I. CALL TO ORDER OF AN ADJOURNED REGULAR MEETING: Chairman Shaw

- Pledge of Allegiance: Commissioner Sanchez

- Roll Call: Commissioners Brosious, Krick, Schuler, Sanchez, Chairman Shaw

II. PUBLIC COMMENTS: - On Items Not on the Agenda

A five-minute limitation shall apply to each member of the public who wishes to address the Chairman and Commissioners 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.

1. Minutes of November 6, 2019 Regular Planning Commission Meeting
2. Minutes of December 4, 2019 Regular Planning Commission Meeting

IV. PUBLIC HEARINGS:

1. CONDITIONAL USE PERMIT 19-8011 (MOBIL GAS STATION) AUTHORIZING ONE PYLON SIGN OF MAXIMUM FIFTY-FIVE (55) FEET IN HEIGHT AND A MAXIMUM DISPLAY FACE OF 100 SQUARE FEET (6’3” X 16’), LOCATED AT 300 HIGHLAND SPRINGS AVENUE (APN: 419-140-028)

Staff Report – Adam Rush
Recommendation:

That the Planning Commission adopt Resolution 2020-01:

I. Making a determination under CEQA Guidelines that the project is exempt under the California Environmental Quality Act (CEQA) Guidelines Section 15301 (Existing Facilities); and

II. Approving Conditional Use Permit 19-8011 to allow the construction of one pylon sign of maximum fifty-five (55’) feet in height and a maximum display face of 100 square feet (6’3” x 16”).

2. CONDITIONAL USE PERMIT 19-8009, (AMG SIGNS COMPANY) AUTHORIZING ONE DOUBLE-FACE MARQUEE ELECTRONIC MESSAGE CENTER OF MAXIMUM HEIGHT OF EIGHTY (80’) FEET AND MAXIMUM DISPLAY FACE OF 1,200 SQUARE FEET (25’ X 48’), LOCATED AT 583 W. LIVINGSTON STREET (APN: 540-192-005)

Recommendation:

That the Planning Commission adopt Resolution 2020-02:

I. Recommending the City Council make a determination that the Project is exempt under the California Environmental Quality Act (CEQA) Guidelines Section 15332; and
II. Approve Conditional Use Permit 19-8009, authorizing one double-face marquee electronic message center of maximum height of eighty (80') feet and maximum display face of 1,200 square feet (25' X 48'). Located at 583 W. Livingston Street (APN: 540-192-005).

3. ZONE TEXT AMENDMENT (ZTA) NO. 19-97506, AMENDING SECTION 17.080.100 (“ACCESSORY DWELLING UNIT STANDARDS”) OF CHAPTER 17.08 (“RESIDENTIAL DISTRICTS”) OF DIVISION II (“LAND USE DISTRICTS”) OF TITLE 17 (“ZONING”) OF THE BANNING MUNICIPAL CODE IN COMPLIANCE WITH ASSEMBLY BILL (“AB”) 881, AB 68, AB 587, AB 670, AND SENATE BILL (“SB”) 13, WHICH REMOVE BARRIERS TO THE CONSTRUCTION OF ACCESSORY DWELLING UNITS.

Staff Report – Adam Rush

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)

Recommendation:

That the Planning Commission take the following actions:

Open and continue the public hearing to the February 5, 2020 Planning Commission Meeting Agenda.

V. PLANNING COMMISSIONER COMMENTS:

VI. COMMUNITY DEVELOPMENT DIRECTOR COMMENTS:

VII. ADJOURNMENT:

The City of Banning Planning Commission is hereby adjourned to the regular Planning Commission meeting of February 5, 2020 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].
MINUTES
Planning Commission Meeting
Council Chambers
99 E. Ramsey St. Banning, Ca
Regular Session: 6:30 PM
Wednesday, November 6, 2019

REGULAR MEETING

I. CALL TO ORDER opened at 6:30 p.m.
Commissioners Present: Chairman Shaw, Vice Chairman Krick, Commissioner Brosious, Commissioner Sanchez, Commissioner Schuler

Staff Present: Community Development Director Adam Rush, Assistant City Attorney, Serita R. Young, Senior Planner, Sonia Pierce, Contract Planner, Mark de Manincor, Recording Secretary Sandra Calderon

II. PUBLIC COMMENTS (ITEMS NOT ON THE AGENDA)
Public Comment opened
J. Hagen – asked why there isn’t any kind of trade off when zone changes from Low Density Residential to High Density Residential areas.

F. Burgess – asked the Commission to speak louder into the microphone.

Public Comment closed

III. CONSENT CALENDAR ITEMS
1. Approval of Minutes dated October 2, 2019.

ACTION: Motion/Second (SCHULER/KRICK)
(Motion Carried 5-0) passed

IV. PUBLIC HEARINGS
1. RESOLUTION 2019-22, RECOMMENDING THE CITY COUNCIL APPROVE GENERAL PLAN AMENDMENT 19-2503, ZONE CHANGE 19-3501 AND ENVIRONMENTAL ASSESSMENT 19-1505, FOR A PROPOSED AMENDMENT TO THE GENERAL PLAN LAND USE MAP AND ZONING MAP TO ELIMINATE INCONSISTENCIES WITHIN THE MAP AND PROMOTE ECONOMIC DEVELOPMENT, FINDING THE PROJECT WILL HAVE LESS THAN SIGNIFICANT EFFECT ON THE ENVIRONMENT AND APPROVING A NEGATIVE DECLARATION.

Commissioner Krick recused himself from the public hearing.

Public hearing opened
S. Creason – Agrees with proposed Location Nine.
Location Three – Opposed proposed zone change.
F. Burgess – Location Seven – Concerns regarding the proposed change and would like to make sure his properties remain Industrial zone.

D. Turnell – Location Nine – Concerns regarding the property lines shown on the maps.

Commissioner Shaw said property lines will not be affected.

Resident of Banning – Location Seven – Concerned if a two-story housing development will be constructed.

Kay – Location Three – Concerned regarding the number of units and size that will be developed, and the current size of the street on N. Hermosa Avenue.

Y. Anson – (attachment 1)

Public hearing closed

ACTION: Motion/Second
(SCHULER/BROSIOUS)

The Planning Commission of the City of Banning hereby recommends to the City Council that the Council’s approval of General Plan Amendment 19-2503, excluding Locations 5 and 8 (APNs: 540-220-008, -009; and 534-172-001, -002, -003, -004, -005, -007, and -008), not be effective until the effective date of the City Council ordinance adopting Zone Change 19-3501, excluding Locations 5 and 8 (APNs: 540-220-008, -009; and 534-172-001, -002, -003, -004, -005, -007, and -008).

(Motion Carried 4-0) passed – Krick abstained


Public hearing opened
L. Leindecker asked for the proposed Temporary Use Permit fee.
Director Rush said the full recovery as proposed is $1,065.86.

Public hearing closed

ACTION: Motion/Second (BROSIOUS/KRICK)
To continue the item to the December 4, 2019 meeting.
(Motion Carried 5-0) passed
3. RESOLUTION 2019-24, RECOMMENDING ZONING TEXT AMENDMENT 19-97503 AMENDING CHAPTER 17.108 "TEMPORARY USE PERMITS" AND TO ADD A NEW SECTION 17.12.080 "COMMERCIAL CARGO/STORAGE CONTAINERS" TO TITLE 17 "ZONING" OF THE BANNING MUNICIPAL CODE (BMC) TO ESTABLISH ZONING AND DESIGN STANDARDS FOR COMMERCIAL CARGO/STORAGE CONTAINERS.

Public hearing opened
J. Hagen – (Attachment 2)

Public hearing closed

ACTION: Motion/Second (KRICK/BROSIOUS)
To include table presented regarding storage containers (attachment 3)
(Motion Carried 5-0) passed

V. PLANNING COMMISSIONER COMMENTS
Commissioner Brosious asked the City will renew permits for the existing storage containers on property.

Director Rush said no, the City is exempt from this Ordinance.

VI. COMMUNITY DEVELOPMENT DIRECTOR COMMENTS
Update of active commercial and residential applications within the City of Banning (attachment 4)

VII. ADJOURNMENT
Adjournment of the Planning Commission of the November 6, 2019 Meeting at 9:23 p.m.

The next regular meeting of the Banning Planning Commission is scheduled for Wednesday, December 4, 2019, at 6:30 p.m. in the City Council Chambers.

Banning City Hall – Online www.banningca.gov
Attachment 1

My name is Yolanda D Anson, residence at 686 E Theodore St. Banning, CA 92220 located on the Location 3 Zoning Map. High Density Residential Housing in my neighborhood.
How many "appartments" would be built on the 2 parcels?
Will there be Entry-Exit access to the appartments onto Hermosa or only Entry - Exit on Gilman/Paloma Way?
Where can I/we go and have access to the plans for the proposed appartments?

Who will be responsible for expanding Hermosa St from its present narrow street?
(My property has been damaged multiple times as recently as 2.18.16 when a drunk driver plowed through the fence & landing his car halfway through my garage.
Waste Management Truck driver while traveling North to South on Hermosa St. residents vehicles were parked facing North on Hermosa the truck arm caught the tree branches on our property, pulling out the tree, caused damage to our fence & driveway. Vehicles trying to travel North & South at the same time on Hermosa St. have also damaged our chain link fence and poles.

At this point I'm not for the "Rezoning for High Density/Affordable Housing" without further research on how it will affect/benefit me and my neighbors & our safety.

My father suffers from Alzheimers/senile dementia, can't be left alone. I'm unable to attend tonights meeting

I can be reached on my cell #951.570.4514

Yolanda D. Anson
Attachment 2

November 6, 2019

I moved to this semi rural setting so that I would have a little room and a larger piece of property to work with. I own this property and although I do see the need and appreciate some of the guide lines set down to control the aesthetics of a growing community’ However I feel that this storage container ordnance is an overreach of you authority.

Your building codes and setbacks for permanent structures on the properties limit what a person can do concerning storage structures. The storage containers afford the property owner to safely and neatly store their belongings and protect them from deteriorating due to weather exposure. I don’t believe that a property owner would pay for the cost of a storage container if they did not have items that they value. So weather you allow them to have a storage container or not they will not get rid of those treasured belongings. Now you have created a situation where the belongings that would have been placed in a container and out of sight are now piled up in the yard deteriorating away as yard art. These yard art issues will not be controlled by code enforcement as is evident in a large percentage of the properties around here now.

With this ordinance you are not only telling the property owners what they can have on their own property, but now how many and where they have to place it. I don’t object to the paint requirement but I feel that if I have the room to adequately place containers on my property for private use and storage I should be able to do that without the expense of permit fees and government over reach.

These containers are not permanent structures; they are not used for habitation, and should be exempt from setback requirements as they are movable and cause no burden on future development. The setbacks suggested 50 ft from front 25 from side and 50 to the rear are a detriment to the rest of the ordinance. Think about this, if you allow the container to be placed near the property line it can be easily camouflaged with shrubbery or fence line. The way it is worded you have required the container to be placed out where there is no hiding it, and it interferes with the land owners landscape plans. Also if you allow only one
container an owner has to deal with a monster container 53 ft. long where as if you allowed smaller containers equaling the same sq footage i.e. (2- 25 ft containers) it would give the landowner a little more versatility in placing them.

Just because some of you have a distain against storage containers you should not use your position of power to inflict your will upon the community. I agree that you probably need a backyard requirement and paint but that is where this should stop. A half acre parcel can easily handle 2 or 3 containers of various sizes without impeding on the surrounding environment. And if properly placed can be hidden from street view and not be a neighborhood eyesore.

I request that you reconsider this matter. The city uses storage containers on several of their sites and you cannot require the resident to comply and exempt the city. I do not see a particular problem or over abundance of containers on any properties throughout this city and feel that this is an attempt to generate revenue at the property owner’s expense. This needs to be rewritten and some of these outrageous conditions removed. A storage container in the yard is much more slightly than all of its contents strewn all over the yard. Think about that before you in act an unenforceable burden on the already overworked code enforcement division.

Since there has been no existing complaint on the existing containers if you do in act this there should be a grandfather clause for the existing containers, as the current owners have a considerable investment in the purchase and placement of the existing containers. Frankly I do not know why you are wasting your time and energy on this when there are several other eye sores that need to be addressed first like the Banning Business Center and the connection between Westward and Sun Lakes, or all the junk in people’s yards that a container would solve. Why target something that is going to piss people off instead of these other major issues.

Thank You,
John Hagen, Banning resident
## Background

<table>
<thead>
<tr>
<th>Development Standards</th>
<th>VLDR</th>
<th>RR/H</th>
<th>RR</th>
<th>R/A/H</th>
<th>R/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Min. Lot Size</td>
<td>20,000</td>
<td>40,000</td>
<td>40,000</td>
<td>10 Ac.</td>
<td>10 Ac.</td>
</tr>
<tr>
<td>Min. Front Setback (Feet)</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>35</td>
</tr>
<tr>
<td>Min. Rear Setback (Feet)</td>
<td>50</td>
<td>50</td>
<td>35</td>
<td>35</td>
<td>35</td>
</tr>
<tr>
<td>Min. Side Yard Setback (Feet)</td>
<td>25</td>
<td>25</td>
<td>25</td>
<td>25</td>
<td>15</td>
</tr>
<tr>
<td>Commercial Cargo/Storage Containers</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>5*</td>
<td>5*</td>
</tr>
</tbody>
</table>

*One Commercial Cargo/Storage Container for every two-acres in access of 5 gross acres. In no case shall any lot contain more than five containers.
Attachment 4

CITY OF BANNING
PLANNING COMMISSION
STAFF REPORT

TO: PLANNING COMMISSION

FROM: Adam B. Rush, Community Development Director

MEETING DATE: November 6, 2019

SUBJECT: Update on Recently Approved Projects (Director’s Comments)

BACKGROUND:

At the October 4th Planning Commission meeting, the Commissioner’s requested an update as to the active commercial and residential applications within the City of Banning. As such, the attached spreadsheet provides a summary of currently entitled projects, a general status of each project, and anticipated expiration date of the project.

PREPARED BY:

[Signature]

Adam B. Rush, M.A., AICP
Community Development Director
### Planning Commission Major Projects Approved (Date 11/6/2016)

<table>
<thead>
<tr>
<th>Project /Location</th>
<th>PC Approval Date</th>
<th>Expiration Date</th>
<th>Extensions</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>CUP 16-8004 / Mountain Av School</td>
<td>1/4/2017</td>
<td>1/4/2019 (l)</td>
<td>0</td>
<td>5 modular units complete</td>
</tr>
<tr>
<td>CUP 17-8001 / La Quinta Hotel &amp; Cafe</td>
<td>5/3/2017</td>
<td>5/3/2019</td>
<td>1</td>
<td>Expired/Re applied/New review</td>
</tr>
<tr>
<td>DR 17-7005 / Diamond Hills Auto</td>
<td>1/3/2018</td>
<td>1/3/2020 (l)</td>
<td>0</td>
<td>Expand new frontage complete</td>
</tr>
<tr>
<td>DR 17-7004 / Careage Medical</td>
<td>6/6/2018</td>
<td>6/6/2020</td>
<td>0</td>
<td>No movement/ no plan checks</td>
</tr>
<tr>
<td>DR 18-7009/ Bank Building Upgrades</td>
<td>8/1/2018</td>
<td>8/1/2020</td>
<td>1</td>
<td>Opted to paint / no permit req.</td>
</tr>
<tr>
<td>DR 18-7008/ LaQuinta Hotel &amp; Cafe</td>
<td>8/1/2018</td>
<td>8/1/2020</td>
<td>0</td>
<td>Phase 1 Plan Check Complete</td>
</tr>
<tr>
<td>DR 18-7006/ Lauren Lane 13 SFR</td>
<td>9/5/2018</td>
<td>9/5/2020</td>
<td>0</td>
<td>No movement/ No plan checks</td>
</tr>
<tr>
<td>DR 18-7004/ Downing Corp. Office</td>
<td>10/3/2018</td>
<td>10/3/2020</td>
<td>0</td>
<td>Plan Check Complete</td>
</tr>
<tr>
<td>DR 16-7002/Banning Distr. Ctr.</td>
<td>11/7/2018</td>
<td>11/7/2020</td>
<td>0</td>
<td>Lot Merger Complete</td>
</tr>
<tr>
<td>DR 18-7003/St. Boniface 143 SFR</td>
<td>11/7/2018</td>
<td>11/8/2020</td>
<td>0</td>
<td>No movement/ no plan checks</td>
</tr>
<tr>
<td>DR 18-8003/ Finesse Lounge</td>
<td>1/16/2019</td>
<td>1/16/2021 (l)</td>
<td>0</td>
<td>Permits issued / Construction</td>
</tr>
<tr>
<td>DR 18-7001/ Lawrence Equipment</td>
<td>1/16/2019</td>
<td>1/16/2021</td>
<td>0</td>
<td>No movement/ No plan checks</td>
</tr>
<tr>
<td>CUP 18-8004/ Love Tattoo Studio</td>
<td>2/6/2019</td>
<td>2/2/2021 (l)</td>
<td>0</td>
<td>Open for business</td>
</tr>
<tr>
<td>DR 18-7011/ Hanna 96 Apt</td>
<td>4/3/2019</td>
<td>4/3/2021</td>
<td>0</td>
<td>No movement/ no plan checks</td>
</tr>
<tr>
<td>DR 19-8001 O'Reilly Auto Parts</td>
<td>9/1/2019</td>
<td>5/1/2021</td>
<td>0</td>
<td>Plan Check Complete</td>
</tr>
</tbody>
</table>

*([l]) = Permits Issued*

---

### City of Banning Entitled & In-Process Residential Lots

<table>
<thead>
<tr>
<th>Tentative Map Number</th>
<th>Location</th>
<th>Developer Name</th>
<th>Approved by City Council</th>
<th>Number of Lots</th>
<th>Development Type</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>TR37365</td>
<td>NEC of Wilson St./Highland Springs Ave.</td>
<td>Pardee</td>
<td>6/25/2019</td>
<td>107</td>
<td>SF Condos</td>
<td>Entitled/Imprv. Plans signed/Recordation Date = 1/2020</td>
</tr>
<tr>
<td>TR37390</td>
<td>NEC of Wilson St./Highland Springs Ave.</td>
<td>Pardee</td>
<td>6/25/2019</td>
<td>362</td>
<td>SFR</td>
<td>Entitled/Imprv. Plans signed/Recordation Date = 1/2020</td>
</tr>
<tr>
<td>TR37298</td>
<td>NEC of Wilson St./Highland Springs Ave.</td>
<td>Pardee</td>
<td>7/10/2018</td>
<td>360</td>
<td>SFR</td>
<td>Entitled/Imprv. Plans signed/Recordation Date = 1/2020</td>
</tr>
<tr>
<td>TR37766</td>
<td>SWC of San Gorgonio Ave./West Westminster St.</td>
<td>Diversified Pacific</td>
<td>N/A</td>
<td>80</td>
<td>SFR</td>
<td>Development Review (1st Round)</td>
</tr>
<tr>
<td>TR37767</td>
<td>SWC of San Gorgonio Ave./West Westminster St.</td>
<td>Diversified Pacific</td>
<td>N/A</td>
<td>55</td>
<td>SFR</td>
<td>Development Review (1st Round)</td>
</tr>
<tr>
<td>TR37768</td>
<td>SWC of San Gorgonio Ave./West Westminster St.</td>
<td>Diversified Pacific</td>
<td>N/A</td>
<td>22</td>
<td>SFR</td>
<td>Development Review (1st Round)</td>
</tr>
<tr>
<td>TR37769</td>
<td>SWC of San Gorgonio Ave./West Westminster St.</td>
<td>Diversified Pacific</td>
<td>N/A</td>
<td>48</td>
<td>SFR</td>
<td>Development Review (1st Round)</td>
</tr>
<tr>
<td>TR37770</td>
<td>SWC of San Gorgonio Ave./West Westward</td>
<td>Diversified Pacific</td>
<td>N/A</td>
<td>105</td>
<td>SFR</td>
<td>Development Review (1st Round)</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>DR 18-7011</td>
<td>SWC of Hathaway St./Hoffer St.</td>
<td>John and Diana Hanna</td>
<td>8/27/2019</td>
<td>60</td>
<td>Multi-Family Apts.</td>
<td>Entitled, CD’s being developed</td>
</tr>
<tr>
<td>TR36710</td>
<td>NWC of Fiordia St./Wilson St.</td>
<td>RMG Residential 2010, LLP</td>
<td>6/11/2019</td>
<td>39</td>
<td>SFR</td>
<td>Entitled, Final Map pending plan check</td>
</tr>
<tr>
<td>TR30906</td>
<td>NWC of Gilman St./Mountain Ave.</td>
<td>Fiesta Development</td>
<td>11/13/2007</td>
<td>303</td>
<td>SFR</td>
<td>Final Map Recorded</td>
</tr>
<tr>
<td>TR36939</td>
<td>NEC of Sunset Ave./Wilson St.</td>
<td>Diversified Pacific</td>
<td>1/6/2015</td>
<td>98</td>
<td>SFR</td>
<td>Final Map Recorded 10/22/19</td>
</tr>
<tr>
<td>TR33540</td>
<td>NWC of 8th St./Gilman</td>
<td>Arrowhead</td>
<td>12/11/2018</td>
<td>143</td>
<td>SFR</td>
<td>Entitled, Final Map pending</td>
</tr>
<tr>
<td>TR31748</td>
<td>SEC of San Gorgonio Ave./Wesley St.</td>
<td>Lauren Lane</td>
<td>9/5/2018</td>
<td>13</td>
<td>SFR</td>
<td>Entitled, Final Map pending plan check</td>
</tr>
</tbody>
</table>
REGULAR MEETING

I. CALL TO ORDER opened at 6:30 p.m.
Commissioners Present: Chairman Shaw, Vice Chairman Krick, Commissioner Brosious, Commissioner Sanchez, Commissioner Schuler

Staff Present: Community Development Director Adam Rush, Assistant City Attorney Serita R. Young, Senior Planner Sonia Pierce, Recording Secretary Sandra Calderon, Captain Phil Holder, Captain Jeff Horn.

II. PUBLIC COMMENTS (ITEMS NOT ON THE AGENDA)
Public Comment opened
No public comments

Public Comment closed

III. CONSENT CALENDAR ITEMS
1. Adopt the 2020 Planning Commission Calendar

ACTION: Motion/Second (SCHULER/BROSIOUS)
(Motion Carried 5-0) passed

IV. PUBLIC HEARINGS opened at 6:33 p.m.
1. RESOLUTION 2019-19, CONDITIONAL USE PERMIT 19-8004 DESIGN REVIEW 19-7005, AND ENVIRONMENTAL ASSESSMENT 19-1502 TO ALLOW FOR THE CONSTRUCTION AND OPERATION OF A WIRELESS TELECOMMUNICATIONS FACILITY LOCATED NORTH OF EAST RAMSEY STREET AND EAST OF NORTH PHILLIPS, AT 1165 EAST RAMSEY STREET IN THE BUSINESS PARK (BP) ZONING DISTRICT.

W. Kazimi – applicant, answered questions of the commission

Public comments
No public comments

Public comments closed

ACTION: Motion/Second
(KRICK/SANCHEZ) with the following amendment to COA No. 9:

9. Prior to final inspection, the site is required to provide a paved driveway approach, paved class 2 base driveway (revised per Planning Commission 12/4/19), paved parking
space for one vehicle and a paved class 2 base (revised per Planning Commission 12/4/19) turn around to allow maintenance vehicles to enter, park and exit the site in a forward direction.

(Motion Carried 5-0) passed


C. Henry – applicant, answered questions of the commission

Public comments opened
Captain Phil Holder, Banning PD said he understands the City does not want any loitering around any business, and if that becomes a problem, Banning Police Officers will work together with Code Enforcement to address these issues.

Public comments closed

ACTION: Motion/Second (KRICK/BROSIOUS) with the following amendments to COA’s:

15. The applicant shall provide video surveillance of all sensitive outside and inside areas of the facility with a system camera resolution of 1280 x 720 pixels; shall be transmission control protocol capable of being accessed through the internet; shall provide sound; shall record 24 hours per day at 15 frames per second; and shall have a storage capacity of 90 days in accordance with Section 17.54.110 D. of the Banning Municipal Code (revised per Planning Commission 12/4/19).

20. 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 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 (added per Planning Commission 12/4/19).

(Motion Carried 5-0) passed

3. RESOLUTION 2019-23, CONDITIONAL USE PERMIT 19-8006, AUTHORIZING A CANNABIS RETAILER AT AN EXISTING DEVELOPED PROPERTY LOCATED AT 2372 W. RAMSEY STREET (APN: 538-200-025) IN THE HIGHWAY SERVING COMMERCIAL (HSC) ZONING DISTRICT.

M. Newell – applicant, answered questions of the commission

Public comments opened
Letter from Coyne Power Sports (Attachment 1)

Public comments closed
ACTION: Motion/Second (KRICK/SANCHEZ)
With the following amendments to COA’s:

15. The applicant shall provide video surveillance of all sensitive outside and inside areas of the facility with a system camera resolution of 1280 x 720 pixels; shall be transmission control protocol capable of being accessed through the internet; shall provide sound; shall record 24 hours per day at 15 frames per second; and shall have a storage capacity of 90 days in accordance with Section 17.54.110 D. of the Banning Municipal Code (revised per Planning Commission 12/4/19).

20. 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 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 (added per Planning Commission 12/4/19).

21. Recreational Vehicle parking shall be prohibited on the project site. All existing recreational vehicles shall be removed prior to occupancy (added per Planning Commission 12/4/19).

(Motion Carried 5-0) passed

4. RESOLUTION 2019-27, ZONING TEXT AMENDMENT (ZTA) NO. 19-97505 AMENDING CHAPTER 17.3 “LANDSCAPING STANDARDS’ AND TO ADD PROVISIONS TO EXISTING ARTICLE II. “WATER CONSERVATION,” CHAPTER 17.32.090 “LANDSCAPE DOCUMENT PACKAGE” TO TITLE 17 “ZONING” OF THE BANNING MUNICIPAL CODE (BMC) TO ESTABLISH WATER EFFICIENCY STANDARDS IN COMPLIANCE WITH STATE LAW.

Public hearing opened
No public comments

Public hearing closed

ACTION: Motion/Second (KRICK/SANCHEZ)
(Motion Carried 5-0) passed


Public hearing opened
Public hearing closed
ACTION: Motion/Second (KRICK/SANCHEZ)
(Motion Carried 5-0) passed

V. PLANNING COMMISSIONER COMMENTS
Commissioner Krick wished everyone a happy new year

VI. COMMUNITY DEVELOPMENT DIRECTOR COMMENTS
Director thanked the Commission for an exciting year.
An RFP is being prepared for the comprehensive General Plan update and
a new City employee Building Official will start soon.

VII. ADJOURNMENT
Adjournment of the Planning Commission of the December 4, 2019 Meeting at 8:15 p.m.

The next regular meeting of the Banning Planning Commission is scheduled for Wednesday,
January 8, 2019, at 6:30 p.m. in the City Council Chambers.

Banning City Hall – Online www.banningca.gov
December 3rd, 2019

City of Banning, California
Planning Commission
99 E. Ramsey St.
Banning, Ca. 92220

SUBJECT: OPPOSITION TO CONDITIONAL USE PERMIT 19-8006 TO CONSIDER A PROPOSAL TO ALLOW FOR A CANNABIS RETAILER LOCATED IN THE HIGHWAY SERVING COMMERCIAL (HSC) ZONE ON REAL PROPERTY IDENTIFIED AS 3272 WEST RAMSEY ST (APN 538-200-025)

Dear Chair Eric Shaw and Commissioners of the City of Banning Planning Commission,

Coyne Powersports values its relationship with the City of Banning and appreciates its support throughout the years. To this end, I feel it is very important to share my views with the Planning Commission regarding your intention to consider the conditional use permit for a cannabis retailer right across the street from my retail store, to which I am grossly against.

Even though the City of Banning is constantly striving to provide a safe environment for its residents, my business has suffered numerous break-ins and vandalism. My concern relies on a potential for increase in crime near my retail store. Equally important, is the fact that the City of Banning does not need to increase the drug addict and homeless population anymore than it already has.

Decades of research have shown that the use of enhancing and inhibiting drugs highly increases the risk of vehicle accidents and crime. Coyne Powersports sells motor vehicles along with a retailer adjacent to us. The nearby selling of a substance that is only legal once certain conditions are met under the state of California even though they remain illegal under Federal law, increases the accessibility to a substance that presents a social and public safety concern. Consequently, the Cannabis retailer would create a negative environment and reputation in the City of Banning.

Coyne Powersports is a large employer and tax producing business for the City of Banning. I intent to continue doing business in this city, as long as measures to improve our commercial zoning take place, rather than becoming detrimental to the safety of my employees and my customers.

For all the above stated reasons, I urge the City of Banning Planning Commission to deny the conditional use permit after carefully considering the deleterious effects of allowing a cannabis retailer in such a visible and populated area.

Sincerely,

Martin D. Coyne, CEO
TO: PLANNING COMMISSION

FROM: Adam B. Rush, Community Development Director

MEETING DATE: January 15, 2020

SUBJECT: Resolution 2020-01, recommending approval of the Conditional Use Permit 19-8011 to the City Council. The Project will authorize the construction and operation of a 55-foot, free standing sign, at 300 S. Highland Springs Avenue, located in the General Commercial (GC) Zoning District.

RECOMMENDED ACTION:

Staff recommends that the Planning Commission adopt Resolution 2020-01

1. Making a determination under CEQA Guidelines that the project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 (New Construction of Small Structures) and Section 15332 (Infill Development Projects).

2. Approving Conditional Use Permit 19-8011 to authorize the construction and operation of a 55-foot, free standing sign, at 300 S. Highland Springs Avenue in the General Commercial (GC) General Plan Designation and Zoning District subject to the recommended Conditions of Approval.

APPLICANT INFORMATION:

Project Location: 300 S. Highland Springs Ave.
APN Information: 419-140-028
Project Applicant: Architectural Design & Signs
1160 Railroad Street
Corona, CA, 92882
Property Owner: Sobhy Yousef
300 S. Highland Springs Avenue
Banning, CA, 92220
REQUEST:

The applicant, Architectural Design & Signs, is requesting approval of the Conditional Use Permit to construct and operate of an operation of a 55-foot, free standing sign, at 300 S. Highland Springs Avenue in the General Commercial (GC) General Plan Designation and Zoning District subject to the recommended Conditions of Approval.

DESCRIPTION:

The project site is a 0.84-acre vacant lot. The project includes the construction of a 55-foot tall, double-faced, free standing sign at the westerly frontage of the property; which is adjacent to Highland Springs Avenue. The property is surrounded the I-10 freeway to the north and retail commercial properties on the south, east, and west consisting of a commercial neighborhood shopping center.

Land Use Summary Table

<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>Existing Mobil Gas Service Station</td>
<td>Sun Lakes Specific Plan</td>
<td>Specific Plan</td>
</tr>
<tr>
<td>South</td>
<td>Southern Pacific Railroad (RR) Right-of-Way (R/W)</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>East</td>
<td>Albertson’s Shopping Center</td>
<td>Sun Lakes Specific Plan</td>
<td>Specific Plan</td>
</tr>
<tr>
<td>West</td>
<td>Commercial</td>
<td>Commercial (City of Beaumont)</td>
<td>Commercial (City of Beaumont)</td>
</tr>
</tbody>
</table>

ANALYSIS:

Zoning

The site is located within the General Commercial (GC) Zoning District; wherein free standing signs are authorized, subject to the approval of a Conditional Use Permit (CUP) by both the Planning Commission.

Conditional Use Permit

The purpose of a Conditional Use Permit according to Banning Municipal Code Section 17.52.010 is: Conditional uses are unique and their effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location. At the time of application, a review of the location, design, configuration, and potential impact
of the proposed use shall be conducted by comparing the use to established development standards and design guidelines.

This review shall determine whether the proposed use should be permitted by weighing the public need for the benefit to be derived from the use, against any negative or undesirable impacts which it may cause. Limits which the Planning Commission might want to impose, could include restrictions on the hours of business operation; restrictions on the number of clients or patients which the business may service at any one time; increased visual and sound barriers; improved technologies or equipment which lessen any noise, light or odor emitted by the business or other use; as well as any other conditions which could help make the use more compatible with the neighborhood in which it is proposed to be located.

Additionally, the Commission may approve and/or modify a Conditional Use Permit application in whole or in part, with or without conditions, only if all of the following findings are made:

A. The proposed use is consistent with the General Plan;
B. The proposed use is conditionally permitted within the subject land use district and complies with all of the applicable provisions of this Ordinance;
C. The proposed use would not impair the integrity and character of the land use district in which it is to be located;
D. The subject site is physically suitable for the type and intensity of land use being proposed;
E. There are adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety;
F. There will not be significant harmful effects upon environmental quality; natural resources; or neighborhood characteristics;
G. The proposed location, size, design, and operating characteristics of the proposed use will not be detrimental to the public interests, health, safety, convenience, or welfare of the City.

Findings for the project are made and can be found in the attached Resolution.

Parking Requirements

Although there is no parking requirement for free standing signs and the existing service station contains adequate parking to accommodate maintenance of the proposed sign.

ENVIRONMENTAL DETERMINATION:

California Environmental Quality Act (CEQA)

In accordance with §15303 (New Construction of Small Facilities) a Class 3 Categorical Exemption and §15332 (Infill Developments) a Class 32 Categorical Exemption of the California Environmental Quality Act (CEQA), the project is being exempt from further environmental review. A Class 3 Categorical Exemption consists of construction and
location of limited numbers of new, small facilities or structures and a Class 32 Categorical Exemption consists of projects characterized as in-fill development meeting conditions described below:

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

(c) The project site has no value as habitat for endangered, rare or threatened species.

(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

(e) The site can be adequately served by all required utilities and public services.

Findings for the project are made and can be found in the attached Resolution.

MULTIPLE SPECIES HABITAT CONSERVATION PLAN (MSHCP):

The project is found to be 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.

PUBLIC COMMUNICATION

Proposed Conditional Use Permit 19-8011 and was advertised in the Record Gazette newspaper on January 3, 2020 (Attachment 6). Notice was also mailed to all property owners within 300 feet of the project site and posted in two public places. As of the date of this report, staff has not received any written comments for or against the project.

Prepared by:

Adam B. Rush, M.A., AICP
Community Development Director

Attachments:

1. Site Plans
2. Resolution 2020-01
3. Conditions of Approval
4. Notice of Exemption
5. Public Hearing Notice
ATTACHMENT 1
Site Plans
Prepared for:

Mobil of Banning

300 S. Highland Springs Avenue
Banning CA 92220
USA

From: Robin Bell
cell: 999.721.4535
email: rbell@ads.com

---

**Project Scope:**

<table>
<thead>
<tr>
<th>SIGN TYPE</th>
<th>SIGN NUMBER</th>
<th>ILLUM</th>
<th>DIMENSIONS</th>
<th>QTY</th>
<th>SQ FT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Piano - Business ID</td>
<td></td>
<td>1</td>
<td>55 Jr.</td>
<td>1</td>
<td>100.00</td>
</tr>
</tbody>
</table>

---

This drawing is preliminary and subject to change. The color, materials, and finishes depicted herein may or may not match the final product. The plans are intended for use by Mobil of Banning and its consultants. ADS is not responsible for any errors or omissions in this document. All rights reserved.
ATTACHMENT 2
Planning Commission Resolution No. 2020-01
RESOLUTION NO. 2020-01

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT 19-8011 AUTHORIZING THE CONSTRUCTION AND OPERATION OF AN 55-FOOT FREE STANDING SIGN IN THE GENERAL COMMERCIAL (GC) GENERAL PLAN DESIGNATION AND ZONING DISTRICT ON REAL PROPERTY LOCATED AT 300 S. Highland Springs Ave. RAMSEY STREET (APN 419-140-028), AND MAKING A FINDING OF EXEMPTION FROM CEQA

WHEREAS, an application for a Conditional Use Permit (CUP) has been duly filed by:

Project Location: 300 S. Highland Springs Ave.
APN Information: 419-140-028
Project Applicant: Architectural Design & Signs
1160 Railroad Street
Corona, CA, 92882
Property Owner: Sobhy Yousef
300 S. Highland Springs Avenue
Banning, CA, 92220

WHEREAS, the Planning Commission has the authority per Chapter 17 of the Banning Municipal Code to take action on Conditional Use Permit (CUP) 19-8011 authorizing an 55-foot free standing sign located in the General Commercial (GC) General Plan Designation and Zoning District; and

WHEREAS, on January 3, 2020, the City gave public notice by advertising in the Record Gazette, a newspaper of general circulation within the City of Banning, and by mailing notices to property owners within 300-feet of the project, of the holding of a public hearing at which the project would be considered; and

WHEREAS, on January 15, 2020, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to Conditional Use Permit (CUP) 19-8011 and the Planning Commission considered the environmental determination and the Project; and

WHEREAS, in accordance with the requirements of the California Environmental Quality Act (CEQA), staff analyzed Development Agreement and Conditional Use Permit (CUP) 19-8011 and determined that, pursuant to CEQA Section 15303 (New Construction of Small Structures) and Section 15332 (Infill Developments) the project is categorically exempt from review under CEQA.

NOW THEREFORE, the Planning Commission of the City of Banning does hereby find, determine, and resolve as follows:
SECTION 1: California Environmental Quality Act and Multiple Species Habitat Conservation Plan Findings. The Planning Commission of the City of Banning does hereby make the following environmental findings and determinations in connection with the approval of the project:

A. In accordance with CEQA Guidelines Section 15303 (New Construction of Small Structures), a Class 3 categorical exemption from the requirements of CEQA, the project is being exempt from further environmental review. A Class 3 categorically exempt project consists of construction and location of limited numbers of new small facilities or structures.

B. In accordance with CEQA Guidelines Section 15332 (Infill Developments), a Class 32 categorical exemption from the requirements of CEQA, the project is being exempt from further environmental review. A Class 32 categorically exempt project consists of projects characterized as infill development meeting the conditions described below:

   a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
      i. The project is consistent with the general plan designation of General Commercial and zoning regulations as required in the conditions of approval.

   b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
      i. The proposed development occurs within city limits on a project site of 0.84-acres substantially surrounded by urban uses.

   c. The project site has no value as habitat for endangered, rare or threatened species.
      i. The project site is an infill lot that has sparse vegetation, signs of continued extensive human activity, and has no known value as habitat for endangered, rare or threatened species.

   d. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
      i. The operation of the project will result in a few maintenance trips per year, emits little noise, will not affect air quality or water quality.

   e. The site can be adequately served by all required utilities and public services.
      i. All utilities are located adjacent to the site and public services, such as, Police and Fire, are provided by the City of Banning.

C. The Planning Commission has analyzed proposed Conditional Use Permit (CUP) 19-8011 and has determined, based on its own independent judgment, that the project is categorically exempt from CEQA pursuant to Section’s 15303 and 15332 of the CEQA Guidelines.
Multiple Species Habitat Conservation Plan (MSHCP). The project is found to be 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.

SECTION 2: Required Findings for Conditional Use Permit 19-8011: The Planning Commission of the City of Banning does hereby find and determine that Conditional Use Permit 19-8011 should be approved because:

REQUIRED FINDINGS FOR CONDITIONAL USE PERMIT 19-8011:

Section 17.52 of the City of Banning Zoning Ordinance (Title 17) requires each Conditional Use Permit application shall be analyzed to assure that the application is consistent with the intent and purpose of this chapter, the policies and programs of the General Plan, and the Development Standards and Guidelines of the district in which it is located. The following findings are provided in support of the approval of Conditional Use Permit 19-8011:

Finding A: The proposed use is consistent with the General Plan;

Finding of Fact: Conditional Use Permit 19-8011 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 General Commercial (GC) allows for 55-foot free standing signs subject to the approval of a Development Agreement and a Conditional Use Permit. The proposed project under Conditional Use Permit 19-8011 is adjacent to retail and office commercial uses to the north, east, and west. Further, Conditional Use Permit 19-8011 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 construction of an 55-foot free standing sign will promote business attraction and retention through commercial advertising along a highly traveled interstate freeway and will assist in providing income for the City through the generation of a franchise fee based upon a percentage of the advertising revenue.

Finding B: The proposed use is conditionally permitted within the subject land use district and complies with all the applicable provisions of this Ordinance;

Finding of Fact: The proposed 55-foot free standing sign is conditionally permitted in the General Commercial (GC) Zoning District pursuant to Section 17.36.110 and of the Zoning Ordinance and complies with all applicable provisions in the City’s Zoning Ordinance.

Finding C: The proposed use would not impair the integrity and character of the land use district in which it is to be located;
Finding of Fact: The proposed 55-foot free standing sign is conditionally authorized in the General Commercial (GC) Zoning District under Section 17.36.110 – Sign Regulations and Table 17.36.110.B.6 – Freeway-oriented freestanding signs of the Zoning Ordinance. The proposed project site, is an existing vacant lot, and the improvement of the site is designed and conditioned to complement the existing retail and General commercial character and theme of the neighborhood. The approval of the proposed an 55-foot free standing sign facility will be conditioned to require maintenance of the facility in a manner that will not interfere with the use and enjoyment of future development.

Finding D: The subject site is physically suitable for the type and intensity of land use being proposed;

Finding of Fact: The subject site is suitable for the type and intensity of a 55-foot free standing sign in that the proposed facility will be installed on a vacant lot. The subject site is designed in a way that the proposed wireless telecommunications facility will be compatible with the character of the surrounding neighborhood and the design guidelines set forth in the City's Zoning Ordinance.

Finding E: The City finds that the property is adequately supplied with purveyance of for potable water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety;

Finding of Fact: The proposed 55-foot free standing sign is non-residential in character and will place little or no additional demand upon City services or utilities, except during construction. The applicant will be conditioned to contract with the City's waste hauler for the removal of construction materials. The subject site is serviced by the City's Electrical Department.

Finding of Fact: There will not be significant harmful effects upon environmental quality; natural resources; or neighborhood characteristics;

Finding of Fact: The proposed 55-foot free standing sign will promote economic progress and increased business retention and attraction through enhanced advertising opportunities. The project has been conditioned to ensure that its function and operation will not be detrimental to the public interests, health, safety, convenience, or welfare of the City. Furthermore, the installation of the proposed 55-foot free standing sign has been determined not to have a significant effect on the environment because it is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15303 (New construction of small structures) and 15332 (Infill development projects).

Finding G: The proposed location, size, design, and operating characteristics of the proposed use will not be detrimental to the public interests, health, safety, convenience, or welfare of the City.

Finding of Fact: The proposed location, size, design, and operating characteristics of the proposed 55-foot free standing sign will promote business attraction and retention through commercial advertising along a highly traveled interstate freeway and will assist
in providing income for the City through the generation of a franchise fee based upon a percentage of the advertising revenue. The Project has been conditioned to ensure that it will not be detrimental to the public interests, health, safety, convenience, or welfare of the City. Furthermore, the installation of the proposed wireless telecommunications facility has been determined not to have a significant effect on the environment because it is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section’s 15303 (New construction of small structures) and 15332 (Infill development projects).

SECTION 4: PLANNING COMMISSION ACTION - Approval of Development Agreement and Conditional Use Permit No. 19-8011 with Conditions. Based on the foregoing, the Planning Commission of the City of Banning hereby approves Development Agreement and Conditional Use Permit No. 19-8011, subject to the recommended Conditions of Approval attached as Exhibit “A”.

PASSED, APPROVED AND ADOPTED this 15th day of January, 2020.

________________________
Eric Shaw, Chairman
Banning Planning Commission

APPROVED AS TO FORM
AND LEGAL CONTENT

________________________
Serita R. 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, 2020-02, was duly adopted by the Planning Commission of the City of Banning, California, at an adjourned regular meeting thereof held on the 15th day of January 2020, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Sandra Calderon, Recording Secretary
City of Banning, California
ATTACHMENT 3
Conditions of Approval
EXHIBIT A

* All public improvement 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 Conditional Use Permit approval shall become null and void. Additionally, if after commencement of construction work is discontinued for a period of one year the Review and Conditional Use Permit shall become null and void. Projects may be built in phases if pre-approved by the review authority. The Community Development Director may, upon a written application being filed 30 days prior to expiration and for good cause, grant a onetime extension not to exceed 12 months. Upon granting of an extension, the Community Development Director shall ensure that the Conditional Use Permit complies with all current Ordinance provisions.

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. 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.

6. Subsequent from the issuance of the Certificate of Occupancy/Final Inspection; the City shall review Conditional Use Permit (CUP) 19-8011 every two years (from the date of issuance of a certificate of occupancy) to insure compliance with the Conditions of Approval. If at any time the applicant becomes non-compliant with the Conditions of Approval, the City can reevaluate the project and make recommendations to continue, revoke, or make changes to the project approval.

7. The applicant shall comply with all Conditions of Approval imposed on the free standing sign, located at 300 S. Highland Springs Avenue and CUP 19-8011 prior to the issuance of a Certificate of Occupancy.

8. Prior to final inspection, the site is required to provide a paved driveway approach, paved driveway, paved parking space for one vehicle and a paved turn around to allow maintenance vehicles to enter, park and exit the site in a forward direction.

9. South Coast Air Quality Management District approval is required for the Diesel Generator.
10. The free standing sign shall be maintained throughout the life of the project. All materials, paint, display face, electrical, lighting, and other similar items as determined by the Community Development Director, shall be kept in good working order and maintained for the life of the permit. **NOTE: Failure to comply may result in code enforcement action and/or revocation of the CUP.**

11. The free standing sign and associated equipment shall be enclosed within a six-foot-tall decorative block wall with tubular steel gate. The decorative block wall shall be installed with anti-graffiti coating during installation and prior to the final inspection of said wall.

12. There shall be no storage of vehicles, equipment, or any other materials in the parking or landscaping areas of the project.

13. The applicant shall remove all graffiti immediately or within 24 hours of notice from the City.

14. 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.

15. There shall be no visible storage of any items including garbage, building, or manufacturing materials or junk, in any portion of the project site.

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

**Public Works Department**

17. The telecommunications equipment shall not cause disturbances to the City's existing SCADA telemetry communications network.

**Electric Utility Department**

1. The electric utility approves with attached comments/conditions.

2. The new proposed sign is near or at the location of electric utility underground lines and maybe other underground utilities.

3. The developer must complete the following before the sign location is approved by the utility.

4. The developer must follow the Underground Service Alert of Southern California requirements so the utilities can locate and mark their underground lines.

5. After all utilities have completed marking of the lines, the developer will be required to hand dig and expose all underground utilities.
6. While all lines are exposed the developer shall schedule with the utility to meet onsite so the sign location can be approved.

7. The location shall be a minimum of 10’ feet from the closest side of the proposed sign footing to the electric utility underground lines.

**Fire Department**

18. Provide a sign with emergency contact information.

19. Install a Fire Extinguisher.

20. Order Knox Box, provide key to gate.

21. Schedule a Fire final inspection.

**Prior to Issuance of Building Permit**

**Prior to the Issuance of Certificate of Occupancy.**

**Community Development Department**

22. 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.

**Building and Safety Department**

23. The applicant shall develop the project site in compliance with all current model codes. The applicant shall design all project plans in compliance with the latest editions of the California Building Codes, as adopted by the City of Banning.

24. Separate submittals and building permits are required for all accessory structures such as, but not limited to, ground mounted equipment enclosures.

***END***
ATTACHMENT 4
Notice of Exemption
Notice of Exemption

To: □ Office of Planning and Research
P.O. Box 3044, Room 212
Sacramento, CA 95812-3044

☑ County Clerk
County of Riverside
P.O. Box 751
Riverside, CA 92502-0751

From:
City of Banning
99 E. Ramsey Street
P.O. Box 998
Banning, CA 92220

Project Title:
Conditional Use Permit 19-8011

Project Applicant: Architectural Design & Signs, 1160 Railroad Street, Corona, CA, 92882

Project Location – Specific:
300 S. Highland Springs, Banning, CA, 92220. Assessor’s Parcel Number 419-140-028

Project Location – City: City of Banning
Project Location – County: Riverside County

Description of Nature, Purpose and Beneficiaries of Project:
Free Standing Sign

Name of Public Agency Approving Project: City of Banning

Name of Person or Agency Carrying Out Project: Architectural Design and Signs

Exempt Status: (check one)
☐ Ministerial (Sec. 21080(b)(1); 15268);
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
☒ Categorical Exemption. State type and section number: Section’s 15303 and 15332
☐ Statutory Exemptions. State code number:

Reasons why project is exempt:
The project site is a 0.13-acre vacant lot. The project includes the construction of an 80-foot tall, double-faced, digital sign located at the southerly frontage of the property, which is adjacent to Livingston Street. The property is surrounded the I-10 freeway to the south and commercial properties on the north, east, and west property lines; which rarely in excess of two stories and no significant effects (15332)

Lead Agency: City of Banning
Contact Person: Adam Rush
Area Code/Telephone/Extension: (951) 922-3131

If filed by applicant:
1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature: ____________________________ Date: January 10, 2020 Title: Community Development Director

☒ Signed by Lead Agency
☐ Signed by Applicant

Date received for filing at OPR: ____________________________

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.
ATTACHMENT 5
Public Hearing Notice
NOTICE OF INTENT TO MAKE A DETERMINATION OF EXEMPTION AND NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED CONDITIONAL USE PERMIT (CUP) 19-8011 (MOBIL GAS STATION) AUTHORIZING ONE PLYON SIGN OF MAXIMUM FIFTY-FIVE (55') FEET IN HEIGHT AND A MAXIMUM DISPLAY FACE OF 100 SQUARE FEET (6'3" X 16''), LOCATED AT 300 HIGHLAND SPRINGS AVENUE (APN: 419-140-028)

NOTICE IS HEREBY GIVEN of a public hearing before the City of Banning Planning Commission, to be held on Wednesday, January 15, at 6:30 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider making a determination of exemption and conduct a public hearing to consider proposed CUP 19-8011 (Mobil Gas Station) authorizing one pylon sign of fifty-five (55') feet in height and a maximum display face of 100 square feet (6'3" x 16'') and located at 300 Highland Springs Avenue (APN: 419-140-028).

Information regarding the Notice of Exemption (NOE) and Conditional Use Permit (CUP) 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 https://banningca.gov.

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.

Parties that chose to 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

Adam Rush, M.A., AICP
Community Development Director

Dated: December 30, 2019
Publish: January 3, 2020
300-foot buffer

1" = 640 ft

This map may represent a visual display of inferred geographic information. Data provided here is not a guarantee of accurate field conditions. To be sure of complete accuracy, please contact the recipient directly for confirmation.
Century Group Newspapers:  
Fontana Herald News, Record Gazette,  
Highland Community News,  
Yucaipa/Calimesa News Mirror,  
Redlands Community News  

Phone:  
Fax:  
www.centurygroup.com  

LEGAL ADS  
CITY OF BANNING LEGALS/Accounts Payable  
P.O. BOX 998  
BANNING, CA 92220  
(951)922-3117  

Class Liner Ad #00172023 Summary:  
Slug Line: 172023 CUP 19-8011  
Net Cost $175.20  
Prepaid Amount $0.00  
Amount Due $175.20  

Order Detail:  

<table>
<thead>
<tr>
<th>Publication</th>
<th>Run Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>4015 Banning Record Gazette</td>
<td>1/3/20 - 1/3/20</td>
</tr>
</tbody>
</table>

City of Banning  
99 E. Ramsey Street  
P.O. Box 998  
Banning, CA  
92220-0998  
(951) 922-3125  
Fax(951) 922-3129  

COMMUNITY  
DEVELOPMENT  
DEPARTMENT  
NOTICE OF INTENT TO  
MAKE A DETERMINATION  
OF EXEMPTION AND NO- 
TICE OF PUBLIC HEAR- 
ING TO CONSIDER PRO- 
POSED CONDITIONAL  
USE PERMIT (CUP)  
19-8011 (MOBIL GAS STA-
TION AUTHORIZING ONE
PYLON SIGN OF MAXI-
MUM FIFTY-FIVE (55)
FEET IN HEIGHT AND A
MAXIMUM DISPLAY FACE
OF 100 SQUARE FEET (63
X 16), LOCATED AT 300
HIGHLAND SPRINGS
AVENUE (APN:
419-140-028).
NOTICE IS HEREBY
GIVEN of a public hearing
before the City of Banning
Planning Commission, to
be held on Wednesday,
January 15, at 6:30 p.m. in
the Council Chambers, City
Hall, 99 East Ramsey
Street, Banning, California,
to consider making a deter-
mination of exemption and
conduct a public hearing to
consider proposed CUP
19-8011 (Mobil Gas Sta-
tion) authorizing one pylon
sign of fifty-five (55) feet in
height and a maximum dis-
play face of 100 square feet
(63 x 16) and located at
300 Highland Springs Aven-
ue (APN: 419-140-028).
Information regarding the
Notice of Exemption (NOE)
and Conditional Use Permit
(CUP) can be obtained by
contacting the City's Com-
munity Development De-
partment 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
https://banningca.gov.
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 Develop-
ment Department, City of
Banning at P.O. Box 998,
Banning, California, 92220.
Parties that chose to chal-
lenge any decision regard-
ing the above proposal in
court, you may be limited to

http://71.177.253.90:8090/AMPWeb/TemporaryItems/3DD620F2F6329609CFAE758863115286/00000027.html
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
Adam Rush, M.A., AICP
Community Development Director
Dated: December 30, 2019
Publish: January 3, 2020
Published in
The Record Gazette
No. 172023
01.03/2020
TO: PLANNING COMMISSION

FROM: Adam B. Rush, Community Development Director

MEETING DATE: January 15, 2020

SUBJECT: Resolution 2020-02, recommending approval of the Development Agreement and Conditional Use Permit 19-8009 to the City Council. The Project will authorize the construction and operation of an Electronic Message Center, at 583 W. Livingston Street in the Downtown Commercial (DC) Zoning District.

RECOMMENDED ACTION:

Staff recommends that the Planning Commission adopt Resolution 2020-02

1. Making a determination under CEQA Guidelines that the project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 (New Construction of Small Structures) and Section 15332 (Infill Development Projects).

2. Approving the Development Agreement and Conditional Use Permit 19-8009 to authorize the construction and operation of an Electronic Message Center, at 583 W. Livingston Street in the Downtown Commercial (DC) General Plan Designation and Zoning District subject to the recommended Conditions of Approval.

APPLICANT INFORMATION:

Project Location: 583 W. Livingston Street

APN Information: 540-192-005

Project Applicant: AMG Signs Company, Inc.
359 North Sheridan Street
Corona, CA, 92880

Property Owner: Rami Khouri
18957 Van Buren Blvd. Suite C
Riverside, CA, 92508
BACKGROUND:

At the Planning Commission meeting of May 1, 2019, the Planning Commission considered a proposed Zoning Text Amendment ("Amendment") that authorized Electronic Message Centers ("digital sign") within the Downtown Commercial Zoning District. At that meeting, the Planning Commission reviewed, and ultimately recommended approval to the City Council to adopt the Amendment. The zoning modification would authorize a digital sign subject to a Conditional Use Permit (CUP) and a Development Agreement (DA) or Lease Agreement (LA) because of City some owned property within the Downtown Commercial Zoning District. The Planning Commission version of the Amendment set forth a height limitation of 30-feet and a maximum sign face of 200 square-feet.

At a previous meeting of the Planning Commission, which occurred at April 9th Planning Commission meeting, there was discussion of potential operators and locations of the proposed signed within the district. Potential electronic signs cannot be 1000 feet of another electronic sign. The Conditional Use Permit, currently before the Commission, is required to obtain Caltrans approval prior to the issuance of a building permit.

The Amendment was ultimately forwarded to the City Council for consideration and was placed on the June 11, 2019 City Council meeting agenda. The Council conducted a public hearing and solicited testimony from the public, the business community, and developers of possible digital signs. During testimony provided by Mr. Alex Garcia of AMG Signs, the Council was informed that the minimum height and size – for a digital billboard to be economically viable along freeway frontage – is 80-feet in height and a single-side sign face of 1,200 square feet. The Conditional Use Permit currently before the Commission meets, but does not exceed, these standards.

REQUEST:

The applicant, AMG Signs, is requesting approval of a Development Agreement Conditional Use Permit to construct and operate of an Electronic Message Center, at 583 W. Livingston Street in the Downtown Commercial (DC) Zoning District.

DESCRIPTION:

The project site is a 0.13-acre vacant lot. The project includes the construction of an 80-foot tall, double-faced, digital sign located at the southerly frontage of the property; which is adjacent to Livingston Street. The property is surrounded the I-10 freeway to the south and commercial properties on the north, east, and west property lines; which rarely in excess of two stories.
Land Use Summary Table

<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>Commercial</td>
<td>Downtown Commercial (DC)</td>
<td>Downtown Commercial (DC)</td>
</tr>
<tr>
<td>South</td>
<td>Caltrans R/W</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>East</td>
<td>Commercial</td>
<td>Downtown Commercial (DC)</td>
<td>Downtown Commercial (DC)</td>
</tr>
<tr>
<td>West</td>
<td>Commercial</td>
<td>Downtown Commercial (DC)</td>
<td>Downtown Commercial (DC)</td>
</tr>
</tbody>
</table>

**ANALYSIS:**

**Zoning**

The site is located within the Downtown Commercial (DC) Zoning District, wherein Electronic Message Centers are authorized, subject to the approval of a Conditional Use Permit (CUP) and Development Agreement (DA) by both the Planning Commission and City Council.

These zoning modifications were presented to the City Council, during a regularly scheduled public meeting on June 11, 2019 and were subsequently adopted on June 25, 2019, making them effective on July 24, 2019.

The CUP enclosed herein is the first application to be submitted under the proposed zoning requirements.

**Development Agreement**

The purpose of a Development Agreement according to Banning Municipal Code Section 17.60.010 is: *These provisions establish procedures and requirements for the consideration of Development Agreements between property owners and the City. It is intended that the provisions of this chapter shall be fully consistent, and in full compliance, with the provisions of Article 2.5 of Chapter 4 of Division 1 of Title 7 (commencing with Section 65864) of the California Government Code, and shall be so construed.*
Additionally, the Commission may recommend that the City Council approve or Conditionally Approve a Development Agreement application in whole or in part only if all of the following findings are made:

A. The proposed use is consistent with the General Plan;
B. The proposed use is consistent with the any applicable Specific Plans;
C. The proposed use is consistent with the Zoning Ordinance
   . The proposed use will promote the welfare and public interest of the City

Findings for the project are made and can be found in the attached Resolution.

Conditional Use Permit

The purpose of a Conditional Use Permit according to Banning Municipal Code Section 17.52.010 is: Conditional uses are unique and their effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location. At the time of application, a review of the location, design, configuration, and potential impact of the proposed use shall be conducted by comparing the use to established development standards and design guidelines.

This review shall determine whether the proposed use should be permitted by weighing the public need for the benefit to be derived from the use, against any negative or undesirable impacts which it may cause. Limits which the Planning Commission might want to impose, could include restrictions on the hours of business operation; restrictions on the number of clients or patients which the business may service at any one time; increased visual and sound barriers; improved technologies or equipment which lessen any noise, light or odor emitted by the business or other use; as well as any other conditions which could help make the use more compatible with the neighborhood in which it is proposed to be located.

Additionally, the Commission may approve and/or modify a Conditional Use Permit application in whole or in part, with or without conditions, only if all of the following findings are made:

A. The proposed use is consistent with the General Plan;
B. The proposed use is conditionally permitted within the subject land use district and complies with all of the applicable provisions of this Ordinance;
C. The proposed use would not impair the integrity and character of the land use district in which it is to be located;
D. The subject site is physically suitable for the type and intensity of land use being proposed;
E. There are adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety;
F. There will not be significant harmful effects upon environmental quality; natural resources; or neighborhood characteristics;
G. The proposed location, size, design, and operating characteristics of the proposed use will not be detrimental to the public interests, health, safety, convenience, or welfare of the City.

Findings for the project are made and can be found in the attached Resolution.

Parking Requirements

Although there is no parking requirement for Electronic Message Centers, a paved access and at least one paved parking space and turn around shall be required for maintenance vehicles.

ENVIRONMENTAL DETERMINATION:

California Environmental Quality Act (CEQA)

In accordance with §15303 (New Construction of Small Facilities) a Class 3 Categorical Exemption and §15332 (Infill Developments) a Class 32 Categorical Exemption of the California Environmental Quality Act (CEQA), the project is being exempt from further environmental review. A Class 3 Categorical Exemption consists of construction and location of limited numbers of new, small facilities or structures and a Class 32 Categorical Exemption consists of projects characterized as in-fill development meeting conditions described below:

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

(c) The project site has no value as habitat for endangered, rare or threatened species.

(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

(e) The site can be adequately served by all required utilities and public services.

Findings for the project are made and can be found in the attached Resolution.

MULTIPLE SPECIES HABITAT CONSERVATION PLAN (MSHCP):

The project is found to be 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.
PUBLIC COMMUNICATION

Proposed Conditional Use Permit 19-8009 and was advertised in the Record Gazette newspaper on January 3, 2020 (Attachment 6). Notice was also mailed to all property owners within 300 feet of the project site and posted in two public places. As of the date of this report, staff has not received any written comments for or against the project.

Prepared by:

___________________________
Adam B. Rush, M.A., AICP
Community Development Director

Attachments:

1. Site Plans
2. Resolution 2020-02
3. Development Agreement
4. Conditions of Approval
5. Notice of Exemption
6. Public Hearing Notice
ATTACHMENT 1
Site Plans
ATTACHMENT 2
Planning Commission Resolution No. 2020-02
RESOLUTION NO. 2020-02

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN AMG SIGNS COMPANY, LLC AND THE CITY OF BANNING AND CONDITIONAL USE PERMIT 19-8009 AUTHORIZING THE CONSTRUCTION AND OPERATION OF AN ELECTRONIC MESSAGE CENTER IN THE DOWNTOWN COMMERCIAL (DC) GENERAL PLAN DESIGNATION AND ZONING DISTRICT ON REAL PROPERTY LOCATED AT 583 WEST LIVINGSTON STREET RAMSEY STREET (APN 540-192-005), AND MAKING A FINDING OF EXEMPTION FROM CEQA

WHEREAS, an application for a Development Agreement (DA) and Conditional Use Permit (CUP) has been duly filed by:

Project Location: 583 W. Livingston Street

APN Information: 540-192-005

Project Applicant: AMG Signs Company, Inc.
359 North Sheridan Street
Corona, CA, 92880

Property Owner: Rami Khouri
18957 Van Buren Blvd. Suite C
Riverside, CA, 92508

WHEREAS, the Planning Commission has the authority per Chapter 17 of the Banning Municipal Code to take action on Development Agreement and Conditional Use Permit (CUP) 19-8009 authorizing an Electronic Message Center located in the Downtown Commercial (DC) General Plan Designation and Zoning District; and

WHEREAS, on January 3, 2020, the City gave public notice by advertising in the Record Gazette, a newspaper of general circulation within the City of Banning, and by mailing notices to property owners within 300-feet of the project, of the holding of a public hearing at which the project would be considered; and

WHEREAS, on January 15, 2020, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to Development Agreement and Conditional Use Permit (CUP) 19-8009 and the Planning Commission considered the environmental determination and the Project; and

WHEREAS, in accordance with the requirements of the California Environmental Quality Act (CEQA), staff analyzed Development Agreement and Conditional Use Permit (CUP) 19-8009 and determined that, pursuant to CEQA Section 15303 (New Construction
of Small Structures) and Section 15332 (Infill Developments) the project is categorically exempt from review under CEQA.

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

SECTION 1: California Environmental Quality Act and Multiple Species Habitat Conservation Plan Findings. The Planning Commission of the City of Banning does hereby make the following environmental findings and determinations in connection with the approval of the project:

A. In accordance with CEQA Guidelines Section 15303 (New Construction of Small Structures), a Class 3 categorical exemption from the requirements of CEQA, the project is being exempt from further environmental review. A Class 3 categorically exempt project consists of construction and location of limited numbers of new small facilities or structures.

B. In accordance with CEQA Guidelines Section 15332 (Infill Developments), a Class 32 categorical exemption from the requirements of CEQA, the project is being exempt from further environmental review. A Class 32 categorically exempt project consists of projects characterized as infill development meeting the conditions described below:

   a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
      i. The project is consistent with the general plan designation of Downtown Commercial and zoning regulations as required in the conditions of approval.
   b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
      i. The proposed development occurs within city limits on a project site of 0.13 -acres substantially surrounded by urban uses.
   c. The project site has no value as habitat for endangered, rare or threatened species.
      i. The project site is an infill lot that has sparse vegetation, signs of continued extensive human activity, and has no known value as habitat for endangered, rare or threatened species.
   d. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
      i. The operation of the project will result in a few maintenance trips per year, emits little noise, will not affect air quality or water quality.
   e. The site can be adequately served by all required utilities and public services.
      i. All utilities are located adjacent to the site and public services, such as, Police and Fire, are provided by the City of Banning.
C. The Planning Commission has analyzed proposed Development Agreement and Conditional Use Permit (CUP) 19-8009 and has determined, based on its own independent judgment, that the project is categorically exempt from CEQA pursuant to Section's 15303 and 15332 of the CEQA Guidelines.

Multiple Species Habitat Conservation Plan (MSHCP). The project is found to be 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.

SECTION 2: Required Findings for Conditional Use Permit 19-8009: The Planning Commission of the City of Banning does hereby find and determine that Conditional Use Permit 19-8009 should be approved because:

REQUIRED FINDINGS FOR DEVELOPMENT AGREEMENT:

Section 17.60 of the City of Banning Zoning Ordinance (Title 17) requires each Development Agreement application shall be analyzed to assure that the application is consistent with the intent and purpose of this chapter, the policies and programs of the General Plan, consistent with applicable Specific Plans and will promote the welfare and public interest of the City. The following findings are provided in support of the approval of the Development Agreement.

Finding A: The proposed use is consistent with the General Plan and any applicable Specific Plans;

Finding of Fact: The Development Agreement 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 Downtown Commercial (DC) allows for Electronic Message Centers subject to the approval of a Development Agreement and a Conditional Use Permit. The proposed project under Development Agreement will promote the economic vitality and produce enhance business attraction and retention within the downtown area of the City.

Finding B: The Development Agreement is consistent with the Zoning Ordinance;

Finding of Fact: The proposed Electronic Message Center is conditionally permitted in the Downtown Commercial (DC) Zoning District pursuant to Section 17.36.110 and subject to a Conditional Use Permit which is being processed concurrently with this Development Agreement. The Development Agreement and Conditional Use Permit comply with all applicable provisions in the City's Zoning Ordinance.

Finding C: The proposed location, size, design, and operating characteristics of the proposed use will promote the general welfare and public interest of the City.

Finding of Fact: The proposed location, size, design, and operating characteristics of the proposed Electronic Message Center will promote business attraction and retention
through commercial advertising along a highly traveled interstate freeway and will assist in providing income for the City through the generation of a franchise fee based upon a percentage of the advertising revenue. The Project has been conditioned to ensure that it will not be detrimental to the public interests, health, safety, convenience, or welfare of the City. Furthermore, the installation of the proposed Electronic Message Center has been determined not to have a significant effect on the environment because it is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section’s 15303 (New construction of small structures) and 15332 (Infill development projects).

REQUIRED FINDINGS FOR CONDITIONAL USE PERMIT 19-8009:

Section 17.52 of the City of Banning Zoning Ordinance (Title 17) requires each Conditional Use Permit application shall be analyzed to assure that the application is consistent with the intent and purpose of this chapter, the policies and programs of the General Plan, and the Development Standards and Guidelines of the district in which it is located. The following findings are provided in support of the approval of Conditional Use Permit 19-8009:

Finding A: The proposed use is consistent with the General Plan;

Finding of Fact: Conditional Use Permit 19-8009 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 Downtown Commercial (DC) allows for Electronic Message Centers subject to the approval of a Development Agreement and a Conditional Use Permit. The proposed project under Conditional Use Permit 19-8009 is adjacent to retail and office commercial uses to the north, east, and west. Further, Conditional Use Permit 19-8009 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 construction of an Electronic Message Center will promote business attraction and retention through commercial advertising along a highly traveled interstate freeway and will assist in providing income for the City through the generation of a franchise fee based upon a percentage of the advertising revenue.

Finding B: The proposed use is conditionally permitted within the subject land use district and complies with all the applicable provisions of this Ordinance;

Finding of Fact: The proposed Electronic Message Center is conditionally permitted in the Downtown Commercial (DC) Zoning District pursuant to Section 17.36.110 and of the Zoning Ordinance and complies with all applicable provisions in the City’s Zoning Ordinance.

Finding C: The proposed use would not impair the integrity and character of the land use district in which it is to be located;
Finding of Fact: The proposed Electronic Message Center is conditionally authorized in the Downtown Commercial (DC) Zoning District under Section 17.36.110 – Sign Regulations and Table 17.36.110.B.6 – Freeway-oriented freestanding signs of the Zoning Ordinance. The proposed project site, is an existing vacant lot, and the improvement of the site is designed and conditioned to complement the existing retail and downtown commercial character and theme of the neighborhood. The approval of the proposed an Electronic Message Center facility will be conditioned to require maintenance of the facility in a manner that will not interfere with the use and enjoyment of future development.

Finding D: The subject site is physically suitable for the type and intensity of land use being proposed;

Finding of Fact: The subject site is suitable for the type and intensity of an Electronic Message Center in that the proposed facility will be installed on a vacant lot. The subject site is designed in a way that the proposed electronic message center facility will be compatible with the character of the surrounding neighborhood and the design guidelines set forth in the City’s Zoning Ordinance.

Finding E: The City finds that the property is adequately supplied with purveyance of for potable water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety;

Finding of Fact: The proposed Electronic Message Center is non-residential in character and will place little or no additional demand upon City services or utilities, except during construction. The applicant will be conditioned to contract with the City’s waste hauler for the removal of construction materials. The subject site is serviced by the City’s Electrical Department.

Finding of Fact: There will not be significant harmful effects upon environmental quality; natural resources; or neighborhood characteristics;

Finding of Fact: The proposed Electronic Message Center will promote economic progress and increased business retention and attraction through enhanced advertising opportunities. The project has been conditioned to ensure that its function and operation will not be detrimental to the public interests, health, safety, convenience, or welfare of the City. Furthermore, the installation of the proposed Electronic Message Center has been determined not to have a significant effect on the environment because it is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section’s 15303 (New construction of small structures) and 15332 (Infill development projects).

Finding G: The proposed location, size, design, and operating characteristics of the proposed use will not be detrimental to the public interests, health, safety, convenience, or welfare of the City.

Finding of Fact: The proposed location, size, design, and operating characteristics of the proposed Electronic Message Center will promote business attraction and retention through commercial advertising along a highly traveled interstate freeway and will assist
in providing income for the City through the generation of a franchise fee based upon a percentage of the advertising revenue. The Project has been conditioned to ensure that it will not be detrimental to the public interests, health, safety, convenience, or welfare of the City. Furthermore, the installation of the proposed electronic message center has been determined not to have a significant effect on the environment because it is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section's 15303 (New construction of small structures) and 15332 (Infill development projects).

SECTION 4: PLANNING COMMISSION ACTION - Approval of Development Agreement and Conditional Use Permit No. 19-8009 with Conditions. Based on the foregoing, the Planning Commission of the City of Banning hereby approves Development Agreement and Conditional Use Permit No. 19-8009, subject to the recommended Conditions of Approval attached as Exhibit "A".

PASSED, APPROVED AND ADOPTED this 15th day of January, 2020.

Eric Shaw, Chairman
Banning Planning Commission

APPROVED AS TO FORM
AND LEGAL CONTENT

Serita R. 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, 2020-02, was duly adopted by the Planning Commission of the City of Banning, California, at an adjourned regular meeting thereof held on the 15th day of January 2020, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

_________________________________
Sandra Calderon, Recording Secretary
City of Banning, California
ATTACHMENT 3
Development Agreement
Recorded at request of
CITY OF BANNING

When recorded return to

DEVELOPMENT AGREEMENT NO.

A DEVELOPMENT AGREEMENT BETWEEN

CITY OF BANNING

AND

AMG OUTDOOR ADVERTISING, INC.

Conditional Use Permit (CUP) No. _______ and Change of Zone
(CZ) No. _______.

11303-0026\2364325v2.doc
# TABLE OF CONTENTS

**RECITALS** ...........................................................................................................................................

**COVENANTS** .........................................................................................................................................

1. **DEFINITIONS AND EXHIBITS** ........................................................................................................
   
   1.1 Definitions ........................................................................................................................................
   
   1.1.1 “Agreement” .................................................................................................................................
   
   1.1.2 “CITY” .............................................................................................................................................
   
   1.1.3 “Development” ...............................................................................................................................
   
   1.1.4 “Development Approvals” ............................................................................................................
   
   1.1.5 “Development Exaction” ..............................................................................................................
   
   1.1.6 “Development Plan” ......................................................................................................................
   
   1.1.7 “Effective Date” .............................................................................................................................
   
   1.1.8 “Existing Development Approvals” ..............................................................................................
   
   1.1.9 “Existing Land Use Regulations” .................................................................................................
   
   1.1.10 “Fiscal Year” .................................................................................................................................
   
   1.1.11 “Land Use Regulations” ............................................................................................................... 
   
   1.1.12 “Local Sales and Use Taxes” .........................................................................................................
   
   1.1.13 “Mortgagee” ....................................................................................................................................
   
   1.1.14 “OWNER” ......................................................................................................................................
   
   1.1.15 “Project” ....................................................................................................................................... 
   
   1.1.16 “Property” .....................................................................................................................................
1.1.17 "Reservations of Authority" .................................................................
1.1.18 "Billboard Site Plan" ...........................................................................
1.1.19 "Billboard Site Plan Net Acreage" ......................................................
1.1.20 "Subsequent Development Approvals" .................................................
1.1.21 "Subsequent Land Use Regulations" ....................................................
1.1.22 "Transfer"

1.2 Exhibits ......................................................................................................

2. GENERAL PROVISIONS ............................................................................
2.1 Binding Effect of Agreement ....................................................................
2.2 Ownership of Property ...........................................................................
2.3 Term ........................................................................................................
2.4 Transfer ...................................................................................................
2.4.1 Right of Transfer ...................................................................................
2.4.2 Release of Transferring Owner ..............................................................
2.4.3 Subsequent Transfer ............................................................................
2.5 Amendment or Cancellation of Agreement ..............................................
2.6 Termination ..............................................................................................
2.7 Notices .....................................................................................................

3. DEVELOPMENT OF THE PROPERTY ....................................................
3.1 Rights to Develop ....................................................................................
3.2 Effect of Agreement on Land Use Regulations ........................................
3.3 Timing of Development .........................................................................
3.4 Changes and Amendments

3.5 Reservations of Authority

3.5.1 Limitations, Reservations and Exceptions

3.5.2 Subsequent Development Approvals

3.5.3 Modification or Suspension by State or Federal Law

3.5.4 Intent

3.6 Public Works

3.7 Provision of Real Property Interests by CITY

3.8 Regulation by Other Public Agencies

3.9 Tentative Tract Map Extension

3.10 Vesting Tentative Maps

4. PUBLIC BENEFITS

4.1 Intent

4.2 Local Sales and Use Taxes

4.3 Discount to Local Businesses

4.4 Name of City and Use of Sign for Public Service Announcements and to Publicize Local Events and Programs

5. FINANCING OF PUBLIC IMPROVEMENTS

6. REVIEW FOR COMPLIANCE

6.1 Annual Review

6.2 Special Review

6.3 Procedure
6.4 Proceedings Upon Modification or Termination

6.5 Hearing on Modification or Termination

6.6 Certificate of Agreement Compliance

7. INCORPORATION AND ANNEXATION

7.1 Intent

7.2 Incorporation

7.3 Annexation

8. DEFAULT AND REMEDIES

8.1 Remedies in General

8.2 Specific Performance

8.3 General Release

8.4 Termination or Modification of Agreement for Default of OWNER

8.5 Termination of Agreement for Default of CITY

8.6 Attorneys’ Fees

9. THIRD PARTY LITIGATION

9.1 General Plan Litigation

9.2 Third Party Litigation Concerning Agreement

9.3 Indemnity

9.4 Environment Assurances

9.5 Reservation of Rights

9.6 Survival

10. MORTGAGEE PROTECTION

11. MISCELLANEOUS PROVISIONS
| 11.1 | Recordation of Agreement |
| 11.2 | Entire Agreement |
| 11.3 | Severability |
| 11.4 | Interpretation and Governing Law |
| 11.5 | Section Headings |
| 11.6 | General and Number |
| 11.7 | Joint and Several Obligations |
| 11.8 | Time of Essence |
| 11.9 | Waiver |
| 11.10 | No Third Party Beneficiaries |
| 11.11 | Force Majeure |
| 11.12 | Mutual Covenants |
| 11.13 | Successors in Interest |
| 11.14 | Counterparts |
| 11.15 | Jurisdiction and Venue |
| 11.16 | Project as a Private Undertaking |
| 11.17 | Further Actions and Instruments |
| 11.18 | Eminent Domain |
| 11.19 | Agent for Service of Process |
| 11.20 | Designation of CITY Officials |
| 11.21 | Authority to Execute |

SIGNATURES
DEVELOPMENT AGREEMENT NO.

This Development Agreement (hereinafter "Agreement") is entered into effective on the date it is recorded with the Riverside County Clerk-Recorder (hereinafter the "Effective Date") by and among the CITY OF BANNING (hereinafter "CITY"), a California municipal corporation, and the persons and entities listed below (hereinafter "OWNER"): AMG OUTDOOR, INC., a __________ corporation

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Article 11, Section 7 of the California Constitution and Section 65864, et seq. of the California Government Code; and,

WHEREAS, CITY has adopted Procedures and Requirements of the CITY OF BANNING For the Consideration of Development Agreements (hereinafter "Procedures and Requirements"), pursuant to Section 65865 of the Government Code, which procedures are found in Chapter 17.60 of the Banning Municipal Code; and,

WHEREAS, OWNER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with the Procedures and Requirements of CITY; and,

WHEREAS, by entering into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY with respect to the Project and the Property that is the subject of this Agreement; and,

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY and the City Council and have been found to be fair, just and reasonable; and,

WHEREAS, the best interests of the citizens of the CITY and the public health, safety and welfare will be served by entering into this Agreement; and,

WHEREAS, an Initial Study has been prepared for the Project and this Agreement pursuant to the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.), and the City Council has approved _________ in connection therewith; and,

WHEREAS, this Agreement and the Project are consistent with the CITY’s General Plan and any specific plan applicable thereto; and,

WHEREAS, the Planning Commission has the authority per Chapter 17 of the Banning Municipal Code to take action on Development Agreement and Conditional Use Permit (CUP) 19-8009 authorizing an Electronic Message Center located in the Downtown Commercial
(DC) General Plan Designation and Zoning District; and

WHEREAS, on January 3, 2020, the City gave public notice by advertising in the Record Gazette, a newspaper of general circulation within the City of Banning, and by mailing notices to property owners within 300-feet of the project, of the holding of a public hearing at which the project would be considered; and

WHEREAS, on January 15, 2020, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to Development Agreement and Conditional Use Permit (CUP) 19-8009 and the Planning Commission considered the environmental determination and the Project; and

WHEREAS, in accordance with the requirements of the California Environmental Quality Act (CEQA), staff analyzed Development Agreement and Conditional Use Permit (CUP) 19-8009 and determined that, pursuant to CEQA Section 15303 (New Construction of Small Structures) and Section 15332 (Infill Developments) the project is categorically exempt from review under CEQA.

WHEREAS, this Agreement will confer substantial private benefits on OWNER by granting vested rights to develop the Property in accordance with the provisions of this Agreement; and

WHEREAS, development of the Property in accordance with this Agreement will provide substantial benefits to CITY, including [insert summary of benefits to City] and will further important policies and goals of CITY; and,

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Sections 65864, et seq. of the Government Code are intended; and,

WHEREAS, OWNER has incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and,

WHEREAS, OWNER has incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

AGREEMENT
NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS AND EXHIBITS**

1.1 **Definitions.** The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "CITY" means the CITY OF BANNING, a California municipal corporation and general law city of the State of California.

1.1.3 "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. When authorized by a Subsequent Development Approval as provided by this Agreement, "development" includes the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.4 "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

   (a)    Zone Change No. ____;
 (b)    Conditional Use Permit No. ____;
   (c)    Grading and building permits;
   (d)    Electrical and Misc. Permits.

1.1.5 "Development Exaction" means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.6 "Development Plan" means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.7 "Effective Date" means the date this Agreement is recorded with the CITY Recorder.

1.1.8 "Existing Development Approvals" means all Development Approvals approved or issued prior to the Effective Date. Existing Development Approvals includes the Development Approvals incorporated herein as Exhibit "C" and all other Development
Approvals which are a matter of public record on the Effective Date.

1.1.9 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations includes the Land Use Regulations incorporated herein as Exhibit "D" and all other Land Use Regulations which are a matter of public record on the Effective Date.

1.1.10 "Fiscal Year" means the period beginning on July 1 of each year and ending on the next succeeding June 30.

1.1.11 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings and structures, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the property. "Land Use Regulations" does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

(a) The conduct of businesses, professions, and occupations;
(b) Taxes and assessments;
(c) The control and abatement of nuisances;
(d) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property;
(e) The exercise of the power of eminent domain.

1.1.12 "Local Sales and Use Taxes" means the one percent sales and use taxes imposed pursuant to and governed by the Bradley-Burns Uniform Local Sales and Use Tax Law, Revenue and Taxation Code Section 7200 et seq.

1.1.13 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.14 "OWNER" means the persons and entities listed as OWNER on the first page of this Agreement and their successors in interest to all or any part of the Property.

1.1.15 "Project" means the development of the Property contemplated by the Development Plan as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.16 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement.

1.1.17 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 3.6 of this Agreement.
1.1.18 “Billboard Lease Area” means the Project together with the related Billboard Site Plan real property and facilities described and shown on Exhibit “E”.

1.1.19 “Billboard Net Acreage” means the area of all parts of the Property, and any other real property which is part of the Billboard Lease Area, that is involved in the production, storage or transmission of power. “Billboard Lease Area Net Acreage” includes, but is not limited to, all areas occupied by the footings, electrical and battery back-up equipment, spaces contiguous to buildings, structures, service roads (regardless of surface type and including service roads between collectors), and fencing surrounding all such areas. “Billboard Net Acreage” shall not include any access roads outside the Property, and shall not include any areas specifically designated and set aside either as environmentally sensitive land or open space land, and shall not include the fencing of such designated lands. The Billboard Net Acreage under the Existing Development Approvals is 0.13 acres and is described and shown on Exhibit “F” to this Agreement. In the event the Project is modified by any Subsequent Development Approval, the Planning Director, in consultation with the CITY Executive Officer and CITY Counsel, shall recalculate the Billboard Net Acreage as part of such Subsequent Development Approval and such recalculated Billboard Net Acreage shall be used for all purposes under this Agreement after the effective date of such Subsequent Development Approval.

1.1.20 "Subsequent Development Approvals" means all Development Approvals approved subsequent to the Effective Date in connection with development of the Property.

1.1.21 "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.1.22 “Transfer” means sale, assignment, lease, sublease or any other transfer of a legal or equitable interest in the Property.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" -- Legal Description of the Property.

Exhibit "B" -- Map Showing Property and Its Location.

Exhibit "C" -- Existing Development Approvals.

Exhibit "D" -- Existing Land Use Regulations.

Exhibit “E” -- Billboard Site Plan.

Exhibit “F” -- Billboard Net Acreage.

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this
Agreement. Development of the Property is hereby authorized to be undertaken in accordance with the Development Approvals and shall be carried out only in accordance with the terms of this Agreement.

2.2 **Ownership of Property.** OWNER represents and covenants that it is the owner of a legal or equitable interest in the Property or a portion thereof.

2.3 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue for a period of 10 years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement.

2.4 **Transfer.**

2.4.1 **Right to Transfer.** OWNER shall have the right to transfer the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq., or CITY Municipal Code) to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such transfer shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following conditions precedent:

(a) No transfer of any right or interest under this Agreement shall be made unless made together with the transfer of all or a part of the Property.

(b) Concurrent with any such transfer, or within fifteen (15) business days thereafter, OWNER shall notify CITY, in writing, of such transfer and shall provide CITY with an executed agreement by the transferee, in a form acceptable to CITY, and providing therein that the transferee expressly and unconditionally assumes all the duties and obligations of OWNER under this Agreement.

(c) Any transfer not made in strict compliance with the foregoing conditions shall constitute a default by Owner under this Agreement. Notwithstanding the failure of any transferee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such transferee, but the benefits of this Agreement shall not inure to such transferee until and unless such agreement is executed.

2.4.2 **Release of Transferring Owner.** Notwithstanding any transfer, a transferring OWNER shall continue to be obligated under this Agreement unless such transferring OWNER is given a release in writing by CITY, which release shall be provided by CITY upon the full satisfaction by such transferring OWNER of the following conditions:

(a) OWNER no longer has a legal or equitable interest in all or any part of the Property.

(b) OWNER is not then in default under this Agreement.
(c) OWNER has provided CITY with the notice and executed agreement required under Paragraph (b) of Subsection 2.4.1 above.

(d) The transferee provides CITY with security equivalent in all respects to any security previously provided by OWNER to secure performance of its obligations hereunder.

2.4.3 Subsequent Transfer. Any subsequent transfer after an initial transfer shall be made only in accordance with and subject to the terms and conditions of this Section.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only by written consent of all parties in the manner provided for in Government Code Section 65868. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3.

(b) Entry of a final judgment by a court of competent jurisdiction setting aside, voiding or annulling the adoption of the ordinance approving this Agreement, provided the time for filing any appeal has expired.

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

(d) Owner’s election to terminate this Agreement. If OWNER elects not to develop Property consistent with the approved Conditional Use Permit 18-8009 in substantial conformance with the CITY approved site plan, OWNER shall provide notice of said election to the CITY and identify the portion of the Property that is subject to the notice of termination. Following receipt of OWNER’s notice of election to terminate this Agreement in whole or in part, OWNER and CITY shall execute an appropriate instrument in recordable form evidencing such termination.

Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report,
acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below;

All notices shall be addressed as follows:

If to CITY:

Deputy City Clerk of the City of Banning
99 East Ramsey Street
Banning, CA, 92220
(951) 922-3102

with copies to:

City Manager of the City of Banning
99 East Ramsey Street
Banning, CA, 92220
(951) 922-3104

and

Community Development Director
99 East Ramsey Street
Banning, CA, 92220
(951) 922-3131

and

Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071
Attn: Kevin G. Ennis

If to OWNER:

Alex Garcia
AMG OUTDOOR
P.O. Box 77996
Corona, CA 92882

and

Paul Fisher
117 Pearl
Laguna Niguel, CA 92677

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by any such change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings and structures, and provisions for reservation and dedication of land for public purposes shall be those set forth in Conditional Use Permit 19-8009.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings and structures, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise its discretion in accordance with the Development Plan, and as provided by this Agreement including, but not limited to, the Reservations of Authority. CITY shall accept for processing, review and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters.

3.3 Timing of Development. The City’s Municipal Code sets forth a maximum two years, with the ability for a one (1) year extension, to substantially construct the billboard approved under Conditional Use Permit 19-8009. That being said, the parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984)
37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties’ agreement, it is the parties’ intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing requirements set forth in the Development Plan or the Phasing Plan set forth in Section 3.4.

3.4 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority as provided in Section 3.5 of this Agreement. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in CITY’s reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

(a) Alter the permitted uses of the Property as a whole; or,

(b) Increase the square-footage of the sign face above 1,200 s.f.

(c) Increase the maximum height and size of permitted structures in excess of five-percent (5%) of the originally approved criteria; or,

(d) Delete of any development standards set forth in Conditional Use Permit 19-8009

3.5 Reservations of Authority.

3.5.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Property.

(a) Reasonable processing fees and charges of every kind and nature imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued.

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.
(c) Regulations governing construction standards and specifications including, without limitation, the Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code, Grading Code, and other uniform Codes adopted by the CITY and applicable in the CITY.

(d) Regulations imposing Development Exactions; provided, however, that no such subsequently adopted Development Exaction shall be applicable to development of the Property unless such Development Exaction is applied uniformly to development, either throughout the CITY or within a defined area of benefit which includes the Property.

(e) Regulations which may be in conflict with the Development Plan but which are reasonably necessary to protect the public health and safety. To the extent possible, any such regulations shall be applied and construed so as to provide OWNER with the rights and assurances provided under this Agreement.

(f) Regulations which are not in conflict with the Development Plan. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Property shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Property.

(g) Regulations which are in conflict with the Development Plan provided OWNER has given written consent to the application of such regulations to development of the Property.

3.5.2 Subsequent Development Approvals. This Agreement shall not prevent CITY, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations which do not conflict with the Development Plan, nor shall this Agreement prevent CITY from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

3.5.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

3.5.4 Intent. The parties acknowledge and agree that CITY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to CITY all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if
necessary, to reserve to CITY all such power and authority which cannot be restricted by contract.

3.6 Public Works. If OWNER is required by this Agreement to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency if it would have undertaken such construction, including, but not limited to compliance with the California Labor Code with respect to payment of prevailing wages.

3.7 Provision of Real Property Interests by CITY. In any instance where OWNER is required to construct any public improvement on land not owned by OWNER, OWNER shall at its sole cost and expense provide or cause to be provided, the real property interests necessary for the construction of such public improvements. In the event OWNER is unable, after exercising reasonable efforts to acquire the real property interests necessary for the construction of such public improvements, and if so instructed by OWNER and upon OWNER'S provision of adequate security for costs CITY may reasonably incur, CITY shall negotiate the purchase of the necessary real property interests to allow OWNER to construct the public improvements as required by this Agreement and, if necessary, in accordance with the procedures established by law, use its power of eminent domain to acquire such required real property interests. OWNER shall pay all reasonable costs associated with such acquisition or condemnation proceedings. This Section 3.7 is not intended by the parties to impose upon the OWNER an enforceable duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that the OWNER elects to proceed with the development of the Project, and then only in accordance with valid conditions imposed by the CITY upon the development of the Project under the Subdivision Map Act, Government Code Section 66410 et seq., or other legal authority.

3.8 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will detrimentally affect public interests which will not be fully addressed by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on OWNER which should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on OWNER by providing more fully for the satisfaction of public interests.

4.2 Local Sales and Use Taxes. Billboard Site Plan owners have substantial control with respect to sales and use taxes payable in connection with the construction of a Billboard Site Plan and a corresponding responsibility to assure that such sales and use taxes are reported and remitted to the California State Board of Equalization (BOE) as provided by law. Each franchise, real property interest agreement or development agreement required by this policy shall include
all necessary provisions and construction contract requirements, consistent with law, to ensure allocation directly to the CITY, to the maximum extent possible under the law, of the sales and use taxes payable in connection with the construction of the Billboard Site Plan including, without limitation, provisions and requirements consistent with the following, consistent with the law:

(a) Each Billboard Site Plan owner who meets the criteria set forth in applicable BOE regulations and policies must obtain a BOE permit, or sub-permit, for the Billboard Site Plan jobsite and report and remit all such taxable sales or uses pertaining to construction of the Billboard Site Plan using the permit or sub-permit for that jobsite to the maximum extent possible under the law.

(b) Each Billboard Site Plan owner shall contractually require that all contractors and subcontractors whose contract with respect to the Billboard Site Plan exceeds $100,000.00 (“Major Subcontractors”) who meet the criteria set forth in applicable BOE regulations and policies must obtain a BOE permit, or sub-permit, for the Billboard Site Plan jobsite and report and remit all such taxable sales or uses pertaining to construction of the Billboard Site Plan using the permit or sub-permit for that jobsite to the maximum extent possible under the law.

(c) Prior to the commencement of any grading or construction of a Billboard, each Billboard Site Plan owner shall deliver to the CITY a list that includes, as applicable and without limitation, each contractor’s and Major Subcontractor’s business name, value of contract, scope of work on the Project, procurement list for the Project, BOE account numbers and permits or sub-permits specific to the Billboard Site Plan jobsite, contact information for the individuals most knowledgeable about the Billboard Site Plan and the sales and use taxes for such billboard site plan, and, in addition, shall attach copies of each permit or sub-permit issued by the BOE specific to the Billboard Site Plan jobsite. Said list shall include all the above information for the Billboard Site Plan owner, its contractors, and all Major Subcontractors. The Billboard Site Plan owner shall provide updates to the CITY of the information required under this section within thirty (30) days of any changes to the same, including the addition of any contractor or Major Subcontractor.

(d) Each Billboard Site Plan owner shall certify in writing that they understand the procedures for reporting and remitting sales and use taxes in the State of California and will follow all applicable state statutes and regulations with respect to such reporting and remitting.

(e) Each Billboard Site Plan owner shall contractually require that each contractor or Major Subcontractor certify in writing that they understand the procedures for reporting and remitting sales and use taxes in the State of California and will follow all applicable state statutes and regulations with respect to such reporting and remitting.
(f) Each Billboard owner shall deliver to the CITY or its designee (as provided in section 7 below) copies of all sales and use tax returns pertaining to the Billboard Site Plan filed by the Billboard Site Plan owner, its contractors and Major Subcontractors. Such returns shall be delivered to the CITY or its designee within thirty (30) days of filing with the BOE. Such returns may be redacted to protect, among other things, proprietary information and may be supplemented by additional evidence that payments made complied with this policy.

(g) The CITY may, in its sole discretion, select and retain the services of a private sales tax consultant with expertise in California sales and use taxes to assist in implementing and enforcing compliance with the provisions of the agreement and that each Billboard Site Plan owner shall be responsible for all reasonable costs incurred for the services of any such private sales tax consultant and shall reimburse the CITY within thirty (30) days of written notice of the amount of such costs.

4.3 Local businesses with an annual gross income not in excess of one million dollars ($1,000,000) will be provided with a 50% discount off of the normal (full rack) Billboard display rate(s).

4.4 The Digital Billboard described herein will bear the name or logo of the City of Banning and will, on a space available basis, display City sponsored public service announcements and advertising for local municipal programs and events, at no charge to the City.

6. REVIEW FOR COMPLIANCE.

6.1 Annual Review. The Community Development Director, in consultation with the CITY Manager and the CITY Attorney’s Office, shall review this Agreement annually, on or before the Effective Date, in order to ascertain the good faith compliance by OWNER with the terms of the Agreement. On or before July 1st of each year, OWNER shall submit an annual monitoring report, in a form specified by the Community Development Director, providing all information necessary to evaluate such good faith compliance as determined by the Community Development Director.

6.2 Special Review. The City Council may order a special review of compliance with this Agreement at any time. The Community Development Director, in consultation with the Office of the City Manager and City Attorney, shall conduct such special reviews.

6.3 Procedure.

(a) During either an annual review or a special review, OWNER shall be required to demonstrate good faith compliance with the terms of the Agreement. The burden of proof on this issue shall be on OWNER.

(b) Upon completion of an annual review or a special review, the Community
Development Director shall submit a report to the City Council setting forth the evidence concerning good faith compliance by OWNER with the terms of this Agreement and his recommended finding on that issue.

(c) If the CITY Council finds on the basis of substantial evidence that OWNER has complied in good faith with the terms and conditions of this Agreement, the review shall be concluded.

(d) If the CITY Council makes a preliminary finding that OWNER has not complied in good faith with the terms and conditions of this Agreement, the Council may modify or terminate this Agreement as provided in Section 6.4 and Section 6.5. Notice of default as provided under Section 8.4 of this Agreement shall be given to OWNER prior to or concurrent with, proceedings under Section 6.4 and Section 6.5.

6.4 Proceedings Upon Modification or Termination. If, upon a preliminary finding under Section 6.3, CITY determines to proceed with modification or termination of this Agreement, CITY shall give written notice to OWNER of its intention so to do. The notice shall be given at least ten calendar days prior to the scheduled hearing and shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not CITY proposes to terminate or to modify the Agreement; and,

(c) Such other information as is reasonably necessary to inform OWNER of the nature of the proceeding.

6.5 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, OWNER shall be given an opportunity to be heard and shall be entitled to present written and oral evidence. OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on OWNER. If the City Council finds, based upon substantial evidence, that OWNER has not complied in good faith with the terms or conditions of the Agreement, the Board may modify or terminate this Agreement and impose such conditions as are reasonably necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.6 Certificate of Agreement Compliance. If, at the conclusion of an annual or special review, OWNER is found to be in compliance with this Agreement, CITY shall, upon request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent annual or special review and based upon the information known or made known to the Community Development Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the certificate of compliance, shall state whether the Certificate is issued after an annual review or a special review and shall state the anticipated date of commencement of the next annual review. OWNER may record
the Certificate with the County Recorder.

Whether or not the Certificate is relied upon by transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Community Development Director or City Council.

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application, validity, interpretation or effect of the provisions of this Agreement.

Notwithstanding anything in this Article 8 to the contrary, OWNER’s liability to the CITY in connection with this Agreement shall be limited to direct damages and shall exclude any other liability, including without limitation liability for special, indirect, punitive, or consequential damages in contract, tort, warranty, strict liability or otherwise.

8.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY as provided in Section 8.1 above.

(b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would
adequately compensate OWNER for such efforts.

8.3 General Release. Except for non-damage remedies, including the remedy of specific performance and judicial review as provided for in Section 4.2.6 (c) and Section 6.5, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents, employees, and independent contractors from any and all claims, demands, actions, or suits of any kind or nature whatsoever arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other monetary liability or damages, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement. OWNER hereby waives the provisions of Section 1542 of the Civil Code which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Subsection 6.5 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

8.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

8.6 Attorneys' Fees. In any action at law or in equity to enforce or interpret this Agreement, or otherwise arising out of this Agreement, including without limitation any action for declaratory relief or petition for writ of mandate, the parties shall bear their own attorneys' fees.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. CITY has determined that this Agreement is consistent
with its General Plan, and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. The parties acknowledge that:

(a) Litigation may be filed challenging the legality, validity and adequacy of the General Plan; and,

(b) If successful, such challenges could delay or prevent the performance of this Agreement and the development of the Property.

CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan of this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. OWNER shall defend, with counsel approved by the City, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its officers, agents, employees and independent contractors from any claim, action or proceeding against CITY, its officers, agents, employees or independent contractors to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement, including, but not limited to, on ground of compliance with the California Environmental Quality Act. CITY shall promptly notify OWNER of any such claim, action or proceeding, and CITY shall cooperate in the defense. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys fees, and related costs or expenses, and the reimbursement of CITY, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

9.3 Indemnity. In addition to the provisions of 9.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the sole active negligence or sole willful misconduct of CITY. OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action.

9.4 Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability, based or asserted, upon any act or omission of OWNER, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental
conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

9.5 Reservation of Rights. With respect to Sections 9.2, 9.3 and 9.4 herein, CITY reserves the right to either (1) approve the attorney(s) which OWNER selects, hires or otherwise engages to defend CITY hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that OWNER shall reimburse CITY forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

9.6 Survival. The provisions of Sections 8.1 through 8.3, inclusive, Section 8.6 and Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement.

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part
thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such 
foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. 
If the Planning Director, acting in consultation with the CITY Executive Officer and CITY 
Counsel, provides her prior written consent, which consent shall not be unreasonable 
withheld, a Mortgagee in possession shall not have an obligation or duty under this 
Agreement to perform any of OWNER's obligations or other affirmative covenants of 
OWNER hereunder, or to guarantee such performance; provided, however, that to the 
extent that any covenant to be performed by OWNER is a condition precedent to the 
performance of a covenant by CITY, the performance thereof shall continue to be a 
condition precedent to CITY's performance hereunder. Any transfer by any Mortgagee in 
possession shall be subject to the provisions of Section 2.4 of this Agreement.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment, modification, 
termination or cancellation thereof shall be recorded with the CITY Recorder by the Clerk of the 
City Council within the period required by Section 65868.5 of the Government Code.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding 
and agreement of the parties, and there are no oral or written representations, understandings or 
ancillary covenants, undertakings or agreements which are not contained or expressly referred to 
herein. No testimony or evidence of any such representations, understandings or covenants shall 
be admissible in any proceeding of any kind or nature to interpret or determine the terms or 
conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall 
be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected 
thereby to the extent such remaining provisions are not rendered impractical to perform taking into 
consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the 
Public Benefits set forth in Section 4.2 of this Agreement, including the payments set forth therein, 
are essential elements of this Agreement and CITY would not have entered into this Agreement 
but for such provisions, and therefore in the event such provisions are determined to be invalid, 
void or unenforceable, this entire Agreement shall be null and void and of no force and effect 
whatsoever.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising 
hereunder shall be governed and interpreted in accordance with the laws of the State of California. 
This Agreement shall be construed as a whole according to its fair language and common meaning 
to achieve the objectives and purposes of the parties hereto, and the rule of construction to the 
effect that ambiguities are to be resolved against the drafting party shall not be employed in 
interpreting this Agreement, all parties having been represented by counsel in the negotiation and 
preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for 
convenience only and shall not affect any construction or interpretation of this Agreement.
11.6 Gender and Number. As used herein, the neuter gender includes the masculine and feminine, the feminine gender includes the masculine, and the masculine gender includes the feminine. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. If at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one OWNER, all obligations of such OWNERS under this Agreement shall be joint and several, and the default of any such OWNER shall be the default of all such OWNERS.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 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.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force). If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

11.14 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.
11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Riverside Historic Courthouse of the Superior Court of the Count of Riverside, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of 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. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by CITY of its power of eminent domain.

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venture resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Community Development Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this CITY and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of The Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Designation of CITY Officials. Except for functions to be performed by the City Council, CITY may, at any time and in its sole discretion, substitute any CITY official to perform any function identified in this Agreement as the designated responsibility of any other official. CITY shall provide notice of such substitution pursuant to Section 2.7; provided, however, the
failure to give such notice shall not affect the authority of the substitute official in any way.

11.21 Authority to Execute. The person executing this Agreement on behalf of OWNER warrants and represents that he has the authority to execute this Agreement on behalf of his corporation, partnership or business entity and warrants and represents that he has the authority to bind OWNER to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

CITY OF BANNING

Dated: ____________________________

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Banning, California, this______day of ________, 2020.

__________________________________
Daniela Andrade, Mayor
City of Banning
ATTEST:

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

APPROVED AS TO FORM AND LEGAL CONTENT:

___________________________
Kevin G. Ennis, City Attorney
CERTIFICATION:

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that Ordinance _____ was duly introduced at a regular meeting of the City Council of the City of Banning, held on the ___ day of __________, 2020, and was duly adopted at a regular meeting of said City Council on the ___________ day of ___, 2020, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

_________________________
Sonja De La Fuente, Deputy City Clerk
City of Banning
OWNER:

AMG OUTDOOR

Dated: ________________________________

By: ________________________________

Print Name and Title: ________________________________

Dated: ________________________________

By: ________________________________

Print Name and Title: ________________________________

(ALL SIGNATURES SHALL BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC.
EXECUTION ON BEHALF OF ANY CORPORATION SHALL BE BY TWO CORPORATE
OFFICERS.)
Development Agreement No.

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY
Development Agreement No.

EXHIBIT "B"

MAP SHOWING PROPERTY AND ITS LOCATION
Development Agreement No.

EXHIBIT C

EXISTING DEVELOPMENT APPROVALS

Specific Plan
Zoning
Land Divisions
Other Development Approvals

The development approvals listed above include the approved maps and all conditions of approval.

COPIES OF THE EXISTING DEVELOPMENT APPROVALS LISTED ABOVE ARE ON FILE IN THE CITY OF BANNING COMMUNITY DEVELOPMENT DEPARTMENT AND ARE INCORPORATED HEREIN BY REFERENCE.
Development Agreement No.

EXHIBIT D

EXISTING LAND USE REGULATIONS

1. City of Banning General Plan as amended through Resolution No. ____

COPIES OF THE EXISTING LAND USE REGULATIONS LISTED ABOVE ARE ON FILE IN THE CITY OF BANNING COMMUNITY DEVELOPMENT DEPARTMENT AND ARE INCORPORATED HEREIN BY REFERENCE.
Development Agreement No.

EXHIBIT "E"

BILLBOARD SITE PLAN
Development Agreement No.

EXHIBIT "F"

BILLBOARD SITE PLAN NET ACREAGE
EXHIBIT A

* All public improvement agreements, covenant agreements and agreements subject to recodation 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 Conditional Use Permit approval shall become null and void. Additionally, if after commencement of construction work is discontinued for a period of one year the Design Review and Conditional Use Permit shall become null and void. Projects may be built in phases if pre-approved by the review authority. The Community Development Director may, upon a written application being filed 30 days prior to expiration and for good cause, grant a onetime extension not to exceed 12 months. Upon granting of an extension, the Community Development Director shall ensure that the Conditional Use Permit complies with all current Ordinance provisions.

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. The applicant shall comply with all conditions of approval as stipulated in the Airport Land Use Commission (ALUC) – Comprehensive Land Use Plan (CLUP) and any amendments thereto, including any requirements stipulated by the Federal Aviation Administration (FAA) Aeronautical Study.

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. Subsequent from the issuance of the Certificate of Occupancy/Final Inspection; the City shall review Conditional Use Permit (CUP) 19-8009 every two years (from the date of issuance of a certificate of occupancy) to insure compliance with the Conditions of Approval. If at any time the applicant becomes non-compliant with the Conditions of Approval, the City can reevaluate the project and make recommendations to continue, revoke, or make changes to the project approval.

8. The applicant shall comply with all Conditions of Approval imposed on the electronic message center/outdoor advertising display facility located at 583 W. Livingston Street / 540-192-005 and CUP 19-8009 prior to the issuance of a Certificate of Occupancy.

9. Prior to final inspection, the site is required to provide a paved driveway approach, paved driveway, paved parking space for one vehicle and a paved turn around to allow maintenance vehicles to enter, park and exit the site in a forward direction.
10. South Coast Air Quality Management District approval is required for the Diesel Generator.

11. The Electronic Message Center shall be maintained throughout the life of the project. All materials, paint, display face, electrical, lighting, and other similar items as determined by the Community Development Director, shall be kept in good working order and maintained for the life of the permit. **NOTE: Failure to comply may result in code enforcement action and/or revocation of the CUP.**

12. The Electronic Message Center and associated equipment shall be enclosed within a six-foot-tall decorative block wall with tubular steel gate. The decorative block wall shall be installed with anti-graffiti coating during installation and prior to the final inspection of said wall.

13. There shall be no storage of vehicles, equipment, or any other materials in the parking or landscaping areas of the project.

14. The applicant shall remove all graffiti immediately or within 24 hours of notice from the City.

15. 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.

16. There shall be no visible storage of any items including garbage, building, or manufacturing materials or junk, in any portion of the project site.

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

**Public Works Department**

18. The telecommunications equipment shall not cause disturbances to the City’s existing SCADA telemetry communications network.

**Electric Utility Department**

1. Undergrounding from the existing COB electric utility pole #5001 that is located at the southwest corner of Livingston Street and 6th Street to a vault in the cities right of way in front of the project site, from this vault to an onsite pad mounted transformer.

2. The installation of conduit and street light base (COB Electric to provide decorative street light) that would replace a street light that is currently on a utility pole which will be remove as part of this project. Please follow the attached Electric Utility General Commercial Service Requirements.
3. Complete the attached Commercial New Service Requirements sheet and return it to the COB Electric Utility.

19. Please completed the attached Commercial New Service Questionnaire and return it the utility.

20. Also see and follow the attached Electric Utility General Commercial Service Requirements.

21. See the attached comments from the Electric Utility Department.

**Fire Department**

22. Provide a sign with emergency contact information.

23. Install a Fire Extinguisher.

24. Order Knox Box, provide key to gate.

25. Schedule a Fire final inspection.

**Prior to Issuance of Building Permit**

**Community Development Department**

26. The applicant shall file a copy of a signed lease agreement between the applicant and the property owner with the Community Development Department.

**Prior to the Issuance of Certificate of Occupancy.**

**Community Development Department**

27. 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.

**Building and Safety Department**

28. The applicant shall develop the project site in compliance with all current model codes. The applicant shall design all project plans in compliance with the latest editions of the California Building Codes, as adopted by the City of Banning.
29. Separate submittals and building permits are required for all accessory structures such as, but not limited to, ground mounted equipment enclosures.

***END***
ATTACHMENT 5
Notice of Exemption
Notice of Exemption

To: County Clerk County of Riverside
   P.O. Box 751
   Riverside, CA 92502-0751

From: City of Banning
       99E. Ramsey Street
       P.O. Box 998
       Banning, CA 92220

Project Title:

Development Agreement and Conditional Use Permit 19-8009

Project Applicant: AMG Signs Company, Inc, 359 North Sheridan Street, Corona, CA, 92880

Project Location – Specific:

583 W. Livingston Street, Banning, CA, 92220. Assessor’s Parcel Number 540-192-005

Project Location – City: City of Banning
Project Location – County: Riverside County

Description of Nature, Purpose and Beneficiaries of Project:

Electronic Message Center

Name of Public Agency Approving Project: City of Banning

Name of Person or Agency Carrying Out Project: AMG Signs Company, Inc.

Exempt Status: (check one)

☐ Ministerial (Sec. 21080(b)(1); 15268);
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
☒ Categorical Exemption. State type and section number: Section’s 15303 and 15332
☐ Statutory Exemptions. State code number:

Reasons why project is exempt:

The project site is a 0.13-acre vacant lot. The project includes the construction of an 80-foot tall, double-faced, digital sign located at the southerly frontage of the property; which is adjacent to Livingston Street. The property is surrounded the I-10 freeway to the south and Commercial properties on the north, east, and west property lines; which rarely in excess of two stories and no significant effects (15332)

Lead Agency City of Banning
Contact Person: Adam Rush Area Code/Telephone/Extension: (951) 922-3131

If filed by applicant:
1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature: ___________________________ Date: January 10, 2020 Title: Community Development Director
☐ Signed by Lead Agency
☐ Signed by Applicant

Date received for filing at OPR: ___________________________

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Revised 2018
ATTACHMENT 6
Public Hearing Notice
NOTICE OF INTENT TO MAKE A DETERMINATION OF EXEMPTION AND NOTICE OF PUBLIC HEARING TO CONSIDER CONDITIONAL USE PERMIT (CUP) 19-8009 (AMG SIGNS COMPANY) TO CONSIDER A PROPOSAL TO AUTHORIZE ONE DOUBLE-FACE MARQUEE ELECTRONIC MESSAGE CENTER OF MAXIMUM HEIGHT OF EIGHTY (80') FEET AND A MAXIMUM DISPLAY FACE OF 1,200 SQUARE FEET (25' X 48'), LOCATED AT 583 W. LIVINGSTON STREET, BANNING, CA, 92220 (APN: 540-192-005).

NOTICE IS HEREBY GIVEN of a public hearing before the City of Banning Planning Commission, to be held on Wednesday, January 15, at 6:30 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider a Notice of Exemption (NOE) and Conditional Use Permit (CUP 19-8009) to authorize one double-face marquee electronic message center of a maximum height of eighty (80') feet and a maximum display face of 1,200 square feet (25' x 48') located at 583 W. Livingston Street, Banning, CA, 92220 (APN: 540-192-005).

Information regarding the Notice of Exemption (NOE) and Conditional Use Permit (CUP) 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 https://banningca.gov.

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.

Parties that chose to 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

Adam Rush, M.A., AICP  Dated: December 30, 2019
Community Development Director  Publish: January 3, 2020
<table>
<thead>
<tr>
<th>Phone</th>
<th>Name</th>
<th>Address</th>
<th>City, State, ZIP</th>
</tr>
</thead>
<tbody>
<tr>
<td>540-191-009</td>
<td>SHARON K HART &amp; BRIDGET ANN MOORHEAD</td>
<td>731 SIMS ST</td>
<td>BANNING CA 92220</td>
</tr>
<tr>
<td>540-170-048</td>
<td>JOHN C CHOE &amp; JULIE J CHOE</td>
<td>211 FRANKLIN AVE</td>
<td>REDLANDS CA 92373</td>
</tr>
<tr>
<td>540-191-044</td>
<td>EARL BUCHANAN</td>
<td>PO BOX 952</td>
<td>PERRIS CA 92572</td>
</tr>
<tr>
<td>540-192-002</td>
<td>BANNING NO 169 JNW BANNING PROP</td>
<td>10100 CULVER BLVD #D</td>
<td>CULVER CITY CA 90232</td>
</tr>
<tr>
<td>540-170-042</td>
<td>SWIGGUM &amp; CALENDAR ENT</td>
<td>39906 WILD CANARY LN</td>
<td>MURRIETA CA 92562</td>
</tr>
<tr>
<td>540-192-003</td>
<td>DARLA DRENDEL</td>
<td>PO BOX 1667</td>
<td>GLENORDA CA 91740</td>
</tr>
<tr>
<td>540-191-036</td>
<td>HOPE EMPATHY LOVE &amp; PRAYER INC</td>
<td>731 SIMS ST</td>
<td>BANNING CA 92220</td>
</tr>
<tr>
<td>540-191-041</td>
<td>DANIEL J DICARLO</td>
<td>3675 RUFFIN APT 110</td>
<td>SAN DIEGO CA 92123</td>
</tr>
<tr>
<td>540-170-046</td>
<td>JAAR</td>
<td>1125 W RAMSEY ST</td>
<td>BANNING CA 92220</td>
</tr>
<tr>
<td>540-170-040</td>
<td>RICHARD O ZUBIATE</td>
<td>PO BOX 4056</td>
<td>ORANGE CA 92863</td>
</tr>
</tbody>
</table>
Century Group Newspapers:
Fontana Herald News, Record Gazette,
Highland Community News,
Yucaipa/Calimesa News Mirror,
Redlands Community News

Phone: 
Fax: 
www.centurygroup.com

LEGAL ADS
CITY OF BANNING LEGALS/Accounts Payable
P.O. BOX 998
BANNING, CA 92220
(951)922-3117

Class Liner Ad #00172024 Summary:
Slug Line: 172024 CUP 19-8009
Net Cost $178.85
Prepaid Amount $0.00
Amount Due $178.85

Order Detail:

<table>
<thead>
<tr>
<th>Publication</th>
<th>Run Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>4015 Banning Record Gazette</td>
<td>1/3/20 - 1/3/20</td>
</tr>
</tbody>
</table>

City of Banning
99 E. Ramsey Street
P.O. Box 998
Banning, CA 92220-0998
(951) 922-3125
Fax (951) 922-3128

COMMUNITY
DEVELOPMENT
DEPARTMENT
NOTICE OF INTENT TO
MAKE A DETERMINATION
OF EXEMPTION AND NO-
TICE OF PUBLIC HEAR-
ING TO CONSIDER CON-
DITIONAL USE PERMIT
(CUP) 19-8009 (AMG
SIGNS COMPANY) TO
CONSIDER A PROPOSAL

http://71.177.253.90:8090/AMPWeb/TemporaryItems/3DD620F2F6329609CFAE758863115286/00000038.html
TO AUTHORIZE ONE
DOUBLE-FACE MAR-
QUEE ELECTRONIC MES-
SAGE CENTER OF MAXI-
MUM HEIGHT OF EIGHTY
(80) FEET AND A MAXI-
MUM DISPLAY FACE OF
1,200 SQUARE FEET (25
X 48), LOCATED AT 583
W. LIVINGSTON STREET,
BANNING, CA, 92220
(APN: 540-192-005)
NOTICE IS HEREBY
GIVEN of a public hearing
before the City of Banning
Planning Commission, to
be held on Wednesday,
January 15, at 6:30 p.m. in
the Council Chambers, City
Hall, 99 East Ramsey
Street, Banning, California,
to consider a Notice of Ex-
emption (NOE) and Condi-
tional Use Permit (CUP
19-8009) to authorize one
double-face marquee elec-
tronic message center of a
maximum height of eighty
(80) feet and a maximum
display face of 1,200
square feet (25 x 48) lo-
cated at 583 W. Livingston
Street, Banning, CA, 92220
(APN: 540-192-005).
Information regarding the
Notice of Exemption (NOE)
and Conditional Use Permit
(CUP) can be obtained by
contacting the City's Com-
munity Development De-
partment 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
https://banningca.gov.
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 Develop-
ment Department, City of
Banning at P.O. Box 988,
Banning, California, 92220.
Parties that choose to chal

http://71.177.253.90:8090/AMPWeb/TemporaryItems/3DD620F2F6329609CFAE758863115286/00000038.html
raises that chose to chal-
gen any decision regard-
ing 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 some-
one else raised at the pub-
lic hearing or in written cor-
respondence delivered to
the hearing body at, or prior
to, the hearing (California
Government Code, Section
65009).

BY ORDER OF THE COM-
MUNITY DEVELOPMENT
DIRECTOR OF THE CITY
OF BANNING, CALIFOR-
NIA

Adam Rush, M.A., AICP
Community Development
Director

Dated: December 30, 2019
Publish: January 3, 2020
Published in
The Record Gazette
No. 172024
01.03.20
TO:         PLANNING COMMISSION
FROM:       Adam Rush, Community Development Director
MEETING DATE: January 15, 2020
SUBJECT:    Zoning Text Amendment (ZTA) No. 19-97506, Amending Section 17.080.100 (“Accessory Dwelling Unit Standards”) of Chapter 17.08 (“Residential Districts”) of Division II (“Land Use Districts”) of Title 17 (“Zoning”) of the Banning Municipal Code in compliance with Assembly Bill (“AB”) 881, AB 68, AB 587, AB 670, and Senate Bill (“SB”) 13, which remove barriers to the construction of accessory dwelling units.

RECOMMENDED ACTION:
That the Planning Commission take the following actions:

Open and continue the public hearing to the February 5, 2020 Planning Commission Meeting Agenda.

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

BACKGROUND:
The California state legislature approved several pieces of legislation, and the Governor signed into law, Assembly Bill (“AB”) 881, AB 68, AB 587, AB 670, and Senate Bill (“SB”) 13, which remove barriers to the construction of accessory dwelling units.

These new laws impose additional restrictions on the type of development standards, use restrictions, and fees that apply to the City's processing and plan checking of Accessory Dwelling Units.

The changes made by these bills become effective on January 1, 2020 and require the City to update Title 17 to ensure consistency with state law.
PUBLIC COMMUNICATIONS:

This public hearing was advertised in the Record Gazette newspaper January 3, 2020. As of this writing one constituent email was received and responded to; informing the property owner of the continuance.

Prepared by:

Adam Rush, M.A., AICP
Community Development Director