of the record.

Public Meeting: This Project is tentatively scheduled for the June 6, 2018 Planning Commission hearing. The hearing commences at 6:30 p.m. and is held in the City Council Chambers, Banning City Hall, located at 99 E. Ramsey Street, Banning CA 92220. In that the Project requires a General Plan Amendment and Zone Change, the consideration by the Planning Commission is advisory in this matter and is included as a recommendation for the City Council to either approve, deny or modify the project.

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA.

Patty Nevins
Community Development Director

Dated: May 8, 2018
Date Published: May 11, 2018
NOTICE OF PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM; CONSIDERATION OF GENERAL PLAN AMENDMENT 17-2503, ZONE CHANGE 17-3503, AND DESIGN REVIEW 17-7004; A PROPOSAL TO CONSTRUCT 36,174 SQUARE FEET OF SPACE INCORPORATING MEDICAL OFFICES AND ANCILLARY OFFICE AND RETAIL SPACE IN A TWO STORY STRUCTURE ON 3.31 GROSS ACRES OF VACANT LAND LOCATED ON SUN LAKES BOULEVARD (ASSESSOR'S PARCEL # 419-140-059) IN THE CITY OF BANNING.

NOTICE IS HEREBY GIVEN of a public hearing before the City of Banning Planning Commission, to be held on Wednesday, June 6, 2018, at 6:30 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider the proposed project. The subject parcel is located generally north of Sun Lakes Boulevard between Sun Lakes Village Drive and Silver Lake Avenue in the City of Banning.

Information regarding the Mitigated Negative Declaration, General Plan Amendment, Zone Change and Design Review can be obtained by contacting the City's Community Development Department, Planning Division at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning. You may also go to the City of Banning website at http://www.ci.banning.ca.us/.

All parties interested in speaking either in support of or in opposition to this item are invited to attend the hearing, or to send their written comments to the Community Development Department, Planning Division, City of Banning at 99 E. Ramsey Street, P.O. Box 998, Banning, California, 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the Planning Commission makes its recommendation on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA

Patty Nevins
Community Development Director

Dated: May 22, 2018
Publish: May 25, 2018