

AGENDA
CITY OF BANNING
BANNING, CALIFORNIA

January 22, 2008
Council Chambers
6:30 p.m.

Banning Civic Center
99 E. Ramsey St.

Per City Council Resolution No. 1997-33 matters taken up by the Council before 10:00 p.m. may be concluded, but no new matters shall be taken up after 10:00 p.m. except upon a unanimous vote of the councilmembers present and voting.

I. CALL TO ORDER

- . Pledge of Allegiance
- . Invocation
- . Roll Call – Councilmembers Botts, Franklin, Hanna, Machisic, Mayor Salas

**II. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS
ANNOUNCEMENTS/APPOINTMENTS**

Report by City Attorney

PUBLIC COMMENTS – On Items Not on the Agenda

A three-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to "share" his/her three minutes with any other member of the public. (Usually, any items received under this heading are referred to staff for future study, research, completion and/or future Council Action.) See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

CORRESPONDENCE: Items received under this category may be received and filed or referred to staff for future research or a future Agenda

Our Mission as a City is to provide a safe, pleasant and prosperous community in which to live, work and play. We will achieve this in a cost effective, citizen friendly and open manner.

PRESENTATIONS

1. Presentation by Norman Gibbs of POW/MIA Flag to the City 1
2. Western Riverside Council of Governments (WRCOG) presentation on Clean Cities Membership and Programs and Advancing the Choice Expo Event

ANNOUNCEMENTS/COUNCIL REPORTS:

(Upcoming Events/Other Items and Reports if any) (ORAL)

III. A. CONSENT ITEMS

(The following items have been recommended for approval and will be acted upon simultaneously, unless any member of the City Council wishes to remove an item for separate consideration.)

Motion: That the City Council approve Consent Item 1 through 5.

Items to be pulled _____, _____, _____, _____ for discussion.

(Resolutions require a recorded majority vote of the total membership of the City Council)

1. Ordinance No. 1381 – 2nd Reading: An Ordinance of the City Council of the City of Banning, California, Modifying Title 1, Chapter 1.28 and Title 8, Chapter 8.48, Article I of the Banning Municipal Code Regarding General Penalties and Penalties for Public Nuisances 3
2. Ordinance No. 1382 – 2nd Reading: An Ordinance of the City Council of the City of Banning, California, Approving Zone Text Amendment #07-97502, An Amendment to the Zoning Code to Establish Provisions for Murals. 7
3. Public Improvements Acceptance and Performance/Labor and Material Bond Release for Tract No. 30906-1 12
4. Resolution No. 2008-11, Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal Year 2008/2009. 13
5. Approval of Minutes – Regular Meeting – 01/08/08 19

- Open for Public Comments
- Make Motion

IV. PUBLIC HEARINGS

(The Mayor will ask for the staff report from the appropriate staff member. The City Council will comment, if necessary on the item. The Mayor will open the public hearing for comments from the public. The Mayor will close the public hearing. The matter will then be discussed by members of the City Council prior to taking action on the item.)

1. Resolution No. 2008-08, Adopting the Airport Master Plan Update for the Banning Municipal Airport	44
Staff Report	44
Recommendation: That the City Council adopt Resolution No. 2008-08.	
2. General Plan Amendment and Zone Change #07-2502: A Request to Change the General Plan Land Use Map and Zoning Map designations from Low Density Residential (0-5 Units/Acre) to Professional Office at 935 E. Williams Street. APN: 541-121-022.	
Staff Report	55
Recommendation:	
1) Approve Resolution No. 2008-13, upholding the Planning Commission's recommendation to deny General Plan Amendment #07-2502: to change the Zoning and General Plan map designation from Low Density Residential to Professional Office on parcel 541-121-022.	
<u>Alternatives:</u>	
<u>Continuance:</u>	
1) I move the City Council continue the public hearing to its next regularly scheduled meeting.	
<u>Approve:</u> I move the City Council continue the public hearing to the next regularly scheduled meeting and direct staff to prepare an Ordinance Approving the General Plan Map Amendment #07-2502: to change the Zoning and General Plan map designation from Low Density Residential to Professional Office on parcel 541-121-022.	
3. General Plan Amendment #07-2503, An Amendment to the General Plan Street System to Delete Porter Street between Sunset Avenue and 22 nd Street.	
Staff Report	74
Recommendation:	
1) Adopt Resolution No. 2008-15, approving the Negative Declaration for General Plan Amendment #07-2503 to delete Porter Street between Sunset Avenue and 22 nd Street from the General Plan; and	
2) Adopt Resolution No. 2008-16, approving General Plan Amendment#07-2503 deleting Porter Street from the General Plan Street System between Sunset Avenue and 22 nd Street as shown in "Exhibit A" which is attached hereto and incorporated by this reference.	

Alternatives:

Continuance:

- 1) I move the City Council continue the public hearing to its next regularly scheduled meeting.

Denial: I move the City Council deny the General Plan Amendment No. 07-2503 on the following basis (the City Council will need to make its findings).

V. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items –

1. Review of “Green Plan” in All Departments (*Machisic-10/9/07*) (*Earhart*) (*ETA 2/02*)
2. Annual Review of General Plan (*Hanna- 10/9/07*) (*Orci*)
3. Review of Lease with Armory by end of the year. (*Franklin- 10/9/07*)
4. Schedule Special Meeting with the Beaumont City Council (*Salas- 11/27/07*)
5. Schedule Special Jt. Meeting the Banning United School District Board – (*Botts – 11/27/07*)
6. Schedule Special Jt. Meetings with the City’s Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) – (*Franklin – 11/27/07*)
7. Review of Development Fees (*Hanna – 12/11/07*) (*Orci*)
8. Report on Potential Ordinances in Regards to Skateboarding (*Franklin – 12/11/07*)
9. Time Frames for Demolition of Buildings (*Franklin – 12/11/07*) (*Orci*)
10. Ordinances in Regards to Group Homes (*Botts – 12/11/07*) (*Orci & Purvis*)

FUTURE MEETINGS

1. Special Council Meeting - February 12, 2008 – meeting to discuss delivery of State Water Project to Banning (*this would be meeting with SGPWA*)

VI. ADJOURNMENT

NOTICE: Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A three-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to "share" his/her three minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (909) 922-3102. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II].

My name is Norman Gibbs and I live at 5983 Eagle Trace Lane in Banning, California.

I wish to present to the City of Banning, a flag that represents more than 200,000 Americans , who since World War One, have been listed as being Prisoners of War or Missing in Action.

The POW/MIA flag is an American flag designed as a symbol of the citizens concern about the United States military personnel taken as prisoners of war and missing in action. On March 9, 1989, an official POW/MIA flag that flew over the White House on the 1988 National POW/MIA Recognition Day, was installed in the U. S. Capital rotunda as a result of legislation passed by the 100th Congress. In a demonstration of bipartisan Congressional support, the leadership of both Houses hosted the installation ceremony.

On August 10, 1990, the 101st Congress passed U. S. Public Law 101-355, which recognized the POW/MIA flag and designated it "as the symbol of our Nation's concern and commitment to resolving as fully as possible the fates of Americans still prisoner, missing and unaccounted for". This POW/MIA design has never been copyrighted and has been legally ruled as "public domain".

The POW/MIA flag is the only flag ever displayed in the U. S. Capitol rotunda and the only flag other than the U. S. flag to have flown over the White House. The POW/MIA flag has flown over the White House on National POW/MIA Recognition day since 1982.

Passage by the 105th Congress of Section 1082 of the 1998 Defense Authorization Act required that the POW/MIA flag fly six days each year:

Armed Forces Day (3rd Saturday in May)

Memorial Day (last Monday in June)

Flag Day (June 14)

Independence Day (July 4)

National POW/MIA Recognition Day (3rd Friday in September)

Veterans Day (November 11)

On these days it must be displayed at the White House, the U. S. Capitol, the Department of State, Defense and Veterans Affairs, major military installations, all Federal cemeteries and all offices of the U. S. Postal Services. In addition to the specific dates stipulated, the Department of Veterans Affairs voluntarily displays the POW/MIA flag 24/7 and the National Vietnam Veterans, Korean War Veterans and World War II Veterans Memorials were all required by Congress to display the POW/MIA flag daily.

Many State Capitols and other locations across the country display it daily including our neighboring cities of Redlands, Loma Linda, Highland, Yucaipa, and San Bernardino who have formally adopted resolutions to fly this flag every day! It is my hope that the City of Banning will accept this flag and adopt a similar resolution.

The protocol for flying the POW/MIA flag is as follows:

On one flagpole, the POW/MIA flag is flown below the American flag and above any state flag.

On two flagpoles, the POW/MIA flag is flown on the same pole as the American flag, below the American flag. Any state flag should be on the second pole.

On three flagpoles, the American flag should be flown on the pole located to the flag's own right, the POW/MIA flag should be flown on the middle pole and the state flag should be flown on the pole to the (flag's own) left.

Thank you for your time and consideration.

2

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Thank you for your time and consideration.

2nd Read

ORDINANCE NO. 1381

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF BANNING, CALIFORNIA, MODIFYING TITLE 1,
CHAPTER 1.28 AND TITLE 8, CHAPTER 8.48, ARTICLE I
OF THE BANNING MUNICIPAL CODE REGARDING
GENERAL PENALTIES AND PENALTIES FOR PUBLIC
NUISANCES**

THE CITY COUNCIL OF THE CITY OF BANNING DOES HEREBY ORDAIN AS
FOLLOWS:

SECTION 1. Existing Section 1.28.010 "General penalty—Continuing violations" is
repealed in its entirety.

SECTION 2. Existing Section 1.28.020 "Violations constitute misdemeanors" is
repealed in its entirety.

SECTION 3. New Section 1.28.010 "General penalty—Continuing violations" is added
to Title 1, Chapter 1.28 of the Banning City Code as follows:

(a) It is unlawful for any person to violate any provision or to fail to
comply with any requirement of this Code.

(b) Whenever in this Code any act or omission is made unlawful, it
includes causing, permitting, aiding, abetting, maintaining, suffering or
concealing the fact of such act or omission.

(c) Any person violating any of the provisions of this Code is guilty of
a misdemeanor, unless the offense is specifically classified in this Code or by
state law as an infraction. However, the City Attorney or City Prosecutor is
authorized to file or charge any violation of this Code as either a misdemeanor or
infraction or reduce any charge filed as a misdemeanor to an infraction.

(d) Each day that any condition caused or permitted to exist in
violation of this Code constitutes a new and separate violation.

(e) The owner of any property, building or structure within the City is
responsible for keeping such property, building or structure free of violations
related to its use or condition. The owner of such property, building or structure is
separately liable for violations committed by tenants or occupants relative to the
use or condition of the property.

(f) The penalty provided in this section is in addition to other
provisions of this Code or other law.

SECTION 4. New Section 1.28.020 "Misdemeanor penalties" is added to Title 1, Chapter 1.28 of the Banning City Code as follows:

"Where no specific penalty is provided, any conviction of a misdemeanor under the provisions of this Code or any other ordinance of the City shall be punished by a fine not exceeding \$1,000 or imprisonment for a term not exceeding six months, or by both such fine and imprisonment."

SECTION 5. New Section 1.28.030 "Infraction penalties" is added to Title 1, Chapter 1.28 of the Banning City Code as follows:

"Whenever in this Code or in any other Ordinance of the City, any act is prohibited or is made or declared to be unlawful or an offense or the doing of any act is required or the failure to do any act is declared to be unlawful and the violation of any such provision of this Code or any other ordinance of the City is expressly made an infraction, such infraction shall be punishable by:

- (a) A fine not exceeding \$100 for a first violation;
- (b) A fine not exceeding \$200 for a second violation of the same section of this Code or ordinance within one year;
- (c) A fine not exceeding \$500 for each additional violation of the same section of this Code or Ordinance within one year."

SECTION 6. New Section 1.28.040 "Enforcement of similar clauses or sections" is added to Title 1, Chapter 1.28 of the Banning City Code as follows:

"In all cases where the same offense is made punishable or is created by different clauses or sections of this Code, the City Attorney or City Prosecutor may elect under which to proceed, but not more than one recovery shall be had against the same person for the same offense."

SECTION 7. New Section 1.28.050 "Entitlement permit, other permit or license violations" is added to Title 1, Chapter 1.28 of the Banning City Code as follows:

"(a) Each person or the successor of each person who holds an entitlement permit, a variance permit, or any other permit or license issued by the City shall comply with each provision of the permit or license and with each term that is imposed as a condition to the exercise of the permit or license.

(b) Each person or the successor of each person who receives a rezoning or subdivision approval shall comply with each provision of the approval and with each term that is imposed as a condition to the approval of the rezoning or subdivision."

SECTION 8. New Section 1.28.060 "Criminal prosecution" is added to Title 1, Chapter 1.28 of the Banning City Code as follows:

"Pursuant to California Government Code section 36900, the City Attorney or City Prosecutor may prosecute any violation of this Code in the name of the People of the State of California."

SECTION 9. New Section 1.28.070 "Violations deemed public nuisances" is added to Title 1, Chapter 1.28 of the Banning City Code as follows:

"In addition to other penalties provided by law, any condition caused or permitted to exist in violation of any provision of this Code or any other ordinance of the City, or any such threatened violation, shall be deemed a public nuisance and may be abated as such by the City, and each day that such condition continues shall be regarded as a new and separate offense."

SECTION 10. Existing Section 8.48.030 "Penalty" is repealed in its entirety.

SECTION 11. New Section 8.48.030 "Penalty" is added to Title 1, Chapter 8.48, Article I of the Banning City Code as follows:

"The owner, lessee, occupant, tenant or other person having charge or control over any premises, property, land or structure constituting a public nuisance as defined in this Code, shall be guilty of a misdemeanor, conviction of which shall be punished by a fine not exceeding \$1,000 or imprisonment for a term not exceeding six months, or by both such fine and imprisonment. However, the City Attorney or City Prosecutor is authorized to file or charge any such violation as either a misdemeanor or infraction or reduce any charge filed as a misdemeanor to an infraction. Every day of such violation shall constitute a separate offense."

SECTION 12. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 13. NON-EXCLUSIVITY. Nothing in this Ordinance shall limit or preclude the enforcement of other applicable laws.

SECTION 14. EFFECTIVE. This Ordinance shall take effect thirty (30) days after its enactment in accord with California law.

SECTION 15. PUBLICATION. The City Clerk is directed to cause this Ordinance to be published within 15 days of its passage in a newspaper of general circulation published and circulated within the City of Banning.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2008.

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM:

Burke Williams & Sorensen, LLP
City Attorney

ATTEST:

Marie Calderon, City Clerk

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1381 was introduced at a regular meeting of the City Council of the City of Banning, California, held on the 8th day of January, 2008 and was duly adopted at a regular meeting of the City Council held on the _____ day of _____, 2008, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California



2nd Read

ORDINANCE NO. 1382

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF BANNING, CALIFORNIA APPROVING ZONE TEXT
AMENDMENT #07-97502, AN AMENDMENT TO THE
ZONING CODE TO ESTABLISH PROVISIONS FOR
MURALS**

WHEREAS, the City undertook a comprehensive General Plan and Zoning Ordinance update in 2003; and

WHEREAS, the Municipal Code allows for Zone Text Amendments consistent with the goals and policies of the General Plan; and

WHEREAS, on the 7th day of August 2007, the Planning Commission continued the public hearing to the 4th day of September 2007, at which time interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment; and

WHEREAS, on the 4th day of September 2007, the Planning Commission continued the public hearing to the 2nd day of October 2007, at which time interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment; and

WHEREAS, on the 2nd day of October 2007, the Planning Commission closed the public hearing and directed staff to return to the Planning Commission with new alternatives for the Zone Text Amendment, at which time the public hearing would be re-noticed and re-opened; and

WHEREAS, at this public hearing on the 4th day of December 2007, the Planning Commission considered and heard public comments on the Zone Text Amendment and approved Resolution No. 2007-31, recommending to the City Council approval of the Zone Text Amendment #07-97502, an amendment to the Zoning Code to establish provision for murals; and

WHEREAS, on the 21st day of December 2007, the City gave public notice as required under Zoning Code Section 9117 by advertising in the Record Gazette newspaper of the holding of the re-opened public hearing at which the project would be considered; and

WHEREAS, on the 8th day of January 2008, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment; and

WHEREAS, at this public hearing on the 8th day of January 2008, the City Council considered and heard public comments on the Zone Text Amendment; and

WHEREAS, the City Council has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act (“CEQA”) under Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment.

NOW THEREFORE, the City Council does resolve, determine, find, and order, and recommend as follows:

Section 1: Environmental Findings.

The City Council, in light of the whole record before it, including but not limited to, the City’s Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the Staff Report dated January 8, 2008, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and §21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. **CEQA**: The City has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act (“CEQA”) under Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, as here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA. The amendment to the municipal code does not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to this ordinance will trigger individual analysis and documentation related to CEQA. Therefore, it can be seen with certainty that there is no possibility that this ordinance may have a significant adverse effect on the environment, and therefore the adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Section 2: Zoning Ordinance Amendment Findings.

The City Council makes the following findings regarding the Zoning Ordinance Amendment:

1. The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan.

Fact: The Zone Text Amendment is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations will not change, and the text amendment will result in clarifying the goals, policies and programs of the General Plan. Program 11.A of the Banning General Plan Economic Development Element indicates that the City should encourage and promote special events and activities which strengthen the City’s image and attractiveness to residents, visitors, and

businesses. Murals will enhance the City's appearance and image and make it more attractive to the residents and visitors alike.

2. The proposed Amendment is internally consistent with the Zoning Ordinance.

Fact: The Zone Text Amendment is consistent with the existing provisions of the Zoning Ordinance. The amendments will cause murals to be subject to the general standards of Section 9109 [Sign Regulations] and will establish standards for murals, but will not regulate the content of the murals. The Zoning Ordinance currently contains, in Section 9109 [Sign Regulations] an integrated program for the regulation of signage within the City. These Zone Text Amendments would allow for the placement of murals, under the auspices of the Chamber of Commerce, within commercial and industrial zones in the City. The City would have the same authority that it does to regulate all other types of signs; all content and maintenance issues would be addressed by the Chamber of Commerce.

Section 3: Zone Text Amendments.

The City Council hereby approves the following amendments to the text of the Zoning Code:

- A) Section 9109.03 DEFINITIONS, is hereby amended to add the following:

"Murals. Painted wall signs which have a majority of the sign area comprised of non-commercial content, which generally have artistic, historic or cultural themes, and which are designed and painted (or supervised) by an artist who possess demonstrated knowledge and expertise in the design, materials, and execution of murals or other art. Commercial content of murals shall be subject to all applicable sign limitations of the underlying zone district."

- B) Section 9109.17 MURALS, is hereby added as follows:

"Murals shall be allowed by permit reviewed by the Beautification and Mural Council of the Banning Chamber of Commerce and permitted by the City's Community Development Department. Applications shall be on a form devised by the Community Development Department. A permit for a mural will be granted when the following conditions have been satisfied:

- 1) Completed application;
- 2) Sign permit fee paid;
- 3) Approved by the Beautification and Mural Council of the Banning Chamber of Commerce;
- 4) The mural shall not cause a pedestrian or vehicular safety hazard;
- 5) The mural shall be applied to the wall of a building; and
- 6) The mural shall be maintained."

Section 4: Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Banning hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portions thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional by the decision of any court of competent jurisdiction.

PASSED, APPROVED AND ADOPTED this 8th day of January, 2008.

Brenda Salas, Mayor
City of Banning

**APPROVED AS TO FORM AND
LEGAL CONTENT:**

Burke, Williams & Sorensen, LLP
City Attorney

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1382 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 8th day of January, 2008, and was duly adopted at a regular meeting of said City Council on the _____ day of _____, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

CITY COUNCIL AGENDA CONSENT

Date: January 22, 2008

TO: Honorable Mayor and City Council

FROM: Kahono Oei, City Engineer 

SUBJECT: Public Improvements Acceptance and Performance/Labor and Material Bond Release for Tract No. 30906-1

RECOMMENDATION: Accept the public improvements and release portion of the Faithful Performance/Labor and Material Bond for Tract No. 30906-1.

JUSTIFICATION: The bond release is equivalent to the cost of the public improvements that have been constructed, inspected and deemed in conformance with the approved plans and specifications.

BACKGROUND: Tract No. 30906-1 is located on the west side of the intersection of Oak Lane and Mountain Avenue. Prior to the City Council approval of each tract map, the developer is required to post a Performance/Labor & Material Bond.

The bond reduction is equivalent to the cost of the public improvements that have been constructed, inspected and deemed in conformance with the approved plans and specifications. The remaining bond amount is equal to, or more, than the cost to complete the remaining public improvements. Typically, once the improvements are completed it is prudent to release a portion of said Bonds. The bond amount being released is as follows:

<u>Bond No.</u>	<u>Bond Amount</u>	<u>Bond Amount Being Released</u>	<u>Remaining Bond Balance</u>
730606S	\$2,400,000.00	\$1,400,000.00	\$1,000,000.00

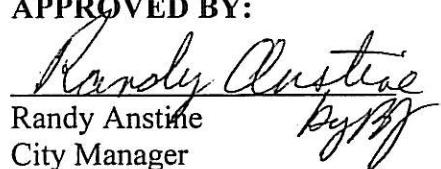
Once said reduction is made in the bond the developer will provide the City with a new bond in the amount of \$1,000,000.00 to complete the remaining improvements within the Tract.

FISCAL DATA: Not applicable.

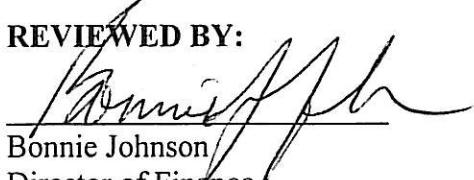
RECOMMENDED BY:


Duane Burk
Director of Public Works

APPROVED BY:


Randy Anstine
City Manager

REVIEWED BY:


Bonnie Johnson
Director of Finance

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**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: January 22, 2008

TO: Honorable Mayor and City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2008-11, "Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal Year 2008/2009"

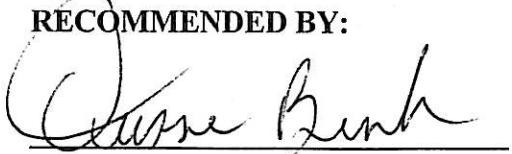
RECOMMENDATION: Adopt Resolution No. 2008-11, "Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal Year 2008/2009."

JUSTIFICATION: The City Council approved the formation of Landscape Maintenance District No. 1 ("the District") by adopting Resolution No. 1990-59 on August 14, 1990. The adoption of Resolution No. 2008-11 will enable the City Engineer to prepare for the assessment for Fiscal Year 2008/2009.

BACKGROUND: In accordance with the "Landscaping and Lighting Act of 1972" ("1972 Act") of the Streets and Highways Code, the City Council adopted a resolution ordering the formation of Landscape Maintenance District No. 1, the boundaries of which are shown in Attachment "A". On May 10, 2005, the City Council approved Resolution No. 2005-36, ordering Annexation No. 1 (consisting of five tracts and three tentative tracts) to Landscape Maintenance District No. 1. The District, by special benefit assessments, provides funding for the servicing and maintenance of certain landscape areas within the City of Banning, all of which are located in the public right-of-way. The "1972 Act" requires that assessments are to be levied according to benefit rather than according to assessed value. Resolution No. 2008-11 will initiate the proceedings to update the District for Fiscal Year 2008/2009. A tentative schedule for updating the District, as required by the "Landscaping and Lighting Act of 1972," is attached hereto as Attachment "B" for your information.

FISCAL DATA: Not applicable. A detailed estimate will be prepared and forwarded with the Engineer's report.

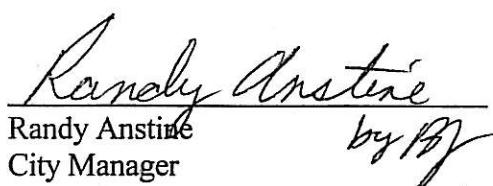
RECOMMENDED BY:



Duane Burk

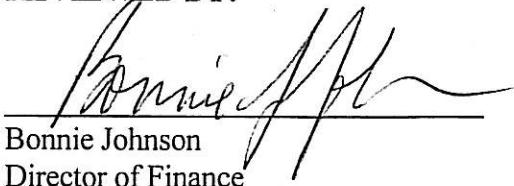
Director of Public Works

APPROVED BY:



Randy Anstine
by PJ
City Manager

REVIEWED BY:



Bonnie Johnson
Director of Finance

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RESOLUTION NO. 2008-11

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA,
INITIATING PROCEEDINGS TO UPDATE LANDSCAPE MAINTENANCE DISTRICT
NO. 1 FOR THE FISCAL YEAR 2008/2009, PURSUANT TO THE LANDSCAPING AND
LIGHTING ACT OF 1972**

WHEREAS, the City Council, pursuant to the provisions of the "Landscaping and Lighting Act of 1972," Part 2 of Division 15 of the Streets and Highways Code of California, beginning with Section 22500, desires to initiate proceedings to update the City of Banning's Landscape Maintenance District No. 1, and to levy and collect annual assessments to pay for the operation, maintenance and servicing of landscaping and all appurtenant facilities related thereto.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning as follows:

Section I. The City Council desires to update Landscape Maintenance District No. 1 for Fiscal Year 2008/2009, pursuant to the "Landscaping and Lighting Act of 1972" (Section 22500 and following, Streets and Highways Code) for the purpose of the following improvements:

Maintaining and servicing street trees, parkways, median islands, perimeter strips and backup walls, side slopes adjacent to sidewalks and storm drains, open space areas, flood detention or retention basins, and the irrigation of the above improvements.

Section II. The City Council hereby directs the City Engineer to prepare and file with the City Clerk an Engineer's Report in accordance with Article 4 of Chapter 1 of the "Landscaping and Lighting Act of 1972."

Section III. The fee to be assessed will not exceed the reasonable cost of providing the service. The fee charged shall be based on the rate and methodology set forth in Resolution Nos. 1990-59 and 2005-36.

Section IV. The Mayor shall sign this resolution and the City Clerk shall attest and certify to the passage and adoption thereof.

PASSED, ADOPTED AND APPROVED this 22nd day of January, 2008.

Brenda Salas, Mayor

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ATTEST:

Marie A. Calderon, City Clerk

**APPROVED AS TO FORM
AND LEGAL CONTENT:**

Burke, Williams & Sorensen, LLP
City Attorney

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-11 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 22nd day of January, 2008.

AYES:

NOES:

ABSENT:

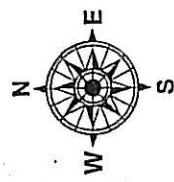
ABSTAIN:

Marie A. Calderon
City Clerk of the City of Banning

ATTACHMENT "A"

**LANDSCAPE MAINTENANCE DISTRICT NO. 1
FOR FISCAL YEAR 2008/2009**

MAP OF LANDSCAPE MAINTENANCE DISTRICT No. 1
JANUARY 2008

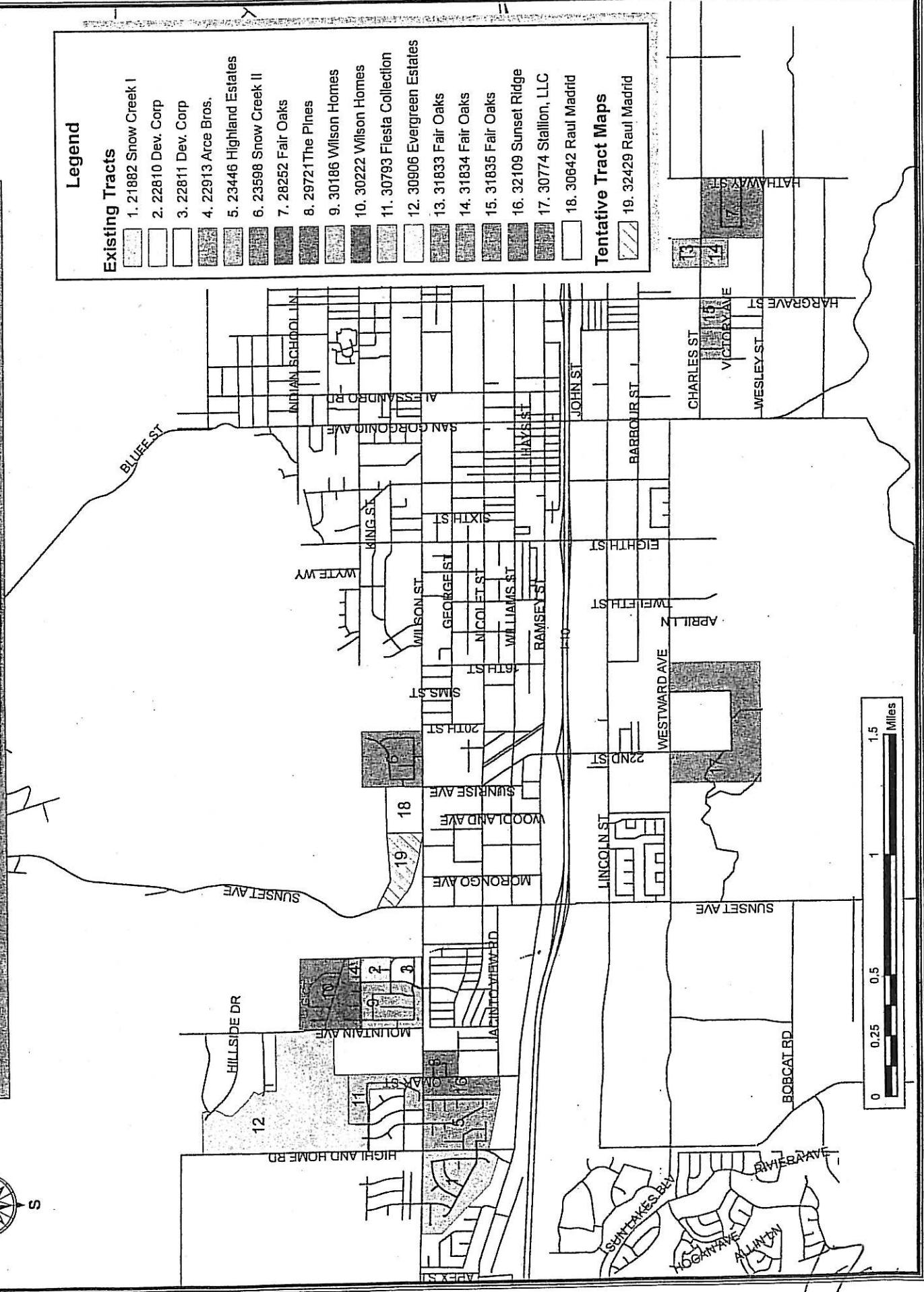


Legend

Existing Tracts

1. 21882 Snow Creek I
2. 22810 Dev. Corp
3. 22811 Dev. Corp
4. 22913 Aroe Bros.
5. 23446 Highland Estates
6. 23598 Snow Creek II
7. 28252 Fair Oaks
8. 29721 The Pines
9. 30186 Wilson Homes
10. 30222 Wilson Homes
11. 30793 Fiesta Collection
12. 30906 Evergreen Estates
13. 31833 Fair Oaks
14. 31834 Fair Oaks
15. 31835 Fair Oaks
16. 32109 Sunset Ridge
17. 30774 Stallion, LLC
18. 30642 Raul Madrid
19. 32429 Raul Madrid

Tentative Tract Maps



ATTACHMENT "B"

**TENTATIVE SCHEDULE
UPDATING LANDSCAPE MAINTENANCE DISTRICT NO. 1**

Item	Council Meeting
Resolution Initiating Update	January 22, 2008
Resolution of Intention (Approve Engineer's Report)	April 8, 2008
Public Hearing, Resolution Confirming Assessment	May 20, 2008

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

01/08/08
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Salas on January 8, 2008 at 6:30 p.m. and a Joint Meeting of the City Council and the Banning Utility Authority at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Botts
Councilmember Franklin
Councilmember Hanna
Councilmember Machisic
Mayor Salas

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Randy Anstine, City Manager
Bonnie Johnson, Finance Director
Julie Hayward Biggs, City Attorney
Phillip Kraft, Deputy City Attorney
Oscar Orci, Community Development Director
Duane Burk, Public Works Director
Jim Earhart, Electric Utility Director
Chris Paxton, Human Resources Manager
Leonard Purvis, Deputy Police Chief
Ted Yarbrough, Fire Marshal/Fire Prevention Officer
Jeff Stowells, Battalion Chief
George Thacker, Asst. Public Works Dir., Water/Wastewater
Kim Clinton, Senior Planner
Marie A. Calderon, City Clerk

Mayor Salas invited the audience and public to join her in the Pledge of Allegiance to the Flag. The invocation was given by the Councilmember Robert Botts.

CLOSED SESSION

City Attorney announced that the City Council will meet in Closed Session pursuant to Government Code Section 54957 with regard to the following personnel issue: Public employment – Appointment of City Manager.

Meeting went into closed session at 6:45 p.m. and returned to regular session at 6:56 p.m.

City Attorney said that the City Council met in closed session pursuant to the provisions of Government Code Section 54957 to discuss a personnel matter: public employment – appointment of the City Manager and we are all pleased to report that the contract for a

new City Manager has been executed by all the necessary parties and the new City Manager for the City of Banning is Brian Nakamura and he will be starting February 4, 2008.

Meeting recessed at 6:45 p.m. and returned to regular session at 6:56 p.m.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/
ANNOUNCEMENTS/APPOINTMENTS

Report by City Attorney

PUBLIC COMMENTS – On Items Not on the Agenda

Charlene Sakurai, 43000 Dillon Road addressed the Council regarding upcoming events that the Alliance will be hosting: Egg Art, Reception at Gallery and other events on March 15; Art Hop – April 19; New theater group PAPAS (Pass Area Performing Artists) had their first event on Sunday which was Hansel and Gretel and it was well received and they will be doing a variety show on Feb. 1, 2 and 3rd and Feb. 8, 9 and 10; February is National Heart Month and there is a movement to Go Red for Women's Heart Issues and starts Feb. 1 and there is another movement being picked up by numerous cities and cities are going red for the entire month and what they are doing is lighting up their civic building with red floodlights for the month of February just to speak to this whole heart issue and that would be a nice thing to do and light up the city. Also the Alliance is in the process of planning for February 23rd to have a luncheon and speaker on women's heart health issues.

Krista Baird addressed the Council regarding the issues with her home and the development in which she lives (Fair Oaks). She had letters for the Council and she gave these to the City Clerk. She said the letters were requested by Councilmembers Franklin and Machisic and they asked her to state the issues in writing so that they could be addressed. They are asking again for the City Council's and the City's assistance in resolving the issues in their development. They want to know that their streets and their homes and everything else had been constructed according to code. They are also asking for a third party review of the documents.

City Attorney said that the difficulty is that this is primarily a dispute between the homeowners and the builder and the City does not stand in the shoes of the homeowners and it is not allowed to basically take up their cause and use public money to pursue resolution of it. There is no liability to the City or responsibility here to take the actions that have been requested.

Matthew Clark, 1036 Charles Street, also addressed the issues as his wife Krista. He said that the City by public law as addressed by the State of California that the building official has the right and duty to enforce California Building Codes. All public officials within the City are charged to assist this building official in the execution of his duties. He is here to ask that the City to delay refunding performance bond money to the developer while matters of concern are being resolved. At the same time there is an

inherent involvement with the City that is the conditions of approval for a project specifically state that the City will inspect, the City will deem all reports and issues reviewed by the City and while no evidence has been provided that says that the City inspectors are required to complete all the conditions of approval for the project therefore the City by at least ethics still retains the control of providing the final inspection for their development. If the inspections were not provided in the first place, they should be provided now. They are asking for the complete order of the conditions of approval to be abided by our Building Department and Building official. They also understand that a certificate of occupancy was never signed. How it is that California law specifies that a certificate of occupancy is supposed to be issued and one is not issued because of some kind of zoning requirement and they would like this explained to the 300 voting residents of their development. They are asking for City support of a resolution of their issues.

Councilmember Machisic said that in regards to this issue he and Mayor Pro Tem Franklin did meet with five resident and they indicated to the residents that they should be their concerns in writing and the City would respond through the City Attorney. They met the Tuesday after Thanksgiving and they have just returned the letter to the Council now so they have not had an opportunity to look at it. Once they look at it then the Council could respond.

City Attorney said that they would be happy to look at what the information is and to the best of her knowledge however, the various inspections that are being asked about were in fact completed and documents were issued.

Mr. Orci said that was correct and that their building official did comply with the code and the homes, etc. do have the appropriate inspection and there are inspection logs for Mr. Clark's home as well as others on the city's computer data base and they would be more than happy to share that with the public. In terms of grading information they are working with the Public Works/Engineering Dept. because that function is controlled through a large extent by that department.

Councilmember Botts asked Mr. Orci if he could respond to the certificate of occupancy.

Mr. Orci said that it was a parlance issue and he would be more than happy to explain it to him. Generally speaking certificate of occupancy are not granted to the residential. They are granted to businesses and commercial. You have "final inspection" and that is the difference. We have a new code as of January 1st that has changed all of that to now where single family homes do get a certificate of occupancy. When this project was underway we had what is known as "final inspection" and there are records in the data base system of when those final inspections occurred.

Oscar Reza, 956 Driftwood Circle said he has concerns in regards to the wash that is probably about five feet deep and 100 feet long going into the street and that is a wash that the City gave a permit to build underneath the concrete into the street which to his understanding is not legal and assumes that the City does have some liability. Besides just being a wash and everything running off of his yard into the wash that the City gave

permission to build into the street he also has a little safety hazard because people could fall in and he has people coming over with kids and could very easily fall into those rocks.

Mayor Salas asked the City Attorney to draft something in regards to this issue. She would like for all the property owners in that area to received correspondence in regards to the issues that have been raised.

City Attorney said that they would be happy to do that. This is a somewhat complex issue because the planning of this included cross drainage across properties and that is more an engineering question than a legal question. Mayor Salas asked Engineering and Planning staff to work together with the City Attorney to get the answers to the questions that the residents have asked.

Jose Soto, 1485 Wesley Street addressed the Council stating that he attended the meeting and have been living in this community for three years and he did not know that the had the availability to an impact report or soil report or any of these other documents until he went to the meeting and the reason he went was because a letter was sent out and they made him aware of a lot of these problems in the community. He has questions and has been living there for three years and was in phase one and he didn't have answers to a lot of the problems that he was having. He has also had major problems in his home that he has taken care of on his own not knowing that he had the availability to request the documents and follow-up on the approvals of who gave the authorization to continue and how the inspections were done and what was done of the inspections.

Larissa Coria, 1037 Charles Street said that she has been in Banning almost seven years and she used to live in an older house and she never had problems. She moved into this new development because she thought new house; no problems. When she had rain the first time the whole backyard was a swamp and she never faced that in her whole life. It cost her almost \$4,000 to redo the land because she didn't know about these issues. She had rain again and water was coming through her house. If it is a new house, how do you deal with these things and how do they fix these things in a new house. Water is following hear and this is the second year and they have not come to fix the issues that they have. She can just imagine in five years those houses are probably going to start breaking down. If you are saying you have permits for everything, she would like to see everything in writing. She is speaking on her behalf and the people that live in her community. She can't afford to stay there if there are going to be more problems.

Patty Hanley, Library Director addressed the Council regarding new programs to be held at the library. There will be a couple of programs for adults on Wednesday, January 16th at 9:15 a.m. called Senior Sunrise Smart Social. That same evening they will have a program called How to Sell Your Stuff on EBay starting at 6:00 p.m. On Thursday, January 17th at 10:30 a.m. they will have Preschool Story Time and on Saturday mornings starting at 10:30 a.m. they will have a story time and crafts for all children. In February she will have a program in conjunction with the City Council and it will have a

theme Love Your Library, Love Where You Live. For more information you go to their website at www.banninglibrarydistrict.org She will also get information to City Hall.

CORRESPONDENCE: None

PRESENTATIONS

1. Recycling All-Stars Presentation

Alex Braicovich, Director of Governmental Affairs for Waste Management said that there were here to honor and recognize an individual from the Banning Unified School District. As you know the City of Banning is required by the State of California to divert 50% of the trash they generate out of the landfill for recycling purposes. In order to do this every city has different components that have to do their part. Residential sector does their part and the commercial sector does their part and here in Banning they encouraged the Banning Unified School District to do their part. They are here to recognize the entire cafeteria staff; Jean Barsness who is the Director of Nutritional Services provides services to eight campuses and four off site campuses supporting the County of Riverside. With Jean's assistance they are able to divert quite a bit of cardboard out of the waste stream and getting it out of the landfill. They also get a lot of assistance from Duane Burk, as well as, Barbara Spoonhour and Julie Goodson with WRCOG. Together they try to team up to get Banning at that number. They are happy to report that Banning is at 55% diversion which is a great number to be at and they congratulate the City and also congratulate Jean Barsness. They presented Jean with a basket of various goodies to share with her staff.

Jean Barsness thanked Waste Management on behalf of the Banning Unified School District and particularly the nutrition services department. She said she knows that her staff has done a tremendous job and continues to make efforts in the area of recycling. Duane and Steve came out and made a presentation to their Superintendent's Leadership Council about a month ago and they have always done recycling but have kicked it up a notch. Also their staff takes an awful lot of pride in providing more than just food nourishment for the children in Banning but also to encourage them to live as good citizens in this town.

2. Waste Watch Program

Alex Braicovich also addressed the Council regarding a program they call Waste Watch. This is a program that Waste Management has developed whereby they train their drivers to be another set of eyes and ears for the local police department. A few weeks ago their security folks from their corporate office came out and trained their drivers here in Banning. Also a representative from the Banning Police Department attend this training that started at 4:30 a.m. He showed a DVD that outlines the program. He said that basically their drivers are in the neighborhood during times that a lot of folks are at work or school and a lot of their drivers have been servicing the area for many years so they encouraged them to look for those things that may be out of place or somebody that just

doesn't look right. He said that quite a few cities in the Inland Empire have signed up for this program and they have seen some good responses and good things happen.

ANNOUNCEMENTS/COUNCIL REPORTS:

1. Report on Reunion Island Participative Democracy Conference and Implication for Banning"

Councilmember Hanna addressed the Council stating that she would be showing a power-point presentation on her trip. She said that she was invited by the Mayor of St. Paul, Reunion Island to speak at a conference and facilitate the workshop because she once lived on Reunion Island in the early 1970's and her son was born there and because she is on the City Council and also because we have this small body of knowledge regarding community forums. She said it is a beautiful island off to the east of Madagascar and consider a state of France and the City of St. Paul has a city urban core which is the same size as Banning and the whole city goes up the mountain. She said that the Mayor of St. Paul is very interested in what he calls "Participative Democracy". Another term that we are using now in California and the United States is "Civic Engagement" and he is looking for ways to get more people involved in the democratic process. This event occurred outdoors and they trained 12 people to assist them in this process. There were 1000 people in attendance and they were seated by neighborhoods. What France has done is similar to what Los Angeles has done and that is they are encouraging cities to have neighborhood advisory councils so all the people attending were from neighborhood advisory councils. They facilitated an Open Space Technology Meeting and there were 300 seats in their portion of the tent and they came up with over 54 subjects of issues that concerned them and their lives and it was brought down to 32 different categories. They only had time for one round of discussions and they had the closing circle and many people spoke and this is the fourth conference that they attended and the best because they were able to personally participate in it. She wanted to share some of the research that she came up with in preparing for this and there was a book that came out called "Bowling Alone and Changing Social Demographics of Country" by Robert Putnam. What Mr. Putnam talks about is three types of capital and there is physical capital which is tools, human capital such as training and social capital which is friends and civic groups. The Council does have many things going that develop social capital. She said that the City of Ventura, California actually has a Civic Engagement Department and they define their mission to engage diverse groups of people to foster collaborative partnerships that will lead to strong community relationships, better decision making and more engaged community. They want to build this active and involved community because it will build ownership if they involve the people in decisions that are important to them, they will take ownership in what we do and trust the City government, it will legitimize the decisions we make and make for two-way communication. Recently the City of Banning has started the one-way communication with the newsletters going out with utility bills but we need to create on an on-going basis ways to have two-way communication so we offer opportunities to hear from the community and that will build social capital. She came across a local professor at UCR that made a statement that is pretty commonly agreed to that democracy has always been about the ability of people to

mold their collective destiny and people need that opportunity to be a part of molding that collective destiny. She said that the Council has been working for the last year on their goals and objectives and with the new city manager they are going to be finalizing those and that would be a tremendous opportunity to go out into the community, present it and give that information out and then hear people's response and allow them to engage and make those goals community wide. She said this trip was a tremendous opportunity and gave her a chance to sit back and look at what the Council has been doing over the last few years and see its value.

Various announcements were made by the Council:

Councilmember Machisic:

- San Gorgonio Pass Rotary Luncheon on Jan. 10th at Noon at the Banning Women's Club with speaker Congressman Jerry Lewis
- WRCOG – Clean Cities Coalition – List of Alternative Fuel Locations

Mayor Pro Tem Franklin:

- Reported on Passcom and the program was in regards to the ham radio operators.
- Women's Club celebrated its 104th Year Anniversary – Ernest Siva was the speaker
- RCTS Community Bus Kickoff will be on January 30th at the Stagecoach Plaza. There will be 7 stops and will take approx. 1 hr. and 20 min. to get to Riverside
- There will be a blood Drive on Jan. 21st – Martin Luther King Day at 1330 W. Ramsey. January is Blood Drive Month

Councilmember Botts:

- Reported on PAPA (Pass Area Performing Artists) and their recent presentation
- He said that he has had a lot of comments in the last week or so asking if the city was in financial trouble and are we broke. He has not discussed this with the rest of the Council and there have been a couple of articles in the newspaper about some of things that they are doing. He said no, this City is not in financial trouble and not broke. We have some \$110 million dollars in money for capital projects and his answer to people is to say that we as a Council and staff are doing are what the voters asked them to do to be prudent. We are committed to a balance budget and the question is what we need to do to make sure that we continue that.

Mayor Salas asked City Manager and Finance Director to put a press release together that echoes the comments made by Councilmember Botts.

Mayor Salas reported that things are well with the Animal Shelter and looking at getting full time staff. She asked the Council that they send a letter to the Board of Supervisors or Supervisor Ashley supporting that need for full time staff.

Councilmember Hanna reported on the Riverside County Transportation Commission just completed a study and she would like the Council to direct whether they would like a copy of the study or have someone from RCTC come and make a presentation on it. Two years ago the City of Temecula sued the County of Riverside and what they were saying was that the counties permitting housing development in county territory right next to Temecula was impacting the on and off ramps and the freeways and the county and the City of Temecula agreed that their solutions would be to develop a report to assess

county-wide that issue and that report has been completed. The Council said that they would like to read the report.

APPOINTMENTS

1. Review of City Council Committee Assignments

There was City Council discussion regarding the current committee assignments. The following changes were made:

Riverside County Transportation Commission (RCTC) – assignment as been changed to Councilmember Botts with Mayor Salas continuing as the alternate.

Pass Area Transportation NOW Committee - wanted it clarified that it had been changed and Mayor Pro Tem Franklin is the assignment and Councilmember Botts the alternate.

Economic Development Committee Liaison is Councilmember Botts.

TUMF Zone Committee – Councilmember Machisic is the liaison with Mayor Salas as the alternate.

Southern California Association of Governments (SCAG) – assignment has been changed to Councilmember Hanna with Mayor Pro Tem Franklin as the alternate.

Banning Chamber of Commerce – assignment Councilmember Botts with Mayor Salas as the alternate.

CONSENT ITEMS

Councilmember Botts asked that Consent Items 4, 5 and 6 be removed for discussion. Councilmember Hanna asked that Consent Item No. 8 be removed for discussion.

1. Approval of Minutes – Regular Meeting – 12/11/07

Recommendation: That the minutes of the Regular Meeting of December 11, 2007 be approved.

2. Approval of Minutes – Special Meeting – 12/18/07

Recommendation: That the minutes of the Special Meeting of December 18, 2007 be approved.

3. Ordinance No. 1378 – 2nd Reading: An Ordinance of the City of Banning Amending Chapter 6A of the Banning Ordinance Code Relating to Disaster Operations and Relief.

Recommendation: That Ordinance No. 12378 pass its second reading and be adopted.

7. Resolution No. 2008-07, Supporting Regulatory Changes to the Low Income Housing Tax Credit Program Creating Consistency with the Regional Housing Needs Assessment.

Recommendation: That the City Council adopt Resolution NO. 2008-07.

9. Accept the Grant of Easement Dedication from James H. Didion and Sylvia M. Didion, Trustees of the Didion Family Trust dated February 10, 1992, located on Parcels APN 538-340-003 & a portion of 004.

Recommendation: That the City Council accept the Grant of Easement Dedication from James H. Didion and Sylvia M. Didion, trustees of the Didion Family Trust dated February 10, 1992, for water purposes, as shown on attached Exhibit "A", and direct the City Clerk to accept and record said easement.

10. Accept the Grant of Easement Dedication from Rickey L. Pippenger and Linda Lou Pippenger, Trustees, located on Parcel APN 538-240-004.

Recommendation: That the City Council accept the Grant of Easement Dedication from Rickey L. Pippenger and Linda Lou Pippenger, trustees of the Pippenger Trust dated August 7, 2002, for water purposes, as shown on attached Exhibit "A", and direct the City Clerk to accept and record said easement.

11. Accept the Right-of-Way Dedication from Henry C. Rutherford and Jean A. Rutherford for Street Improvements at APN 538-032-042.

Recommendation: That the City Council accept the Right-of-Way dedication from Henry C. Rutherford and Jean A. Rutherford for street improvements at Assessor's Parcel Number 538-032-042, as described in Exhibit "A" and Exhibit "B", and direct the City Clerk to accept and record said dedication.

12. Execute a Professional Services Contract with Laurin and Associates to Update the Housing Element.

Recommendation: That the City Council direct the City Manager to execute a professional services contract with Laurin and Associates to update the housing element.

13. Resolution No. 2008-01, Request for a One-Year Extension of Time for Tentative Tract Map No. 33798 (Rafai): The subdivision of a 4.960 acre site into 19 single family lots. The proposed project site is generally located at the southwest corner of Indian School Lane and Hargrave Street. APN: 534-152-002, -023, -024, - 025.

Recommendation: That the City Council adopt Resolution No. 2008-01, granting a one-year extension of time for Tentative Tract Map No. 33798.

14. Approval of Accounts Payable and Payroll Warrants for Month of November 2007.

Recommendation: That the City Council review and ratify the following reports per the California Government Code.

Mayor Salas opened the item for public comments. There were none.

Motion Hanna/Machisic to approve Consent Items 1, 2, 3, 7 and 9 through 14. Motion carried, all in favor.

4. Resolution No. 2008-03, Imposing a Nuisance Abatement Lien in the Amount of \$8,447.75 on the Property Known as APN 538-300-001 for Costs Related to An Administrative Proceeding to Abate a Public Nuisance.

Councilmember Botts said that we have talked as a Council and a community about cleaning up and beautifying Banning and we are serious about that. He pulled this item because we have had to go through some very extraordinary measures to get some people to clean up their properties. The property is now extremely clean after a big mess. What the Council is saying is to please work with us and we will work with you. In this case the people did not work with the City and had to court to spend money to address this issue and money will be collected from those folks who were resistant. It is important for residents to know that we are serious about cleaning up Banning.

Mayor Salas opened the item for public comments. There were none.

Motion Botts/Franklin that the City Council adopt Resolution No. 2008-03, (Exhibit "1), imposing a nuisance abatement lien in the amount of \$8,447.75 on the property known as Assessor's Parcel Number 538-300-001 for costs related to an administrative proceeding to abate a public nuisance. Motion carried, all in favor.

5. Resolution No. 2008-05, Approving a Capital Improvement Program for Fiscal Years 2007-2012.

Councilmember Botts said in line with his previous comments in regards to what the City is doing to get ready for development and the kinds of things we need and new jobs, retail and industrial/commercial rather than leaving it on consent we have a rather detailed capital improvement program where we are estimating spending hundreds of millions of dollars and we have a lot of that money. Again we want the folks to know that this Council and staff are looking at what we need to do to get ready for future development and that is what we are doing in rebuilding our electric company, tertiary water, wastewater pipelines, etc. We are working to be prepared for the future.

Mayor Salas opened the item for public comments. There were none.

Motion Botts/Franklin that the City Council adopt Resolution No. 2008-05, approving a Capital Improvement Program for fiscal Years 2007-2012.

6. Resolution No. 2008-06, Implementing a Voluntary Employee Benefit Association Trust and Authorizing the City Manager or his designee to negotiate employee contributions to the trust and sign any related documents.

Councilmember Botts said this item deals with a program that is beneficial to employees and as he understands it it's to be self-funding and an account that can earn interest and there is a per account charge. He wanted to know what the soft costs are for the City.

Chris Paxton, Personnel Director addressed the Council stating that remarkable there is very little cost involved in this. There is a firm that handles all of the transactions that go back and forth when folks submit their reimbursement and it is all taken care of through the trust. Other than preparing the documents initially and some time for us to work with the employees to put the program in place and time to publicize the program and that kind of thing there is very little involvement on the part of City staff. That is one of the reasons they think it is a good program.

Mayor Salas opened the item for public comments. There were none.

Motion Franklin/Botts that the City Council adopt Resolution No. 2008-06, implementing the California Government Voluntary Employee Beneficiary Association (VEBA) Trust; and authorize the City Manager or his designee to negotiate employee contributions to the trust and sign any related documents. Motion carried, all in favor.

8. Public Improvements acceptance and Faithful Performance/Labor and Material/Monumentation Bond Release for Tract Nos. 28252, 31822, 31834 and 31835.

Mayor Salas said that Mayor Pro Tem Franklin will run this item because, for the record, she does own property in the area and she will abstain and leave the room.

Councilmember Hanna said that said she raises this because she thinks there are some comments regarding the Fair Oaks issue.

Mr. Burk said what the Council has before them is the public improvements acceptance and the faithful performance bond for Tract numbers 28252, 31822, 31834 and 31835. Tonight there were some residents against the issue as it relates to what they submitted to the City Clerk. At the last Council meeting he brought forth the bond approval and Council asked for it to be brought back. Staff is asking the Council to exonerate the last ten percent of the performance bonds of the project. These punch list items have been fulfilled by the developer as it relates to the public right of way. He looked at the list and has met with Mr. Clark and his wife and his position is that the developer has fulfilled his obligation as it relates to these bonds. Obviously the Council has heard testimony that is different that his opinion and he hasn't seen anything as it relates to the public right-of-way and these are

what these bonds cover. Mr. Burk said that Mr. Mike Reed with Century Vintage Homes is in attendance at his request.

Councilmember Machisic addressed the City Attorney asking if it was legal for us to hold up this money.

City Attorney said the answer is the same as it was last time and the answer is no. These monies were pledged basically to secure completion of the facilities as planned under the project. As she understands it from staff they have been completed for over a year so the time has now passed during which if there was a problem it should have shown up. At this point the Council is obligated to release the bonds and accept the completion.

Mayor Pro Tem Franklin asked the developer to come forward and maybe address some of the questions that have come up if he could.

Michael Reed with Century Vintage Homes addressed the Council stating that he was here to address the bond release issue and he was not privileged to all the documents that were turned over to staff but he does have some comments to make about their customer service issues. They have some customer service issues that have not been addressed and thinks that it would have been nice to be involved with some of the meetings that were held with the people and hear the complaints that they have. As he spoke with the Customer Service Manager and staff today he is not in the day to day operations but more in what he would call the off-site bond materials. With the customer service department and some of the documents he had today it seems like they are pretty active in the project down there. When he hears the comments it seems a little bit more one-sided. He said that they are not really privileged to some of the things that have been asked for but he can tell you that just the documents that he has in his hands for instance there was some issues on the casita foundation on the Clark and Baird property and they have had a lot of representation out there and had consultants from the construction engineer and the soils people that provided to their counsel and all the documents requested by the Century people and he even has documents that were given to the people. He said that the construction engineering report was given to them on 11/16/07, site engineering report on 7/13/07 and those were sent on the 19th and these reports were again given to them on Dec. 6th. It sounds like they are not doing something out there but they are doing quite a bit based on the information that he has just on that specific issue. He said like Mr. Burk said this is a public right-of-way improvement area which they have done everything to accommodate the City's request pursuant to their performance bond, improvement plans, etc. and to hold this on something that is on the civil side he doesn't quite understand. It there are going to be meetings with people he thinks that Century Vintage should have had some type of representation there as well so that could indeed hear some of things that are coming up.

Councilmember Hanna said that this issue right now is not about the major issues that the homeowners are experiencing on their own property. We are only talking about the public improvement right-of-way, curb, gutters, sidewalks and whatever is in the public right-of-way. She said she just brought it up so there could be public comment if they care to make it, on this specific issue and not on the broader ones.

Mayor Pro Tem Franklin opened the meeting for public comments.

Matthew Clark, 1030 Charles Street addressed the Council stating that in terms of the matter at hand they ask the City Council to delay reimbursement of those funds based on the so called punch list that has been performed that may have not have been done completely to the City of Banning building code or to the Uniform Building Code. They are requesting a separate review of those punch list items to see that they are in conformance with the Riverside County industry standard and the State of California Uniform Building Code. Until that third party review is completed that these funds be held. This is in regards to the public right-of-way issues. He and the residents of the subdivision have gone to the counter requesting documents over and over again and they have not been provided for public review and they were told with certainty by department heads that they were in fact done. Again, per the Freedom of Information Act, they are asking that these punch list items that have been supposedly complete in accordance with the building codes they demand to see the as graded report, as built for these public events that were constructed they want to see the certifications for elevation, for centerline and curb. If these were done and these were in public record, how come they cannot be provided to them? They have asked to them time and time again. They have also asked for a copy of the punch list. They want to review the public record.

Crista Baird addressed the Council asked the Council to hold these monies. She said they met with Mr. Burk today and he told them that he hadn't gone out to see this stuff and she and her husband drove out there in the dark and you could see in the street where things were subsiding and everything else. What is to say that these streets and curbs and gutters are going to have the same issues and problems and no one has been able to provide them with documents to make them feel good that this stuff has been done. It is not only her house but the streets that affect her house. Century came out and there were some things wrong and it was probably because of non-compaction of the soils underneath. These same problems are going to happen again. They are asking the City to hold these monies until the documents could be reviewed so that the citizens and the Council will know that these things were done. Why should city monies have to be spent for these kinds of things when there are bond monies that were supposed to take care of those? They are asking for a third party review.

Mayor Pro Tem Franklin closed the item for public comments.

Mr. Burk said that at the December 11th meeting he said to release these bonds for this company and that was almost a month ago and he has not met with any of these people from Century Vintage Homes or any of the neighbors in a month but today at 4:00 p.m. If it is such a dire emergency why wasn't he notified December 12th? They released 90% of the bonds over a year ago and they have been in the warranty for over a year. They are under the warranty of the bonds. In public works opinion they haven't seen any failures in a year and with what they have seen they have made a punch list to Century Vintage Homes in the public right-of-way and they have corrected the measure. Today at 4:00 he received another

list of some items. His point is that Century Vintage Homes will stand true to a couple of these items however; he hasn't heard anything from these people in a month.

Councilmember Hanna said that she has already apologized and was on vacation a week after their meeting and he tried to reach them but she didn't get to tell them what the issue was and they didn't meet until 4:00 today and it is totally her fault. She said she is not addressing the right or wrong or plus or minus. She is just saying that she apologize for that.

Councilmember Machisic said it seems to him that we have a couple of issues here and the one issue is this bond and the complaints that he has heard in the past have been primarily with the property. This is the first time that he has heard comment about the public part of this. He has never heard this before. One of the things that he is interested in is because of the attorney's comment in that it is not legal to hold it up because the contactor has performed his functions. What he would like to know and feel comfortable with have they done what they were supposed to do as far as this bond because one of the things that Mr. Clark asked him for when they were in his home was that he was going to state some documents that were missing that were not reported and he was to report them to him by individuals that refused him and when it was refused. Unfortunately he gets this tonight and he doesn't have time to read it and neither does the Council. If you want it considered, it is very difficult for them to read it tonight. He is concerned about the issue of this bond and wants it taken care of. There were certain things that the developer was to do for this bond and he wants some assurances that he has done what he was supposed to do.

Mr. Burk said that everything in the public right-of-way has been met by the developer as it relates to bonds that he is asking be released. Everything has been met.

Mayor Pro Tem Franklin asked if there were some documents that people could see that shows that.

Mr. Burk said that tonight they asked for a gamut of things and this is from December 11th until today and he doesn't know if we refused them anything at the counter. He can assure the Council that he doesn't allow his staff to really refuse anything however, there would be good reason for them to refuse some thing and he would like to know what that exactly is. There have been some things in the file that they have asked for and staff said they would get it for them and maybe that is not to their liking and maybe the information that we have is not to their liking and maybe staff is faulted in some of the record keeping. However, it doesn't substantiate what you are going to approve tonight or not. If the City does not have the records that they are asking for it doesn't mean that the curb and gutter is bad. It just means that staff does not have the documents that the people are asking for. Maybe we need better record keeping in the next tract and he has shared that with staff and maybe the drainage should be a little bit better for example, tonight's conversation as it relates to drainage in that subdivision was that we collected an impact fee from the developer and the infrastructure is not put in place because part of the Riverside County Flood Control District Master Improvement Plan has the improvement going from Smith Creek to the airport. The City is also collecting an impact fee from the developer on Barbour and Hathaway. The City plans on putting that money together and

applying for a grant from Riverside County Flood Control and doing the improvement themselves. But the developer was not conditioned to do it; he was conditioned to pay his fair share and this is what this Council and the developer agreed to do and that is what staff is moving forward with. Yes, there are some storm drainage issues out there but the City plans on doing it and it is not going to happen tomorrow and this is not before the Council this evening.

Councilmember Botts said that we listen to our counsel most of the time and he has to do that tonight based upon what staff is saying and at some point we have to rely on what we hopefully know as the facts and Duane and staff are saying the developer has met those requirements on the public portion of that and the City Attorney is saying we must pay it. He said he would support that and it is probably not the popular thing to do but he would also say personally and he trust that the rest of the Council are very concerned about what is going on in that developer and if there is anything the City didn't do, we will look at it and correct it. We are all in agreement that we need to provide the documents that are available. As one Councilperson he is committed to working with the residents on the issues that are in fact City responsibilities. He would encourage the builder/developer to really be available and communicate because communications solves a lot of problems and to try to work with theses folks. Certainly he supports then on issues if the City is in fact liable or negligent on anything. In this case and on this subject he thinks that we are bound to release that but it doesn't lessen the City's responsibility to work with the residents in that area.

Councilmember Hanna said she agrees with Councilmember Botts. It is hard when you own property and you are experiencing such terrible things as so many of these residents have. It is a very emotional thing and for professionals or those of us who are not directly involved we can think calmly and sound quite rational and so forth. But it is a very, very emotional issue and the biggest investment in their lives. She understands Mr. Clark's logic in that we don't trust what we are finding out about our homes and our property therefore why we should trust this. The logic makes sense. At this point she doesn't think that the 10% isn't enough to change things dramatically. If in fact there is a failure across the board in this development, the owners are probably going to have to find very significant ways of dealing with the development to bring about massive changes. What the Council is saying is that we are now liable for this and we are taking responsibility. Also, staff made no effort to reach out to the residents themselves and only spoke with the developers. There are some issues regarding the public right of way and she hopes that they will be worked out but if they are not worked out, it is the City's responsibility because we have to maintain the roads, the sidewalks and if it is done poorly we have to take the brunt of this.

Mayor Pro Tem Franklin said that she was one of the persons that was very concerned about what the residents told them and voted against moving forward at the last meeting with the understanding that they were going to get information from the residents. It is kind of hard to be able to move forward to her when they didn't get anything and they still don't have that information but it was presented tonight and they haven't had the opportunity to see what the requests were or be able to question staff about it because

nothing came forward and like Councilmember Machisic said this is since the meeting they had in November. It makes it very difficult for the Council to be able to say yes or no when need to work further with staff and we don't have the information. There does come a time when as Council they do have to make a decision and as the comments that have been said already we have to look at what the bond issues were for and we owe not only the residents but also everybody that does business with us to follow through as what is recommended not only by staff but also by counsel. That is one of the things that we are going to look at as we make our decision this evening.

Motion Botts/Machisic to approve Consent Item No. 8 to accept the public improvements and release the final portion (10%) of the Faithful Performance and Material/Monumentation Bonds for Tract Nos. 28252, 31822, 31834 and 31835. Motion carried, all in favor with Mayor Salas abstaining.

Mayor Salas returned to the dais at this time.

Meeting recessed at 8:40 p.m. and reconvened at 8:50 p.m.

PUBLIC HEARINGS

1. Ordinance No. 1380 – 2nd Reading. An Ordinance of the City Council of the City of Banning, Amending Chapter 8, Article II, Section 8-16 of the Banning Municipal Code Adopting the California Fire Code, 2007 Edition and Appendices as Amended, as the Uniform Fire Code of the City of Banning and Repealing Chapter 8, Article II, Section 8-17 of the Banning Municipal Code.
(Staff Report – Ted Yarbrough, Fire Marshal/Fire Prevention Officer)

Ted Yarbrough addressed the Council stating that staff recommends approval of this ordinance.

Mayor Salas opened the public hearing for comments from the public. There were none and Mayor Salas closed the public hearing.

Mayor Salas asked the City Clerk to read the title of Ordinance No. 1380. City Clerk read: An Ordinance of the City Council of the City of Banning, California, Amending Chapter 8, Article II, Section 8-16 Repealing Sections 8-17 of the Banning Ordinance Code Adopting the 2007 California Fire Code in its Entirety for 1) Regulating and Governing the Safeguard of Life and Property from Fire and Explosion Hazards (Arising from the Storage, Handling and Use of Hazardous Substances, Material and Devices) and from Conditions Hazardous to Life or Property in the Occupancy of Buildings and Premises in the city of Banning, and 2) Providing for the Issuance of Permits and the Collections of Fees Therefor.

Motion Hanna/Franklin to waive further reading of Ordinance No. 1380. Motion carried, all in favor.

Motion Hanna/Franklin that Ordinance No. 1380 pass its first reading. Motion carried, all in favor.

2. Subdivision of 7.96 Acres into 15 Parcels, 12 Residential Lots and 3 Remainder Industrial Parcels, and Approval of Six Facades.
(Staff Report – Oscar Orci, Community Development Director)

Mr. Orci gave the staff report on this item as contained in the staff report. He also displayed a map of the proposed subdivision and pointed out the industrial parcels and the residential parcels. He also went over the schematic of the triplexes. The Planning Commission reviewed this project and recommending approval.

Councilmember Hanna asked Mr. Orci to talk about the interface between the industrial areas and the residential areas.

Mr. Orci said one of the things that they struggled with as you may be aware of during the General Plan was the interface along Lincoln. They struggled with that particular scenario and what they were doing there and on Lincoln you will find the multiple types of zoning designations that include industrial, business park, as well as, some residential component within that area. One of the things that the Council did in order to create more of a buffer is to increase the densities for those areas along the industrial and as you move away from that area put in things like lower density units and that is why next to these industrial parcels you have a medium density residential zone. So the thought was to be able to provide some housing or alternative housing type for properties along the industrial and business park designations to act as a buffer. In addition to that obviously they have provisions within the city, within our codes and within the design review process that will also allow us the opportunity when a project comes in for these properties to be able to make certain that, for example, that you don't have openings that face the residential, that your lighting is minimized along this perimeter, that your parking or your greenbelt be created along the two properties to afford folks an additional measure of privacy. But in terms of zoning and the layout their intent was to create these buffers by putting these types of units there and lower the density as you move away from our industrial and business park designations.

Councilmember Hanna said that his impression is that you are going to see lots of garages and is that true and if it is are there any alternatives that we talked about to kind of do some better looking kinds of designs.

Mr. Orci said that on Barbour you are not going to see garages. You will see the homes with the porches and the walkways. They worked with the applicant to modify the design for these six units or two lots so that we have a nice streetscape as you go down on Barbour Street. Internally however, you will see garages but one of the things that they did try to do is to break that up. They created more green space and create a more visual buffer so that you don't see garage and concrete when you drive through these areas.

There was some discussion regarding these types of homes, build-out, built in amenities, etc.

Mayor Salas opened the public hearing for comments.

Darwin Manuel, 539 South Brea Blvd., Brea addressed the Council stating that his experience in building rental development over the past 40 years he has found that this townhouse style is a very attractive for two people and that would be the owner and the tenant. This is a high-quality triplex format with individual townhouse residents. You have a single lot and on that lot you have three individual townhouses which are self-contained so that three different families could live there or the owner could live in one and rent it out. They have been working in Banning for over a year and he doesn't think there is another project like this in town. He thinks it will be a positive addition to the residential inventory you have here. The twelve lots are controlled by a private gate so that your access off Barbour is controlled and restricted to the owner, the tenants or their visitors. So there is no public driving back and forth and as was explained the frontage on Barbour has been addressed so it really looks nice. There will be a homeowners association and that is an important element. The HOA will be responsible for all of the maintenance of anything that is viewable and this means there will be regular and quality maintenance of the entire project. Also, family living is enhanced by having a front yard and porch and would also have the three-car garage with direct access to the home. He said that it is his view that this type of rental because of the number of items with one as private gated and other design elements that he thinks it would be safe to say that it offers the opportunity for less pressure on public safety (fire and police). He said that this area is in the redevelopment area and based on his calculations this project if it were completed and sold would create some where in the area of \$100,000 per year, tax increment to the Banning Redevelopment Agency.

Mayor Salas closed the public hearing on this item.

There was Council discussion with the applicant regarding the HOA, living space, entrances and exits, when they will build, price range, requirements of parking in garage, common areas for recreation, design of townhouses, and sidewalks.

Mayor Pro Tem Franklin said that she would like to have an alternate route for emergency access and exit.

Mayor Salas would like to have a basketball area for the project.

Mayor Salas asked the Council is they would support the change to add basketball hoops at the end of the drive. Mayor Pro Tem Franklin said she would support it if they could do it without impeding an emergency exit. There was Council consensus.

Motion Hanna/Machisic to approve Resolution No. 2008-04, approving Lot Split - #07-4504 (Tentative Tract Map 35694), based on the findings and conditions of approval (attached hereto as Attachment "1" and incorporated by reference) including the basketball court and adding an additional condition requiring additional emergency access. Motion carried, all in favor.

Motion Machisic/Franklin to approve Resolution No. 2008-09, approving Design Review #07-7015, based on the findings and conditions of approval (attachment "1" and incorporated by reference). Motion carried, all in favor.

3. Amendment to the Municipal Code Regarding Penalties for Public Nuisances
(Staff Report – Oscar Orci, Community Development Director)

Mr. Orci gave the staff report as contained in the staff report.

Mayor Salas asked Mr. Orci to remind the public what the public nuisance would include. Mr. Orci said that usual public nuisance are un-kept properties, debris, getting tough on repeat offenders.

Mayor Pro Tem Franklin said in regards to Item No. 4 where it talks about violation of City entitlements if a person buys a piece of property that has a violation in terms of somebody putting in an illegal building on it does the new owner become responsible for that and they will be the ones fined if they do not rectify that.

Mr. Orci said that was correct and true now. The issue has been before the City and an example of that for instance if someone violates their CUP the City has revocation and would allow the opportunity to really seek out further legal remedies to make certain that the properties are improved and not just the revocation of their conditional use permit.

Mayor Pro Tem Franklin asked if this would apply to properties that are already out of compliance now. Mr. Orci said yes. She said the reason she was asking was that she was told before that if we couldn't prove that it was something that was illegally done, that we couldn't enforce it.

Mr. Orci said if he understands for example, if someone erects a structure and it is questionable whether or not they did it legally or to code, to us we still pursue that code enforcement action.

Mayor Salas said legally if one person owns the property they have to notify the property owner because the problem has been in the past that they just sell the property over and over and we can never track down the person to do anything.

City Attorney said that whoever owns the property has the liability. If it is currently in violation of the code and it is not grandfathered and it was not legal beforehand and that may be what you are talking about. If it is a legal non-conforming use it is a different issue. Assuming that it is not and just something that violates the code then the owner is responsible. And the fact that the owner sells to somebody else may get that owner off the hook but it would put it on the next owner.

There was some discussion regarding

City Attorney said that this has been captioned as a zone text amendment but it is not a zone text amendment and it does not affect the zoning code at all; it affects other provisions of the code. So as we read the title of this ordinance omit the zone text amendment.

Councilmember Botts said in regards to Item No. 6 it seems like there are times when we make business decisions and then ask for legal opinions. Shouldn't we decide if it is a misdemeanor or an infraction when we ask the Attorney to go do what they need to do? This item says that the Attorney decides.

Phillip Kraft, City Prosecutor, said the question asked was about the flexibility between misdemeanors and infractions. That becomes important during a prosecution. Often times a misdemeanor will be charged and this change is extremely important for those violators who refuse to voluntarily come into compliance. Most cases when the City contact a property owner they will bring their property into compliance voluntarily and that happens a majority of the time. But in those rare cases where the property owner will refuse to bring themselves in compliance and misdemeanor charge is filed against them in criminal court sometimes they will show up the first day of court and say they fixed it and want to make it go away. The flexibility in the code allows the city prosecutor or city attorney at that time to review what has happened and say okay thank you, you fixed it why don't you plead to an infraction instead of a misdemeanor. So that allows the flexibility in the court which they really appreciate that flexibility because an infraction is a lot easier for the court to deal with especially when you have a property owner that for all intense and purposes voluntarily complied later than most property owners would.

There was some discussion regarding this issue.

Mayor Salas opened the public hearing on this item for comments from the public. There were none.

Mayor Salas asked the City Clerk to read the title of Ordinance No. 1381. City Clerk read: An Ordinance of the City Council of the City of Banning, California, Modifying Title 1, Chapter 1.28 and Title 8, Chapter 8.48, Article I of the Banning Municipal Code Regarding General Penalties and Penalties for Public Nuisances.

Motion Hanna/Franklin to waive further reading of Ordinance No. 1381. Motion carried, all in favor.

Motion Hanna/Machisic that Ordinance No. 1381 pass its first reading. Motion carried, all in favor.

4. Amendment to the Municipal Code Establishing Provisions for Murals.
(Staff Report – Oscar Orci, Community Development Director)

Mr. Orci gave the staff report as contained in the staff report.

Mayor Pro Tem Franklin said that in regards to the City Attorney's concerns about the legislation could he expand on that and explain if it makes a difference or not if it considered legislation versus an advisory group.

City Attorney said the recurring concern that they have had is that government is limited in what it can regulate with regard to matters of expression. And that limitation says that you really cannot look at the content of what comes before you. You can only look as to the standards as to size, location and perhaps material. What the ordinance sets up is a situation where the mural committee is a requirement for the applicant. The applicant must come in and comply with all of the basic standards that the City requires and then get approval of the mural committee and that is part of the ordinance. As a result of that the mural committee becomes an agent of the City and they are concerned and they have expressed this in the past that then makes that governmental action and the judgment then is imposed by that entity that is required as a matter of law for the applicant to go through is a problem. They did suggest making it a voluntary thing and suggested a variety of aspects of how this might be handled and certainly the Planning Commission considered, wrestled, and went back and forth and ultimately decided that from their standpoint they thought it was the risk to go forward naming the mural committee as the body that must basically approve these things. She said that they still think there is a risk that you may have litigation over this but with that said they are the City's legal advisors and no one has elected them to public office. They do not make the decisions; Council makes the decisions. Their duty is to advise the Council that there is some risk. Clearly should that risk materialize and be actually brought there are choices that could be taken at that point to reconsider the legislation.

Mayor Salas opened the public hearing for comments from the public.

John Klimkiewicz, 4678 W. Gilman Street addressed the Council stating that he was the vice-president of the Banning Mural Council. This item has gone back and forth and back and forth working with staff and the City Attorney. It was at their request that this be brought back that we have an ordinance in place rather than no ordinance at all. It is not their intent as the Banning Mural Council and having the ordinance say that they have to go to them. It is not their intent to regulate content. They understand that there is liability for the City in that way but the mural program throughout California is very successful in many cities as far as bringing in tourists and raising the quality of life in their downtown areas. It is part of the quality of life programs that cities have initiated to both the citizens and to bring in tourist and visitor dollars and to make the downtown area particularly a welcome place for arts and artists. The mural program is not something that is just really simple that somebody comes in and says they want to paint a mural and then you go ahead and let them do it. They feel that there does need to be an ordinance, there does have to be some requirements and there does have to be some standards and in fact, people in the mural council have been to seminars and multi-day symposiums and they have learned a lot. They know what it takes to get a major mural painted in your community. They know who the artists are that are respected not only throughout California and the Western United States but throughout the world. They feel their talents bring something special to bring that quality of life to the community. It is not only the quality of the artist but also the knowledge of how that mural has to be done so that it done properly, placed properly, proper preparation for the building, proper paint, and program for maintenance, etc. As the mural council with their knowledge and expertise they can make sure that a mural painted on one of our public buildings is going to be done well and right from the beginning and will be protected and maintained. That

is the purpose and their program and it is not to regulate and get the City in trouble. They feel that they have a vested interest and if they are going to have a mural program let's do it right and properly. They would like to see this ordinance passed so that they can go on with their program as they have done in the past and protect our community from things that we don't want to see on our walls quality wise.

Mayor Salas closed the public hearing for further comments from the public.

Councilmember Botts said that he would like to see this move forward as a former member of the mural council. He said that we need to bite the bullet and he always appreciates counsel's opinion and as she clearly stated it is a legal opinion. When people ask him if he would support this he clearly said yes. He said that with every vote the Council makes they stand to be sued and Black Bench is a good example. He said they have to say lets have a little control. Counsel sometimes says well if there is some content decision then immediately we end up in court and he thinks the answer is that it is probably not true. There is negotiation working with the City and the mural committee. Just to remind Mr. Orci his reading of the ordinance was that there was an ad hoc committee within the Planning Department that had to review the ordinance before and this simple one page ordinance did say there was an ad hoc committee that would review it. His only point there is that we have gone for so many years and never had anyone sue us under any system. He would like the Council to support at least a majority of the Planning Commission and approve Option one.

Councilmember Machisic said that the people who have been doing the murals in the city of Banning have done a fine job and he has every confidence in them. He would like to allow them as much freedom as possible because they have done such a good job but at the same time some of the things that Councilmember Botts mentioned are critical. Maybe after six or eight months or a year maybe we can review this thing a little bit based on the experience we have and how it is working.

Mayor Salas asked the City Clerk to read the title of Ordinance No. 1382. City Clerk read: An Ordinance of the City Council of the City of Banning, California, Approving Zone Text Amendment #07-97502, An Amendment to the Zoning Code to Establish Provisions for Murals.

Motion Franklin/Machisic to waive further reading of Ordinance No. 1382. Motion carried, all in favor.

Motion Machisic/Franklin that Ordinance No. 1382 pass its first reading. Motion carried, all in favor.

Motion Machisic/Botts to extend the Council Meeting past 10:00 p.m. Motion carried, all in favor.

RECESS CITY COUNCIL MEETING TO A JOINT MEETING OF THE CITY COUNCIL AND THE BANNING UTILITY AUTHORITY.

Mayor Salas called the joint meeting to order.

A. CONSENT ITEMS

A-1. IBEW-Utility Unit (International Brotherhood of Electrical Workers) Memorandum of Understanding.
1) Adopt Resolution No. 2008-02, Approving a Memorandum of Understanding (MOU) with the IBEW-Utility Unit which covers the City's Electric Utility and Water and Wastewater Utility employees; and 2) Adopt Banning Utility Authority Resolution No. 2008-01UA, Amending the 2007-08 Budget to Incorporate Necessary Changes.

Motion Hanna/Franklin to approve Consent Item A-1. Mayor Salas opened the item for public comments. **There were none. Motion carried, all in favor.**

Mayor Salas adjourned the joint meeting and reconvened the regular City Council Meeting.

ITEMS FOR FUTURE AGENDAS

New Items –

Councilmember Hanna would like a report back soon on the master planning for Parks and Recreation. She understands that requests for proposals went out and nothing came back and she would like to know what the plan is. It is an important component of our general planning.

Mayor Pro Tem Franklin would like ETA's on the pending items.

Councilmember Botts said he would like an update on the upgrades to the Council Chambers.

Finance Director said that there was a delay in our contractor ordering some of the equipment and getting it on time and they were to be done actually by the beginning of January. Staff is looking at the schedule so that meetings would not be disrupted, etc. and tentatively staff has put a side time between January 29 and February 5th to look at not having meetings in the Council Chambers and waiting to hear back from the contractor and move the project forward as soon as possible.

Mayor Pro Tem Franklin said that we have some properties here in town that have been either total losses because of a fire or in the middle of being demolished and left and one property is west of Sunset and the other is just east of Hargrave. She has talked with code enforcement officers and she was told it is out of their hands and she would like to know what needs to be done to get these properties either finished being demolished or repaired. We need to do something.

City Manager said that he would get with staff and find out. If it is out of Code Enforcement's hands then it tells him that perhaps we are in litigation with the property owner but we could certainly do something about it.

Pending Items –

1. Review of "Green Plan" in All Departments (*Machisic-10/9/07*) (*Earhart*)
2. Annual Review of General Plan (*Hanna- 10/9/07*) (*Orci*)
3. Review of Lease with Armory by end of the year. (*Franklin- 10/9/07*)
4. Schedule Special Meeting with the Beaumont City Council (*Salas- 11/27/07*)
5. Schedule Special Jt. Meeting the Banning United School District Board – (*Botts – 11/27/07*)
6. Schedule Special Jt. Meetings with the City's Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) – (*Franklin – 11/27/07*)
7. Review of Development Fees (*Hanna – 12/11/07*) (*Orci*)
8. Report on Potential Ordinances in Regards to Skateboarding (*Franklin – 12/11/07*)
9. Time Frames for Demolition of Buildings (*Franklin – 12/11/07*)
10. Ordinances in Regards to Group Homes (*Botts – 12/11/07*)

FUTURE MEETINGS

1. Special City Council Meeting –Thursday, January 17, 2008 at 9:00 a.m. with Banning Heights Mutual Water Company and the San Gorgonio Pass Water Agency to be held in the Council Chambers.
2. Special Council Meeting with Supervisor Marion Ashley - January 17, 2008 at 11:30 a.m. in the Large Conference Room
3. Special Council Meeting - February 12, 2008 – meeting to discuss delivery of State Water Project to Banning (*this would be meeting with SGPWA*)

CLOSED SESSION

City Attorney said that the City Council will meet in closed session pursuant to Government Code Section 54957.6 Conference with labor negotiators Randy Anstine, Julie Hayward Biggs, Bonnie Johnson and Chris Paxton regarding BPOA (Banning Police Officers Association). The Council will also meet in closed session pursuant to the provisions of Government Code Section 54956.9(b) with regards to two matters of significant exposure to litigation.

ADDENDUM - Call to Order a Joint Meeting of the City Council and the Banning Community Redevelopment Agency.

CLOSED SESSION

City Attorney said that the City Council and the Agency Board will meet in closed session pursuant to the provisions of Government Code Section 54956.9(b) to confer with legal counsel with regard to one matter of potential litigation.

Mayor Salas opened the items for public comments. There were none.

Meeting went into closed session at 10:10 p.m. are returned to regular session at 10:35 p.m. with no reportable action.

ADJOURNMENT

By common consent the meeting adjourned at 10:35 p.m.

Marie A. Calderon, City Clerk

**THE ACTION MINUTES ARE A SUMMARY OF ACTIONS TAKEN BY THE CITY COUNCIL.
AUDIOTAPES OF THE ACTUAL MEETING ARE AVAILABLE FOR LISTENING IN THE
OFFICE OF THE CITY CLERK OR A COPY OF THE MEETING CAN BE REQUESTED IN
WRITING.**

**CITY COUNCIL MEETING
PUBLIC HEARING**

DATE: **January 22, 2008**

TO: **Honorable Mayor and City Council**

FROM: **Duane Burk, Director of Public Works**

SUBJECT: **Resolution No. 2008-08, "Adopting the Airport Master Plan Update for the Banning Municipal"**

RECOMMENDATION: Adopt Resolution No. 2008-08, "Adopting the Airport Master Plan Update for the Banning Municipal Airport."

JUSTIFICATION: It is essential to adopt the Airport Master Plan Update for the Banning Municipal Airport in order to comply with Federal Aviation Administration (FAA) guidelines. Additionally, this update will provide direction for future airport development and help to ensure that the necessary facilities are improved or made available to meet the forecasted demand for services at the airport.

BACKGROUND: The Banning Municipal Airport has one runway with one taxiway and administrative building, fuel pumps, and 72 hangars. The existing Airport Master Plan was prepared in December of 1990. In order to comply with the current FAA requirements and to develop projects for FAA Airport Improvement Grants (AIP) grants, it was recommended that the Airport Master Plan be updated.

On June 27, 2005, the recommendation to hire a consultant, C&S Engineers, Inc., to update the Airport Master Plan was presented to and accepted by the Public Works Advisory Committee. On June 28, 2005, Resolution No. 2005-63, "Approving the Professional Services Agreement for Project No. 2004-49, 'Updating the Airport Master Plan for Banning Municipal Airport'" was approved by City Council.

In addition to the need to remain in compliance with FAA requirements, the main objective of the Airport Master Plan update was to determine the extent, type, and schedule of development needed to accommodate existing needs and future aviation demand at the airport. The Scope of Work for the project included the review of existing facilities, the preparation of an Airport Layout Plan, environmental documents per California Environmental Quality Act (CEQA) guidelines, and the Banning Municipal Airport Master Plan update (which included an inventory of the socioeconomic data and historical activity, local land use regulations, current conditions, economic analysis, financial plan and airport development, recommendations, and alternatives for airside and landside facilities and improvements at the airport to develop Airport Improvement Program (AIP) projects), along with public participation and meetings to discuss and review comments by the City of Banning, the Airport Land Use Commission, the FAA, and other affected agencies.

In April of 2007, the Airport Master Plan Update was completed by C&S Engineers, Inc. and submitted to the FAA for review. FAA approval was obtained in May of 2007. Consequently, the Airport Master Plan Update was submitted to the County of Riverside Airport Land Use Commission (ALUC) in June of 2007. ALUC found this update to be consistent with the 2004 Banning Airport Land Use Compatibility Plan and therefore approved the new Airport Master Plan in August of 2007. Copies of the Master Plan were forwarded under separate cover to City Council members in June of 2007 in order to allow sufficient time for review and comments.

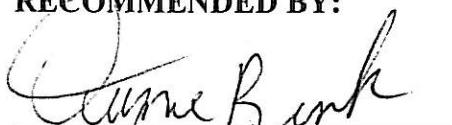
On October 23, 2007, a public hearing was held for the adoption of the Airport Master Plan Update which was advertised in two local newspapers on October 2, 2007 and October 5, 2007, as shown as attached Exhibit "A". At this hearing, City Council directed staff to hold a workshop to discuss the Airport Master Plan Update and to notify and request input and attendance from all pilots currently renting hangars at the Banning Municipal Airport. As directed, staff sent out letters via U.S. Postal Certified Mail requesting the attendance and/or comments from pilots.

The workshop was held on January 8, 2008 where a representative from C & S Engineers, Inc. provided a brief overview of the Airport Master Plan and Fixed Based Operator Study. Additionally, the representative was available for questions and answers. Upon completion of the workshop, City Council directed staff to proceed with the Airport Master Plan Update and Fixed Based Operator Study.

The Notice of Public Hearing for the second hearing was advertised in the Press Enterprise and the Record Gazette on January 4, 2008, as shown as attached Exhibit "B". Copies of the update were made available for public review at the Office of the City Clerk, Engineering Division, Banning Municipal Airport, and the Banning Public Library.

FISCAL DATA: The Airport Master Plan Update was completed by C&S Engineers, Inc. for the original "Not to Exceed" contract amount of \$174,560.00 and was funded by Account No. 856-9500-490.33-11.

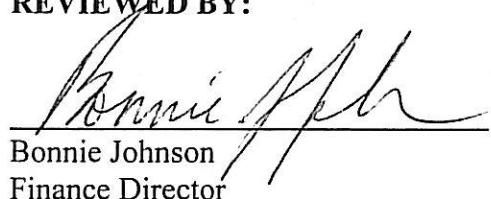
RECOMMENDED BY:



Duane Burk

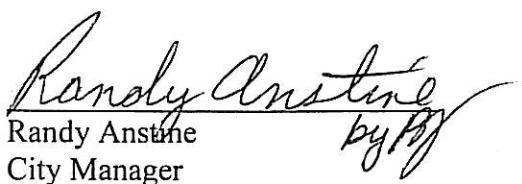
Director of Public Works

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Randy Anstine
City Manager

RESOLUTION NO. 2008-08

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, ADOPTING THE AIRPORT MASTER PLAN UPDATE FOR THE
BANNING MUNICIPAL AIRPORT**

WHEREAS, the City of Banning's existing Airport Master Plan was prepared in December of 1990; and

WHEREAS, the update of the Airport Master Plan is necessary in order to comply with current Federal Aviation Administration (FAA) requirements and will also provide direction for future airport development and help to ensure that the necessary facilities are improved or made available to meet forecasted demand for services at the airport; and

WHEREAS, on June 27, 2005, the recommendation to hire a consultant to update the Airport Master Plan was presented to and accepted by the Public Works Advisory Committee; and

WHEREAS, on June 28, 2005, the City Council approved an agreement with C&S Engineers, Inc. to perform the update of the Banning Municipal Airport Master Plan; and

WHEREAS, the proposed Airport Master Plan Update for the Banning Municipal Airport was approved by the FAA in May of 2007 and the County of Riverside Airport Land Use Commission (ALUC) in August of 2007; and

WHEREAS, on October 23, 2007, a public hearing was held for the adoption of the Airport Master Plan Update which was advertised in two local newspapers on October 2, 2007 and October 5, 2007 as shown as attached Exhibit "A". At this hearing, City Council directed staff to hold a workshop to discuss the Airport Master Plan Update; and

WHEREAS, the workshop was held on January 8, 2008 where C & S Engineers, Inc. provided a brief overview of the Airport Master Plan and Fixed Based Operator Study and was available for questions and answers. City Council directed staff to proceed with the Airport Master Plan Update and Fixed Based Operator Study; and

WHEREAS, the Notice of Public Hearing for the second hearing was advertised in the Press Enterprise and the Record Gazette on January 4, 2008, as shown attached as Exhibit "B". Copies of the update were made available for public review at the Office of the City Clerk, Engineering Division, Banning Municipal Airport, and the Banning Public Library.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning as follows:

Section I. Following notice duly given by publication, the City Council has held a full and fair public hearing regarding the adoption of the Airport Master Plan Update for the Banning Municipal Airport. All interested persons were offered the opportunity to hear and be heard regarding protests and objections to the adoption of the Airport Master Plan Update. All protests and objections to the acceptance of the Airport Master Plan Update are hereby overruled by the City Council.

Section II. The City Council hereby adopts the Airport Master Plan Update for the Banning Municipal Airport as prepared in 2007 by C&S Engineers, Inc.

Section III. A certified copy of the Airport Master Plan Update for the Banning Municipal Airport shall be filed in the Office of the City Clerk, with a duplicate copy on file in the office of the Director of Public Works and open for public review.

PASSED, APPROVED AND ADOPTED this 22nd day of January, 2008.

Brenda Salas, Mayor

ATTEST:

Marie A. Calderon, City Clerk

**APPROVED AS TO FORM AND
LEGAL CONTENT:**

Burke, Williams & Sorensen, LLP
City Attorney

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-08, was adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 22nd day of January, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon
City Clerk of the City of Banning

EXHIBIT "A"
NOTICE OF PUBLIC HEARING
FOR
RESOLUTION NO 2007-118,
"ADOPTING THE AIRPORT MASTER PLAN UPDATE FOR
THE BANNING MUNICIPAL AIRPORT"

F2 TUESDAY, OCTOBER 2, 2007

PUBLIC NOTICES

THE PRESS-ENTERPRISE PE.com

NOTICE OF PUBLIC
HEARING

PURSUANT TO LAW, no-
tice is hereby given of a Public
Hearing before the City Coun-
cil of the City of Banning, to be

heard October 23, 2007 at 6:30
p.m. of the Banning Civic Cen-
ter Council Chambers, 99 E.
Ramsey St. Banning, Califor-
nia, to consider Resolution No.
2007-118, "Adoption of the Air-
port Master Plan Update for
the Banning Municipal
Airport."

ALL INTERESTED PAR-
TIES are invited to attend said
hearing and present oral or
written testimony on the mat-
ter or to send written com-
ments to the City Clerk, P.O.
Box 998, Banning, CA 92220.
The Airport Master Plan Up-
date for Banning Municipal
Airport is available for public
review at the following loca-
tions: Office of the City Clerk
and Engineering Division lo-
cated at 99 E. Ramsey Street,
the Banning Municipal Airport
located at 200 South Hawtho-
row Street, and the Banning
Public Library located at 21
West Nicolet Street.

If you challenge any deci-
sion regarding the above pro-
posal in court, you may be lim-
ited to raising only those
issues you or someone else
raised in written correspon-
dence delivered to the City
Clerk at, or prior to, the time it
makes its decision on the pro-
posed action; or if a public
hearing is held on the pro-
posed resolution, you or some-
one else must have raised
those issues at the public
hearing or in written corre-
spondence delivered to the
City Clerk at, or prior to, the
hearing (California Govern-
ment Code Sub-Section
65009).

BY ORDER OF THE CITY
CLERK of the City of Banning,
California.
Date: September 27, 2007
Publish: The Press Enterprise
October 2, 2007
S/ Marie A. Calderon
City Clerk
By: Lelia Lopez
Deputy City Clerk

10/2

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PUBLIC NOTICES

**NOTICE OF
PUBLIC HEARING**

PURSUANT TO LAW, notice is hereby given of a Public Hearing before the City Council of the City of Banning, to be heard October 23, 2007 at 6:30 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey St., Banning, California, to consider Resolution No. 2007-118, "Adoption of the Airport Master Plan Update for the Banning Municipal Airport."

ALL INTERESTED PARTIES are invited to attend said hearing and present oral or written testimony on the matter or to send written comments to the City Clerk, P.O. Box 998, Banning, CA 92220. The Airport Master Plan Update for the Banning Municipal Airport is available for public review at the following locations: Office of the City Clerk and Engineering Division located at 99 E. Ramsey Street, the Banning Municipal Airport located at 200 South Hathaway Street, and the Banning Public Library located at 21 West Nicolet Street.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time it makes its decision on the proposed action; or if a public hearing is held on the proposed resolution, you or someone else must have raised those issues at the public hearing or in written correspondence delivered to the City Clerk at, or prior to, the hearing (California Government Code Sub-Section 65009).

BY ORDER OF THE
CITY CLERK of the City
of Banning, California.

DATE: September 27,

2007

PUBLISH: Record
Gazette
October 5, 2007
Marie A. Calderon
City Clerk
Publish the Record
Gazette
No. 751

10/5, 2007

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EXHIBIT "B"
NOTICE OF PUBLIC HEARING
FOR
RESOLUTION NO 2008-08,
"ADOPTING THE AIRPORT MASTER PLAN UPDATE FOR
THE BANNING MUNICIPAL AIRPORT"

THE PRESS-ENTERPRISE www.PE.com/classifieds

PUBLIC NOTICES

THE PRESS-ENTERPRISE 

FRIDAY, JANUARY 4, 2008 **A9**

**NOTICE OF
PUBLIC HEARING**
PURSUANT TO LAW, no-
tice is hereby given of a Public
Hearing before the City Coun-
cil of the City of Banning, to be
heard January 22, 2008 at 6:30
p.m. at the Banning Civic Cen-
ter Council Chambers, 99 E.
Ramsey St., Banning, Califor-
nia, to consider Resolution No.
2008-08, "Adoption of the Air-
port Master Plan Update for
the Banning Municipal
Airport".

ALL INTERESTED PAR-
TIES are invited to attend said
hearing and present oral or
written testimony on the mat-
ter or to send written com-
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Box 998, Banning, CA 92220.
The Airport Master Plan Up-
date for the Banning Municipal
Airport is available for
public review at the following
locations: Office of the City
Clerk and Engineering Divi-
sion located at 99 E. Ramsey
Street, the Banning Municipal
Airport located at 200 South
Hathaway Street, and the
Banning Public Library, lo-
cated at 21 West Nicolet
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makes its decision on the pro-
posed action; or if a public
hearing is held on the pro-
posed resolution, you or some-
one else must have raised
those issues at the public
hearing, or in written corre-
spondence delivered to the
City Clerk at, or prior to, the
hearing (California Govern-
ment Code, Sub-Section
65009).

BY ORDER OF THE CITY
CLERK of the City of Banning,
California.

Date: December 28, 2007

Publish: Press Enterprise

January 4, 2008

S/ Marie A. Calderon

City Clerk

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PUBLIC NOTICES

**NOTICE OF
PUBLIC HEARING**
PURSUANT TO LAW,
notice is hereby given of a
Public Hearing before the
City Council of the City of
Banning, to be heard Jan-
uary 22, 2008 at 6:30
p.m., at the Banning Civic
Center Council Chambers,
99 E. Ramsey St., Ban-
ning, California, to consider
Resolution No. 2006-
08, Adoption of the Airport
Master Plan Update for
the Banning Municipal Air-
port."

ALL INTERESTED PAR-
TIES are invited to attend
said hearing and present
oral or written testimony
on the matter or send their

written comments to the
City Clerk, P.O. Box 998,
Banning, California 92220.
The Airport Master Plan
Update for the Banning
Municipal Airport located
at 200 South Hathaway
Street, and the Banning
Public Library located at
21 West Nicolet Street.

If you challenge any decision
regarding the above
proposal in court, you may
be limited to raising only
those issues you or some-
one else raised in written
correspondence delivered
to the city Clerk at, or prior
to, the time it makes its
decision on the proposed
action; or if a public hearing
is held on the pro-
posed resolution, you or
someone else must have
raised those issues at the
public hearing or in written
correspondence delivered
to the City Clerk at, or prior
to, the hearing (California
Government Code Sub-
Section 65009).

BY ORDER OF THE CITY
CLERK of the City of Ban-
ning, California.

DATE: December 28,
2007.

-5- Marie A. Calderon

Marie A. Calderon

City Clerk, City of

Banning, California

Publish The Record
Gazette

No. 1103

01/04/2008

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**CITY COUNCIL
PUBLIC HEARING**

DATE: January 22, 2008

TO: City Council

FROM: Kim Clinton, Senior Planner

SUBJECT: General Plan Map Amendment and Zone Change #07-2502: A Request to change the General Plan Land Use Map and Zoning Map designations from Low Density Residential (0-5 Units / Acre) to professional Office at 935 E. Williams Street. APN 541-121-022.

RECOMMENDATION:

That the City Council:

Adopt Resolution No. 2008-13 upholding the Planning Commission's recommendation to deny General Plan Map Amendment #07-2502: to change the Zoning and General Plan map designation from Low Density Residential to Professional Office on parcel 541-121-022.

MOTION:

"I move the City Council adopt Resolution No. 2008-13 upholding the Planning Commission's recommendation to deny General Plan Map Amendment #07-2502: to change the Zoning and General Plan map designation from Low Density Residential to Professional Office on parcel 541-121-022"

ALTERNATIVES:

Continuance:

"I move the City Council continue the public hearing to its next regularly scheduled meeting".

Approve:

"I move the City Council continue the public hearing to the next regularly scheduled meeting and direct staff to prepare an Ordinance approving the General Plan Map Amendment #07-2502: to change the Zoning and General Plan map designation from Low Density Residential to Professional Office on parcel 541-121-022".

JUSTIFICATION: The proposed General Plan Map Amendment is not consistent with the General Plan. The Planning Commission has reviewed the amendment and has recommended denial based on the following Findings of Fact:

Finding #1: The proposed Amendment is not consistent with the goals and policies of the general plan.

Fact: The property is located at 935 Williams Street, in the Low Density Residential Zone of the General Plan. The property is bound by Williams Street on the south, Nicolet Street on the north, is west of Phillips Street and is approximately 330 feet east of Hargrave Street. While this area is made up of a variety of land uses, it is overwhelmingly residential in character. While there are office and commercial uses to the south of Williams Street, there are single family and multifamily developments on the north, east and west and, therefore, the proposed zone change does not support the City's Vision Statement that includes: "Respecting and enhancing the character of our existing neighborhoods." In addition, the General Plan was amended in 2006, and the land use classification for this property was changed from High Density Residential to Low Density Residential. This change reflected a clear policy to require any use of this land to conform with the low density character of surrounding neighborhood.

One of the Land Use Element's areas of focus for development opportunities is the use of neighborhood plans as an opportunity to revitalize neighborhoods and to enhance their character and identity as well as creating a livable city. The Zone Change is for a parcel that lies on the boundary of a Low Density Residential neighborhood; is on a street that straddles the transition between commercial and residential uses; and to develop a commercial office use within the boundary of this neighborhood would compromise the neighborhood identity by introducing an element that is not in character with existing development. Finally, as stated above, the current designation conforms with the current character of the surrounding neighborhood.

Finding #2: The proposed Amendment is not internally consistent with the Zoning Ordinance.

Fact: Changing the zone from Low Density Residential to Professional Office will cause internal inconsistencies with the Zoning Ordinance. Because the uses included for Professional Office zoning in the permitted uses matrix of the Zoning Ordinance are more intense uses not suitable for low density neighborhoods, approval of the proposal would result in undesirable, "spot zoning" within a Low Density Residential community.

BACKGROUND/ANALYSIS:

A Public Hearing for the requested Zone Change was held on December 4, 2007 and at that hearing the Planning Commission recommended denial and instructed staff to

prepare a resolution for denial to be brought back for adoption on January 2, 2008. The Planning Commission adopted the resolution for denial on January 2, 2008.

Staff had recommended approval of the zone change, see attached Planning Commission staff report dated December 4, 2007. Staff felt that an office use would be a compatible, low impact, transitional use between the Business Park uses to the south located between Ramsey Street and Williams Street and the residential uses located to the north of Williams Street. Staff felt the Conditional Use Permit and Design Review processes would effectively serve to screen out any incompatible uses or designs that might be proposed.

However, the Planning Commission felt that the uses permitted in the Professional Office Zone (for example: liquor stores) were incompatible with the adjacent Low Density Residential uses and that such uses would impair the neighborhood character. Please see the Planning Commission minutes of the meeting of December 4, 2007, attached.

FISCAL DATA: The denial of the application will have no fiscal impact.

RECOMMENDED BY:

Kim Clinton *by JS*
Kim Clinton, AICP
Senior Planner

REVIEWED BY:

Oscar W. Orci *by JS*
Oscar W. Orci
Community Development Director

REVIEWED BY:

Bonnie Johnson
Bonnie Johnson
Finance Director

APPROVED BY:

Randy Anstine *by BJ*
Randy Anstine
City Manager

Exhibits:

- 1) Resolution No. 2008-13
- 2) Planning Commission Staff Reports December 4, 2007 and January 2, 2008
- 3) Minutes of the December 4, 2007 Planning Commission Meeting.

GPA #07-2502
935 E. WILLIAMS STREET

RESOLUTION
NO. 2008-13

EXHIBIT “1”

RESOLUTION NO. 2008-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, TO DENY ZONE CHANGE #07-2502 TO CHANGE THE ZONING CLASSIFICATION FROM LOW DENSITY RESIDENTIAL TO PROFESSIONAL OFFICE AT 935 E. WILLIAMS STREET/APN 541-121-022.

WHEREAS, an application for a Zone Change to change the zoning from Low Density Residential to Professional Office has been duly filed by:

Applicant / Owner:	VicSeth Construction
Authorized Agent:	Elena Labastida
Project Location:	935 E. Williams Street
APN Number:	APN 541-121-022
Lot Area:	4.6 acres

WHEREAS, the Planning Commission has the authority per Section 17.44.010 of the Banning Municipal Code to review and make recommendations to the City Council on Zone Change #07-2502 for a change in zoning from Low Density Residential to Professional Office for the property located at 935 E. Williams St. ; and

WHEREAS, in accordance with Government Code § 65854, on November 16, 2007 the City gave public notice by advertisement in the Press Enterprise Newspaper and by mailing public notices to property owners within a 300 foot radius, of the holding of a public hearing at which the project would be considered by the Planning Commission; and

WHEREAS, on December 4, 2007 and January 2, 2008 the Planning Commission held the noticed public hearings at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Change and at which the Planning Commission considered the Zone Change; and

WHEREAS, at these public hearings the Planning Commission considered, heard public comments on, and on January 2, 2008 adopted a Resolution 2008-01 recommending denial of the proposed zone change; and

WHEREAS, in accordance with Government Code § 65854, on January 11, 2008 the City gave public notice by advertisement in the Record Gazette and by mailing public notices to property owners within a 300 foot radius, of the holding of a public hearing at which the project would be considered by the City Council; and

WHEREAS, on January 22, 2008 the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Change and at which the City Council considered the Zone Change; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES RESOLVE, DETERMINE, FIND AND ORDER AS FOLLOWS:

SECTION 1. CEQA FINDINGS:

Pursuant to CEQA Guidelines section 15270, CEQA does not apply to projects which a public agency rejects or disapproves.

SECTION 2. REQUIRED ZONE CHANGE FINDINGS.

Pursuant to Banning Municipal Code Section 17.44.010, the City Council makes the following findings pertaining to Zone Change No. 07-2502:

Finding #1: The proposed Amendment is not consistent with the goals and policies of the general plan.

Fact: The property is located at 935 Williams Street, in the Low Density Zone of the General Plan. The property is bound by Williams Street on the south, Nicolet Street on the north, is west of Phillips Street and is approximately 330 feet east of Hargrave Street. While this area is made up of a variety of land uses, it is overwhelmingly residential in character. While there are office and commercial uses to the south of Williams Street, there are single family and multifamily developments on the north, east and west and, therefore, the proposed zone change does not support the City's Vision Statement that includes: "Respecting and enhancing the character of our existing neighborhoods." In addition, the General Plan was amended in 2006, and the land use classification for this property was changed from High Density Residential to Low Density Residential. This change reflected a clear policy to require any use of this land to conform the low density character of surrounding neighborhood.

One of the Land Use Element's areas of focus for development opportunities is the use of neighborhood plans as an opportunity to revitalize neighborhoods, to enhance their character and identity and to create a livable city. The Zone Change is for a parcel that lies on the boundary of a Low-Density Residential neighborhood; is on a street that straddles the transition between commercial and residential uses; and to develop a commercial office use within the boundary of this neighborhood would compromise the neighborhood identity by introducing an element that is not in character with existing development. Finally, as stated above, the current designation conforms with the current character of the surrounding neighborhood.

Finding #2: The proposed Amendment is not internally consistent with the Zoning Ordinance.

Fact: Changing the zone from Low Density Residential to Professional Office will cause internal inconsistencies with the Zoning Ordinance. Because the uses included for Professional Office zoning in the permitted uses matrix of the zoning ordinance are more intense uses not suitable for low density neighborhoods, approval of the proposal would result in undesirable, "spot zoning" within a low density residential community.

SECTION 3. CITY COUNCIL ACTION

The City Council hereby takes the following action:

Deny Zone Change No. 07-2502 changing the zoning from Low Density Residential to Professional Office as shown in Exhibit A, which is attached hereto and incorporated herein by reference.

PASSED, APPROVED AND ADOPTED this 22nd day of January, 2008.

Brenda Salas, Mayor
City of Banning

**APPROVED AS TO FORM AND
LEGAL CONTENT:**

Burke, Williams & Sorensen, LLP
City Attorney
City of Banning, California

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2008-13, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 22nd day of January, 2008 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

GPA #07-2502
935 E. WILLIAMS STREET

PLANNING COMMISSION
STAFF REPORTS
12/4/07 & 1/2/08

EXHIBIT “2”

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STAFF REPORT
PLANNING COMMISSION

DATE: DECEMBER 4, 2007

CASE NO'S: GENERAL PLAN MAP AMENDMENT AND ZONING CODE CHANGE 07-2502

REQUESTS: CHANGE TO THE GENERAL PLAN LAND USE MAP AND ZONING MAP DESIGNATIONS FROM LOW DENSITY RESIDENTIAL (0-5 UNITS/ACRE) TO PROFESSIONAL OFFICE.

LOCATION: 935 E. WILLIAMS APN: 541-121-022

APPLICANT: VICSETH, INC.

SURROUNDING ZONE/USES: NORTH: SINGLE FAMILY HOMES
SOUTH: COMMERCIAL/OFFICE CENTER, VACANT PROPERTY & EXISTING SINGLE FAMILY HOMES
EAST: VACANT PROPERTY & EXISTING MULTI-FAMILY RESIDENTIAL;
WEST: VACANT LAND & EXISTING MULTI-FAMILY RESIDENTIAL

ENVIRONMENTAL
CONSIDERATION: THE COMMUNITY DEVELOPMENT DEPARTMENT DETERMINED THAT THE PROJECT WOULD NOT RESULT IN POTENTIALLY SIGNIFICANT EFFECTS ON THE ENVIRONMENT; THEREFORE, STAFF IS RECOMMENDING THE ADOPTION OF A NEGATIVE DECLARATION.

BACKGROUND/PROJECT DESCRIPTION:

The project site is approximately 4.62 acres in size, located between Nicolet Street and Williams Street and between Hargrave Street and Phillips Avenue. The site is generally flat in shape, vacant and zoned Low Density Residential (0-5 units/acre). The applicant is requesting approval to change the General Plan land use and Zoning designation from Low Density Residential to Professional Office.

As the Planning Commission is aware, the property was zoned High Density Residential Designation (up to 24 units/acre), but it was changed in January 31, 2006 (during the comprehensive update) to Low Density Residential (up to 5 units/acre). The applicant acquired this property prior to the down-zoning and requested during the hearings for the General Plan update that the property remain High Density Residential.

At the October 16, 2006 Planning Commission meeting, the applicant requested a change in the land use as well as zoning designation from Low Density Residential to Medium Density Residential (0-10 units/acre) for the development of 40 units on said property. At the meeting, the Commission discussed numerous items, including the GPAC's efforts, alternative housing options (single-family versus condominium/townhomes). At this meeting the Planning Commission voted (4-0) to direct that this matter be brought back at staff's discretion. The Commission indicated that the project should be more "in tune" with what has been discussed by the City in previous meetings for this area. In other words, the project should include market rate dwelling units that are owner-occupied. At the February 20, 2007 meeting, the Planning Commission continued the discussion of the project's merits as well as the requested change to the General Plan and Zoning designations. At the March 6, 2007 meeting the Planning Commission asked for the applicant to return with rendered plans of the residential project.

Subsequently, the applicant withdrew the applications and filed an application to change the zoning to General Commercial. After meeting with staff to discuss the proposed zone change, the applicant withdrew the request to change the zoning to General Commercial and requested a change of zoning to Professional Office. This was in response to discussions with staff regarding the applicant's desire to develop an office project on this site.

Findings:

Findings to recommend approval of the change in the General Plan land use map and Zoning designation have been made and are included in the attached resolution.

Public Notice

This proposal was advertised in the Press Enterprise newspaper November 16, 2007. All property owners within 300 feet of the site were mailed a public hearing notice. To date, no written comments have been received.

ANALYSIS:

Analysis

It is staff's opinion that the proposed General Plan and Zoning Map change is consistent with the goals and objectives of the General Plan and Zoning Code, however, due to the recent history regarding zone changes for this property a change in zoning to professional offices has the potential to generate much discussion similar to the proposed zone change to medium density residential did when it was brought forward last year. It is a proposed intensification of use in an area that had been down-zoned to a lower intensity use in 2006.

General Plan and Zoning Map: As the Planning Commission is aware, the project site was once included in a moratorium area that limited the development of High Density Residential development. During the comprehensive update to the City's General Plan the land use density was discussed for this site as well as the surrounding properties. It was determined that the appropriate density would be Low Density Residential. However, the Planning Commission may wish to visit this issue again.

General Plan Consistency: This Zone Change proposal supports the General Plan Vision Statement that includes: *"Well balanced commercial development where revenue generating commercial neighborhoods provide a diversified economy and a wide range of jobs, where people can work without needing their cars and where revitalization and beautification provide a safe and enjoyable shopping experience for visitors and residents alike."*

Policy 1 of the Commercial and Industrial Goals, Policies and Programs is: *"The land use map shall include sufficient commercial lands to provide a broad range of products and services to the City and region while carefully considering compatibility with adjacent residential lands".*

One of the Land Use Element's areas of focus for development opportunities is the use of neighborhood plans as an opportunity to revitalize neighborhoods and to enhance their character and identity as well as creating a livable city. As a parcel that lies on the boundary of a residential neighborhood and on a street that straddles the transition between commercial and residential uses, the design of this site as an office campus could include high quality fixtures and landscaping that could set a new design standard for the neighborhood and could include a pedestrian oriented courtyard and paseo that is a gateway between Williams Street and Nicolet Street.

Surrounding Properties: The developed properties located to the east and west of this site are multi-family. To the north, across Nicolet are single family homes. To the south is a commercial center located on Ramsey Street that formerly contained home décor oriented businesses and whose anchor was formerly a high end patio furnishings store. That building has recently been converted to the offices for the California Department of Social Services. The surrounding residential uses are a mixture of multi-family and single family development, some in good condition and some among the most blighted in the city. The former design center to the south is relatively new and is in a potentially ideal commercial location. Hargrave and Ramsey Street, located two parcels to the west of the

subject site is a prominent intersection with a freeway off ramp. But generally speaking, the area between Ramsey and Williams Street is relatively blighted near this location.

Because of the location of the subject property close to Hargrave Street, one block north of Ramsey and two blocks from the I-10 Freeway, it is an ideal property for transitional zoning between the commercial properties to the south and the residential properties to the north.

Furthermore, a low-intensity office campus designed to be architecturally compatible with the surrounding residential neighborhood would be a relatively low impact use that potentially could bring necessary services into a community that is lacking in such conveniences. Vehicle trips could be reduced as residents could walk to the doctor, dentist, beautician or other neighborhood-oriented service businesses.

The key to the success of such a project's integration with the surrounding neighborhood would be through the City's Design Review process that could assure the architecture and site design has a low key, residential appearance and through the appropriate use of the CUP process to assure that low-impact, residentially compatible business uses are approved for the site. There is a wide range of permitted uses in the professional office zone as evidenced in the attached permitted uses matrix from the zoning code. They include mixed use residential, professional offices of many types and convenience stores. The higher intensity uses permitted in this zone are subject to the CUP process which would screen out incompatible uses.

There are numerous examples of the successful integration of professional offices uses adjacent to residential uses in older established communities such as in the City of Redlands where such services are plentiful along collectors similar to Williams Street, often located in converted homes but also in projects built for office use. This site could serve as a buffer between the intensity of Ramsey Street and the I-10 and the quieter residential district north of Nicolet. The site's proximity to the high traffic areas and uses on the south and its location in a generally blighted area of town does not make it an ideal location for new low density single-family development. However an office campus could be a very good neighbor and could bring in services that the surrounding neighborhood could utilize.

Again the key to the success here is appropriate, high quality design with a residential/campus-like atmosphere and careful screening of incoming uses.

RECOMMENDATION:

The Planning Commission has the following options:

1. **Approval.** The Planning Commission can recommend approval of Resolutions 07-41 recommending approval of the Negative Declaration and 07-42 recommending approval of the General Plan Amendment / Zone Change to the City Council;

2. **Continue.** The Planning Commission can provide staff and/or the applicant with further direction and continue this item to a future meeting; or
3. **Denial.** The Planning Commission can direct staff to prepare the necessary resolution to recommend denial of the application to the City Council.

Respectfully Submitted:

Kim Clinton, Senior Planner

Exhibits:

1. Resolution No. 2007-41
2. Resolution No. 2007-42
3. Initial Study
4. Permitted Uses Matrix Exhibit A (Under Separate Cover)
5. Zone Change Exhibit C (Under Separate Cover)

STAFF REPORT
PLANNING COMMISSION

DATE: JANUARY 2, 2008

CASE NO'S: GENERAL PLAN AMENDMENT #07-2502

REQUESTS: CHANGE THE GENERAL PLAN LAND USE MAP AND ZONING MAP DESIGNATIONS FROM LOW DENSITY RESIDENTIAL (0-5 UNITS/ACRE) TO PROFESSIONAL OFFICE.

LOCATION: 935 E. WILLIAMS - NORTH SIDE OF WILLIAMS ST. MID-BLOCK BETWEEN HARGRAVE ST. AND PHILLIPS AVE.
APN: 541-121-022

APPLICANT: VICSETH CONSTRUCTION INC.

SURROUNDING ZONE/USES: NORTH: SINGLE FAMILY HOMES
SOUTH: COMMERCIAL CENTER, VACANT PROPERTY & EXISTING SINGLE FAMILY HOMES
EAST: VACANT PROPERTY & EXISTING MULTI-FAMILY HOME;
WEST: VACANT LAND & MULTI- FAMILY HOMES

ENVIRONMENTAL CONSIDERATION: A DENIAL OF THE GPA IS RECOMMENDED, THEREFORE NO ENVIRONMENTAL REVIEW IS REQUIRED.

BACKGROUND:

A Public Hearing for the requested Zone Change was held on December 4, 2007 and at that hearing the Planning Commission recommended denial and instructed staff to prepare a resolution for denial to be brought back for adoption on January 2, 2008. The resolution for denial is attached.

RECOMMENDATION:

That the Planning Commission adopt Resolution No. 2008-01 and recommend denial of the application to the City Council.

Respectfully Submitted:

Kim Clinton
Senior Planner

Exhibits:

1. Resolution No. 2008-01
2. Zone Change Exhibit A - Large version (Under Separate Cover)

*GPA #07-2502
935 E. WILLIAMS STREET*

*EXCERPT FROM
PLANNING COMMISSION
MINUTES OF 12/4/07*

EXHIBIT “3”

~~ACTION (BARSH / DICKSON): A motion was moved, seconded and carried that the Planning Commission Approve Resolution No. 2007-40, approving Design Review #07-7016, based on the findings and conditions of approval (Attachment "1" and incorporated by reference).~~

~~(Motion carried 5 - 0)~~

3. General Plan Amendment #07-2502: A Request by VicSeth Construction to change the General Plan / Zoning Map designation from Low Density Residential (LDR) to Professional Office (PO) on a vacant 4.62 acre parcel located at 935 E. Williams Street. APN 541-121-022. Pursuant to the California Environmental Quality Act, a Negative Declaration of Environmental Impact is recommended for this project.

Senior Planner Clinton presented the staff report and stated staff approved of the change from Low Density Residential to Professional Office, as Professional Office can be a good neighbor close to residential. It is usually a good transitional use as it relates to noise and emissions, etc. This use would bring some services within walking distance into the neighborhood and would reduce vehicle trips. The success of the rezone will depend on low key architectural design and careful screening of uses through the CUP process. Staff recommended approval of the General Plan Amendment and the Negative Declaration.

The Commissioners discussed what the actual uses were in the Professional Office zone. Some of the uses include markets, liquor stores, banks, as well as offices. The commissioners also discussed design and if any studies have been done to determine if these offices would be successful.

Marisela Labastida, representative of VicSeth Construction and HLCD, 897 Via Lata, Colton CA, came forward to discuss her project. She also stated that banks and lenders are not interested in funding a condo / residential project with today's mortgage market. Mrs. Labastida also felt this use would benefit the neighborhood by bringing in jobs and cleaning up this blighted area. That is why she is requesting the change to the Professional Office designation. She has also been talking to several entities and feels that her property would be able to provide offices that would compliment the Social Services Department project going in to the south.

There was much discussion among the commissioners regarding the various uses that could possibly be placed on that property and felt from the GPAC committee and from the many General Plan update meetings the general point of view was that that neighborhood be Low Density Residential and the commission wanted to stay with that designation.

ACTION (ESCANDEL / DICKSON): A motion was moved, seconded and carried that the Planning Commission direct staff to prepare the necessary resolution to recommend denial of the application to the City Council and to bring this resolution back to the Planning Commission at the next meeting.

(Motion carried 5 – 0)

4. ~~Lot Split #07-4504 and Design Review #07-7015: A request to approve Tentative Tract Map (TTM 35694) to subdivide a 3.59 acre site into 12 residential lots (Triplex lots) and request to approve six facades on W. Barbour Street approximately 250 feet west of San Gorgonio Avenue. APN 540-250-006.~~

Community Development Director Orci presented the staff report and state that the subject site is located between Barbour and Lincoln. The request is to subdivide the property into 15 parcels, 12 residential lots and 3 remnant lots (with nothing proposed for them). Access would be from Barbour Street, project would be gated with a private drive. The lots would be landscaped and fenced and the units would have porches, barbeques, Cape Code architecture with six various facades. The project meets and / or exceeds the Code requirements with the exception of the rear yards, which need to comply with the 10 foot set backs.

Darwin Manuel, 539 S. Brea Blvd, Brea CA, came forward to discuss his project. Mr. Manuel stated this is a very unique kind of development in that it contains separate lots with a duplex and a single family dwelling. There will be a Homeowner's Association for the interior properties and the exteriors of the buildings.

Frank Burgess, 2021 W. Wilson Street and the owner of 300 W. Lincoln Street, came forward to speak about this proposed project. Mr. Burgess owns the property adjacent to this project and he stated that the residents of the apartment complex next to him cause a great deal of problems. Mr. Burgess stated that he does not feel residential next to industrial makes for a good neighborhood situation, he feels the street should be the divider between different zones. Mr. Burgess offered the suggestion that this project would be better served on the VicSeth property on Williams Street mentioned in the previous case. He also stated he would like to see a study done about low income housing next to industrial uses.

Don Smith, 1681 W. Westward Avenue, Banning CA, came forward to speak. Mr. Smith stated that staff was wonderful to him when he came into City Hall to look at the packet. He stated that he felt this project would in essence be a 36 unit apartment complex with no manager. He felt that 36 individual lots with a Homeowner's Association would be a better idea.

Darwin Manuel, came forward to emphasize that this is not a low income apartment complex. This project will have individual owners with an investment interest.

**CITY COUNCIL AGENDA
PUBLIC HEARING**

DATE: January 22, 2008

TO: City Council

FROM: Kim Clinton, Senior Planner

SUBJECT: General Plan Amendment #07-2503: An Amendment to the General Plan Street System to delete Porter Street between Sunset Avenue and 22nd Street.

RECOMMENDATION:

That the City Council:

1. Adopt Resolution No. 2008-15, approving the Negative Declaration for General Plan Amendment #07-2503 to delete Porter Street between Sunset Avenue and 22nd Street from the General Plan; and
2. Adopt Resolution No. 2008-16, approving General Plan Amendment #07-2503 deleting Porter Street from the General Plan Street System between Sunset Avenue and 22nd Street as shown in "Exhibit A" which is attached hereto and incorporated by this reference.

MOTIONS:

1. *"I move the City Council Adopt Resolution No. 2008-15, approving the Negative Declaration for General Plan Amendment #07-2503 to delete Porter Street between Sunset Avenue and 22nd Street from the General Plan; and*
2. *"I move the City Council Adopt Resolution No. 2008-16, approving General Plan Amendment #07-2503 deleting Porter Street from the General Plan Street System between Sunset Avenue and 22nd Street as shown in "Exhibit A" which is attached hereto and incorporated by this reference.*

ALTERNATIVES:

Continuance:

"I move the City Council continue the public hearing to its next regularly scheduled meeting".

Denial:

"I move the City Council deny the General Plan Amendment No. 07-2503 on the following basis (the City Council will need to make its findings).

JUSTIFICATION:

The proposed General Plan Amendment is consistent with the General Plan. The Planning Commission has reviewed the amendment and has recommended approval.

BACKGROUND/ANALYSIS:

Porter Street is an east west street that is indicated on the General Plan Street Circulation plan as a secondary highway running between Sunset Avenue and Cottonwood Road and as a collector highway between Highland Home Road and Sunset Avenue.

This proposed change is in response to development that is occurring in the area bounded by 22nd Street and Sunset Avenue on the east and west and Bobcat Road on the south, including the approved Rolling Hills and the Tefft projects and the proposed Lariat and 5 Bridges Specific Plans.

None of these aforementioned developments occurring in this area has built or plans to build or utilize Porter Street as an access. However they do plan to build and utilize Bobcat Road. Staff is recommending that the segment of road be deleted from the Street System. As evidenced in the attached initial study, Bobcat Road serves the same purpose and will provide the same level of service.

The Planning Commission held a public hearing on the proposed GPA on December 4, 2007. There was no public opposition to the change and the commission unanimously recommended approval.

An advertisement regarding this proposal was placed in the Press Enterprise Newspaper on December 11, 2007 and to date, no comments have been received regarding the proposal.

ENVIRONMENTAL ASSESSMENT

An initial study (attached) was completed for this project and it was determined that there would be no effect on the environment. The intent to adopt a mitigated negative declaration was circulated and no comments were received. Bobcat Road has the capacity to carry the traffic that will be generated in this area at buildout and the amendment will not substantially change current or proposed traffic patterns in the city. A negative declaration is recommended for the project as no mitigation measures are necessary.

FISCAL DATA:

No fiscal impact.

RECOMMENDED BY:

Kim Clinton *by JS*
Kim Clinton
Senior Planner

REVIEWED BY:

Oscar W. Orci *by JS*
Oscar W. Orci
Community Development Director

REVIEWED BY:

Bonnie Johnson
Bonnie Johnson
Finance Director

APPROVED BY:

Randy Anstine *by RJ*
Randy Anstine
City Manager

Exhibits:

1. Resolution No. 2008-15, with Initial Study
2. Resolution No. 2008-16
3. Exhibit A, indicating deleted segment from the General Plan Street System

*GPA #07-2503
PORTER STREET*

*RESOLUTION
NO. 2008-15*

EXHIBIT “1”

RESOLUTION NO. 2008-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA ADOPTING A NEGATIVE DECLARATION FOR GENERAL PLAN AMENDMENT NO. 07-2503 TO DELETE PORTER STREET BETWEEN SUNSET AVENUE AND 22ND STREET FROM THE GENERAL PLAN STREET SYSTEM.

WHEREAS, an application for General Plan Amendment No. 07-2503 to delete Porter Street between Sunset Avenue and 22nd Street from the General Plan street system has been duly filed by:

Applicant / Owner:	City of Banning
Authorized Agent:	City wide
Project Location:	Porter Street between Sunset Avenue and 22 nd Street

WHEREAS, the proposed General Plan Amendment No. 07-2503 is considered a "project" as defined by the California Environmental Quality Act, Public Resources Code § 21000 et seq. ("CEQA"); and,

WHEREAS, after completion of an Initial Study, the Planning Director determined that it did not identify any potentially significant effects on the environment nor was there any substantial evidence from which it could be fairly argued that the project would have a significant effect on the environment. Therefore, staff has proposed a Negative Declaration for this project; and,

WHEREAS, the proposed Negative Declaration consists of the following documents: *Initial Study, Determination Page*.

WHEREAS, on December 4, 2007, using a method permitted under CEQA Guidelines Section 15072(b), the City provided notice of its intent to adopt the proposed Declaration to the public, responsible agencies, trustee agencies, and the Riverside County Clerk; and,

WHEREAS, the City made the proposed Negative Declaration available for public review beginning on November 14, 2007 and closing on December 3, 2007, a period of not less than 20 days. During the public review period, the City received no written comments concerning the proposed Negative Declaration; and,

WHEREAS, the Banning Planning Commission conducted a duly noticed public hearing on December 4, 2007 at which it received public testimony concerning the project and the proposed Negative Declaration and considered the proposed Negative Declaration and adopted a resolution recommending adoption of the negative declaration, and

WHEREAS, the Banning City Council conducted a duly noticed public hearing on January 22, 2008 at which it received public testimony concerning the project and the proposed Negative Declaration and considered the proposed Negative Declaration, and

NOW THEREFORE, the City Council of the City of Banning does hereby resolve, determine, order as follows:

SECTION 1. FINDINGS.

The City Council, in light of the whole record before it including but not limited to the City's local CEQA Guidelines and Thresholds of Significance, the proposed Negative Declaration and documents incorporated therein by reference, any written comments received and responses provided, and other substantial evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record and/or provided at the public hearing, hereby finds and determines as follows:

1. **Review Period:** That the City has provided the public review period for the Negative Declaration for the duration required under CEQA Guidelines Sections 15073 and 15105.
2. **Compliance with Law:** That the Negative Declaration was prepared, processed, and noticed in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), the CEQA Guidelines (14 California Code of Regulations Section 15000 et seq.) and the local CEQA Guidelines and Thresholds of Significance adopted by the City of Banning.
3. **Independent Judgment:** That the Negative Declaration reflects the independent judgment and analysis of the City.
4. **No Significant Effect:** That there is no substantial evidence, in light of the whole record, from which it could be fairly argued that the project may have a significant effect on the environment. Therefore, the Planning Commission concludes that the project will not have a significant effect on the environment.

SECTION 2. 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 3. CITY COUNCIL ACTIONS.

The City Council hereby takes the following actions:

1. **Adopt Negative Declaration:** The Negative Declaration for General Plan Amendment No. 07-2503 to delete Porter Street between Sunset Avenue and 22nd Street from the General Plan is hereby adopted by the City Council.
2. **Notice of Determination:** In compliance with Public Resources Code § 21152 and CEQA Guidelines § 15075, the Planning Director shall prepare a Notice of Determination concerning the approval and adoption of the Negative Declaration, and

within five (5) working days of project approval, file the Notice with the Riverside County Clerk for posting.

3. **Location:** The Negative Declaration, and all documents incorporated therein or forming the record of decision therefore, shall be filed with the Banning Planning Department at the Banning City Hall, 99 E. Ramsey Street, Banning, California 92220 and shall be made available for public review upon request.

PASSED, APPROVED AND ADOPTED this 22nd day of January, 2008.

Brenda Salas, Mayor
City of Banning

**APPROVED AS TO FORM AND
LEGAL CONTENT:**

Burke, Williams & Sorensen, LLP
City Attorney
City of Banning, California

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-15, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 22nd day of January, 2008 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

Environmental Checklist Form

1. Project title: General Plan Amendment #07-2503
2. Lead agency name and address: City of Banning
99 East Ramsey
Banning, CA 92220
3. Contact person and phone number: Oscar Orci
951-922-3107
4. Project location: Porter Street, from Highland Home Road to 22nd Street
5. Project sponsor's name and address: City of Banning
99 East Ramsey
Banning, CA 92220
6. General plan designation: N/A
7. Zoning: N/A
8. Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)

The City proposes to remove Porter Street from the General Plan of Roads. Porter Street is currently designated a Collector Highway from Highland Home Road to Sunset Avenue, and a Secondary Highway from Sunset to 22nd Street. Porter Street does not currently exist at this location. Traffic would be routed to Bobcat Road, which occurs immediately south of the planned location of Porter Street. The road would remain as a local street where it provides access to existing or future parcels.
9. Surrounding land uses and setting: Briefly describe the project's surroundings:

North: Vacant lands and scattered single family homes.
South: Vacant lands and scattered single family homes.
West: Sun Lakes Country Club
East: Vacant lands and scattered single family homes.
10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.)

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

<input type="checkbox"/>	Aesthetics	<input type="checkbox"/>	Agriculture Resources	<input type="checkbox"/>	Air Quality
<input type="checkbox"/>	Biological Resources	<input type="checkbox"/>	Cultural Resources	<input type="checkbox"/>	Geology /Soils
<input type="checkbox"/>	Hazards & Hazardous Materials	<input type="checkbox"/>	Hydrology / Water Quality	<input type="checkbox"/>	Land Use / Planning
<input type="checkbox"/>	Mineral Resources	<input type="checkbox"/>	Noise	<input checked="" type="checkbox"/>	Population / Housing
<input type="checkbox"/>	Public Services	<input type="checkbox"/>	Recreation	<input type="checkbox"/>	Transportation/Traffic
<input type="checkbox"/>	Utilities / Service Systems	<input type="checkbox"/>	Mandatory Findings of Significance	<input type="checkbox"/>	

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

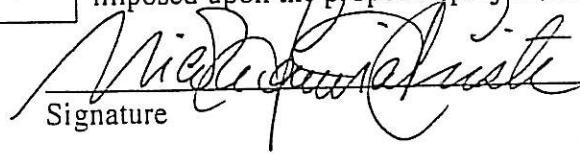
I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.



Signature

11/13/07
Date

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EVALUATION OF ENVIRONMENTAL IMPACTS:

- 1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
- 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
- 4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analyses," may be cross-referenced).
- 5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:
 - a) Earlier Analysis Used. Identify and state where they are available for review.
 - b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
 - c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
- 6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
- 7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
- 8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
- 9) The explanation of each issue should identify:
 - a) the significance criteria or threshold, if any, used to evaluate each question; and
 - b) the mitigation measure identified, if any, to reduce the impact to less than significance

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
I. AESTHETICS -- Would the project:				
a) Have a substantial adverse effect on a scenic vista? (General Plan)				X
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? (Aerial photograph)				X
c) Substantially degrade the existing visual character or quality of the site and its surroundings? (Application materials)				X
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? (Application materials)				X

I. a)-d) The General Plan Amendment will have no impact on aesthetics. The proposed removal of Porter Street from the General Plan is an administrative amendment only. The street does not currently exist in the area where it is proposed to be removed from the General Plan of Roads. Individual projects occurring in this area of the City will be reviewed under CEQA at the time they are proposed.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
II. AGRICULTURE RESOURCES: Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? (General Plan and EIR)				X
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? (Zoning Map)				X
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use? (General Plan Land Use Map)				X

II. a)-c) The General Plan Amendment will have no impact on agricultural resources. Individual projects occurring in this area of the City will be reviewed under CEQA at the time they are proposed. The removal of the roadway from the General Plan will result in less fragmentation of lands in this area of the City, and could therefore preserve potential grazing lands in the area.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
III. AIR QUALITY: Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan? (SCAQMD CEQA Handbook)				X
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? (SCAQMD CEQA Handbook)				X
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? (SCAQMD CEQA Handbook)				X
d) Expose sensitive receptors to substantial pollutant concentrations? (Project Description, Aerial Photo, site inspection)				X
e) Create objectionable odors affecting a substantial number of people? (Project Description)				X

III. a-e)) The General Plan Amendment will have no impact on air quality. Individual projects occurring in this area of the City will be reviewed under CEQA at the time they are proposed.

The deletion of the roadway from the General Plan will result in increased traffic on Bobcat Road. However, both Porter and Bobcat are projected to carry fewer than 5,000 vehicles per day at General Plan build out. Therefore, Bobcat will still operate at LOS or better at General Plan build out. Therefore, the Amendment will not result in the concentration of pollutants on that roadway.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
IV. BIOLOGICAL RESOURCES -- Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				X
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?				X
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?				X
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? (General Plan)				X
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? (Biological Assessment, Pacific Southwest, 11/04)				X

IV. a)-f) The General Plan Amendment will have no impact on biological resources. Individual projects occurring in this area of the City will be reviewed under CEQA at the time they are proposed.

The elimination of Porter will reduce the area needed for development in the City, and may ultimately preserve lands for species, insofar as less pavement will occur in this area of the City.

The area planned for Porter Street between Highland Home and 22nd Street is not located in a criteria cell under the Western Riverside County Multiple Species Habitat Conservation Plan. The proposed Amendment will have no impact on that Plan.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
V. CULTURAL RESOURCES -- Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in '15064.5? (General Plan)				X
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to '15064.5? (General Plan)				X
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? (General Plan)				X
d) Disturb any human remains, including those interred outside of formal cemeteries? (General Plan)				X

V. a)-d) The General Plan Amendment will have no impact on cultural resources. Individual projects occurring in this area of the City will be reviewed under CEQA at the time they are proposed.

Elimination of the roadway may reduce the potential impacts to cultural resources, insofar as less land may ultimately be disturbed for roadway construction, reducing the potential to affect cultural resources.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
VI. GEOLOGY AND SOILS -- Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? (General Plan)				X
ii) Strong seismic ground shaking? (General Plan)				X
iii) Seismic-related ground failure, including liquefaction? (General Plan)				X
iv) Landslides? (General Plan)				X
b) Result in substantial soil erosion or the loss of topsoil? (General Plan)				X
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? (General Plan)				X
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water? (General Plan)				X

VI. a)-e) The General Plan Amendment will have no impact on soils and geology. Individual projects occurring in this area of the City will be reviewed under CEQA at the time they are proposed. The proposed amendment will reduce the amount of roadway in the City, and result in less area which has the potential to be impacted by seismic events.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
VII. HAZARDS AND HAZARDOUS MATERIALS --Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? (Application materials)				X
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? (Application materials)				X
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? (Application materials)				X
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? (Riverside County Hazardous Materials Listing)				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? (General Plan land use map)				X
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area? (General Plan land use map)				X
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? (General Plan)				X
h) Expose people or structures to a significant risk of loss, injury or death				X

involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? (General Plan, Fire Setback standards)				
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VII. a)-h) The General Plan Amendment will have no impact on hazards or hazardous materials. Individual projects occurring in this area of the City will be reviewed under CEQA at the time they are proposed. The proposed amendment will result in increased traffic on Bobcat Road. However, this roadway is designated a Collector Highway, and will still have capacity to operate at acceptable levels of service. The increased traffic will not, therefore, result in increased hazards. The area surrounding the Amendment is proposed for residential development, and is not expected to result in the storage, use or transport of hazardous materials.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
VIII. HYDROLOGY AND WATER QUALITY -- Would the project:				
a) Violate any water quality standards or waste discharge requirements? (General Plan)				X
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? (Urban Water Management Plan)				X
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? (General Plan)				X
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site? (General Plan)				X
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? (General Plan)				X
f) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? (FEMA Maps)				X

g) Place within a 100-year flood hazard area structures which would impede or redirect flood flows? (FEMA Maps)				X
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VIII. a) - g) The General Plan Amendment will have no impact on hydrology or water resources. Individual projects occurring in this area of the City will be reviewed under CEQA at the time they are proposed. The elimination of the roadway from the General Plan may ultimately increase the amount of land available for percolation in the area, which may marginally increase the recharge of the aquifer, thereby resulting in a beneficial impact.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
IX. LAND USE AND PLANNING - Would the project:				
a) Physically divide an established community? (Aerial photo)				X
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? (General Plan Land Use Element)				X
c) Conflict with any applicable habitat conservation plan or natural community conservation plan? (Banning Municipal Code)				X

IX. a)-c) The General Plan Amendment will have no impact on land use and planning. Individual projects occurring in this area of the City will be reviewed under CEQA at the time they are proposed. The deletion of Porter Street as a General Plan road is proposed in an area where it is not being included in proposed projects. The Sunset Crossroads project, and the Lariat Specific Plans both propose to utilize Bobcat Road, and do not include Porter Street in their plans. The roadway capacities will be maintained at build out of the General Plan, without Porter Street.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
X. MINERAL RESOURCES -- Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? (General Plan)				X
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? (General Plan)				X

X. a) & b) The General Plan Amendment will have no impact on mineral resources. No mineral resources are known in this area of the City. The land is designated for residential land uses.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
XI. NOISE Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? (General Plan EIR, p. III-163 ff.)				X
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? (General Plan EIR, p. III-163 ff.)				X
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? (General Plan EIR, p. III-163 ff.)				X
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? (General Plan EIR, p. III-163 ff.)				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? (General Plan land use map)				X
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? (General Plan land use map)				X

XI. a)-f) The General Plan Amendment will have no impact on noise. Individual projects occurring in this area of the City will be reviewed under CEQA at the time they are proposed. The roadway capacity of Bobcat Road will remain at acceptable levels, and noise levels are projected to remain within the City's limits of 65 dBA CNEL, with or without the inclusion of Porter Street. The elimination of the roadway may reduce noise levels for those lands which were to be adjacent to Porter.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
XII. POPULATION AND HOUSING – Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? (General Plan, application materials)				X
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? (General Plan, application materials)				X
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? (General Plan, application materials)				X

XII. a)-c) The General Plan Amendment will have no impact on population and housing. The lands available for development in this area of the City will remain the same, and projects are proposed on most of them, which would result in residential land uses. The Amendment will not impact the development of these projects, and their impacts on population and housing will be assessed as the projects are reviewed under CEQA.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
XIII. PUBLIC SERVICES				
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:			✓	
Fire protection? (General Plan)				X
Police protection? (General Plan)				X
Schools? (General Plan EIR)				X
Parks? (General Plan; Recreation and Parks Master Plan)				X
Other public facilities? (General Plan)				X

XIII. a) The General Plan Amendment will have no impact on public services. The fire and police departments will still have east-west access via Bobcat Road. As Porter does not exist, it is currently not used for emergency services. The elimination of a roadway from the General Plan of Roads will have no impact on parks, schools or other governmental services.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
XIV. RECREATION --				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? (Application materials)				X
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment? (Application materials)				X

XIV. a) & b) The General Plan Amendment will have no impact on recreation. No parks or other recreational facilities are proposed adjacent to Porter Street.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
XV. TRANSPORTATION/TRAFFIC -- Would the project:				
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections (General Plan EIR p. III-20 ff.)			X	
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways? (General Plan EIR p. III-20 ff.)				X
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks? (No air traffic involved in project)				X
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? (TTM 34736)				X
e) Result in inadequate emergency access? (TTM 34736)				X
f) Result in inadequate parking capacity? (TTM 34736)				X
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)? (Project description)				X

XV. a)-g) The General Plan Amendment will have a less than significant impact on traffic. Individual projects occurring in this area of the City will be reviewed under CEQA at the time they are proposed. However, the General Plan EIR Traffic Impact Analysis identified that both Porter and Bobcat would handle less than 5,000 trips per day at General Plan build out. Bobcat is designated as a Collector Highway, with a 66 foot right of way, with one lane in each direction, parking, and curb, gutter and sidewalk. The capacity of a Collector at Level of Service (LOS) C is 12,800 vehicles. The elimination of Porter will result in Bobcat Road transporting less than 10,000 vehicles per day at

General Plan build out. Therefore, Bobcat will operate at better than LOS C at build out of the General Plan, with implementation of the Amendment. LOS C is the established standard for acceptable operations in the City. Impacts associated with traffic are therefore expected to be less than significant.

The General Plan Amendment will have no impact on air traffic, traffic hazards, parking or emergency access.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
XVI. UTILITIES AND SERVICE SYSTEMS. Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? (General Plan)				X
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? (Water Management Plan)				X
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? (General Plan)				X
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? (Water Management Plan)				X
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? (General Plan, Dept. of Public Works)				X
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs? (General Plan)				X
g) Comply with federal, state, and local statutes and regulations related to solid waste? (General Plan)				X

XVI. a)-g) The General Plan Amendment will have no impact on utilities. Individual projects occurring in this area of the City will be reviewed under CEQA at the time they are

proposed. Since Porter does not currently exist at this location, it is not used by utilities for distribution lines. The elimination of the roadway will not impact these utilities.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
XVII. MANDATORY FINDINGS OF SIGNIFICANCE --				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?				X
b) Does the project have the potential to achieve short-term, to the disadvantage of long-term environmental goals?				X
c) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?				X
d) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?				X

XVII. a)-d) The proposed General Plan Amendment will have no impact on biological or cultural resources.

The proposed Amendment will not impact long term goals or result in cumulative impacts, insofar as Porter Road does not currently exist in this area of the City, Bobcat Road is located immediately south of the proposed alignment of Porter Street, and has the capacity to accommodate traffic without impact to the level of service.

The General Plan Amendment will have no impact on human beings.

XVIII. EARLIER ANALYSES.

Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, one or more effects have been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case a discussion should identify the following on attached sheets:

a) **Earlier analyses used.** Identify earlier analyses and state where they are available for review.

General Plan EIR.

b) **Impacts adequately addressed.** Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

Not applicable.

c) **Mitigation measures.** For effects that are "Less than Significant with Mitigation Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

Not applicable.

*GPA #07-2503
PORTER STREET*

***RESOLUTION
NO. 2008-16***

EXHIBIT “2”

RESOLUTION NO. 2008-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING GENERAL PLAN AMENDMENT NO. 07-2503 TO DELETE PORTER STREET BETWEEN SUNSET AVENUE AND 22ND STREET FROM THE GENERAL PLAN STREET SYSTEM.

WHEREAS, an application for General Plan Amendment No. 07-2503 to delete Porter Street between Sunset Avenue and 22nd Street from the General Plan street system has been duly filed by:

Applicant / Owner:	City of Banning
Authorized Agent:	City wide
Project Location:	Porter Street between Sunset Avenue and 22 nd Street

WHEREAS, the Planning Commission has the authority to review and make recommendations to the City Council on General Plan Amendment No. 07-2503 for a change in the General Plan Street System to delete Porter Street between Sunset Avenue and 22nd Street.

WHEREAS, in accordance with Government Code Sections 65353, 65355 and 65090, on November 16, 2007 the City gave public notice by advertisement in the Press Enterprise Newspaper of the holding of a public hearing at which the General Plan Amendment would be considered by the Planning Commission; and

WHEREAS, in accordance with Government Code Section 65353, on December 4, 2007 the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the General Plan Amendment and at which the Planning Commission considered the General Plan Amendment; and

WHEREAS, at that public hearing on December 4, 2007 the Planning Commission considered, heard public comments on, and recommended to the City Council adoption of a Negative Declaration for the project by Resolution 07-45 and Recommended to the City Council approval of the GPA by Resolution 07-46; and

WHEREAS, in accordance with Government Code Sections 65353, 65355 and 65090, on January 11, 2008 the City gave public notice by advertisement in the Record Gazette Newspaper of the holding of a public hearing at which the General Plan Amendment would be considered by the City Council; and

WHEREAS, in accordance with Government Code Section 65353, on January 22, 2008 the City Council held the noticed public hearing at which interested persons had an opportunity

to testify in support of, or opposition to, the General Plan Amendment and at which the City Council considered the General Plan Amendment; and

WHEREAS, at that public hearing on January 22, 2008 the City Council considered, heard public comments on, and adopted a Resolution adopting a Negative Declaration for the project by Resolution 2008-15 ,

NOW THEREFORE, the City Council of the City of Banning does Resolve, Determine, Find and Order as follows:

SECTION 1. ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines and Thresholds of Significance, the recommendation of the Planning Director as provided in the Staff Report dated January 22, 2008 and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. CEQA: The approval of this General Plan Amendment is in compliance with requirements of the California Environmental Quality Act ("CEQA"), in that on January 22, 2008, at a duly noticed public hearing, the City Council approved and adopted a Negative Declaration reflecting its independent judgment and analysis and documenting that there was not substantial evidence, in light of the whole record, from which it could be fairly argued that the project may have a significant effect on the environment. The documents comprising the City's environmental review for the project are on file and available for public review at Banning City Hall, 99 East Ramsey Street, Banning, California 92220.

2. 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 Fees paid for by developer of the properties on which the roadway will be dedicated when that land is developed.

SECTION 2. GENERAL PLAN AMENDMENT

The City Council approves General Plan Amendment No. 07-2503 on the following grounds:

1. The proposed amendment is internally consistent with the General Plan because although it deletes a portion of a roadway in the circulation plan for the city, the development occurring in the area will use an alternative route, Bobcat Road, for east west access between 22nd Street and Sunset Avenue that is equivalent to and serves the same purpose as the portion of roadway that is being deleted.

2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience or welfare of the City because the levels of service, street hierarchy and

convenience of access using Bobcat Road are equivalent to the use of Porter Street in that location.

3. The proposed amendment would maintain the appropriate balance of land uses within the City.

This amendment will maintain appropriate balance of land uses within the city because it has no effect on land use. The land uses in this area have been planned and are being developed without the need for this segment of roadway.

SECTION 3. CITY COUNCIL ACTION

The City Council hereby takes the following action:

1. Approve General Plan Amendment No. 07-2503 Deleting Porter Street from the General Plan street system between Sunset Avenue and 22nd Street as shown in Exhibit A which is attached hereto and incorporated herein by this reference.

PASSED, APPROVED AND ADOPTED this 22nd day of January 2008.

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

Burke, Williams & Sorensen, LLP
City Attorney
City of Banning, California

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City Council of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-16 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 22nd day of January, 2008 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

///

*GPA #07-2503
PORTER STREET*

***EXHIBIT A – INDICATING
DELETED SEGMENT
FROM GEN PLAN STREET
SYSTEM***

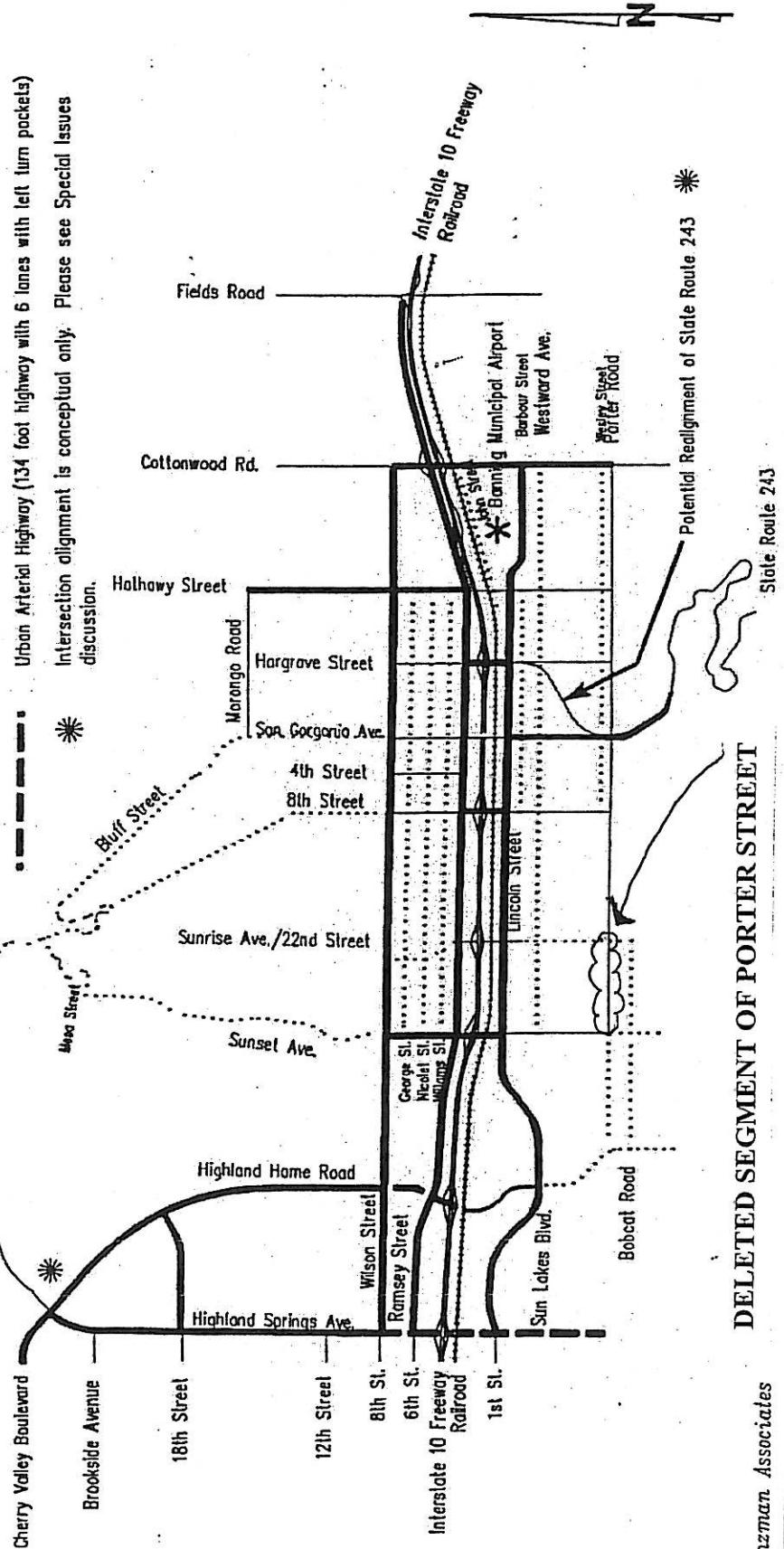
EXHIBIT “3”

112

EXHIBIT A

Legend

- Collector Highway (66 foot highway with 2 lanes without left turn pockets)
- Secondary Highway (68 foot highway with 4 lanes without left turn pockets)
- Major Highway or Arterial Highway (100 or 110 foot highway with 4 lanes with left turn pockets)
(Build 100 foot Major Highway if there is insufficient space for 110 foot Arterial Highway)
- Urban Arterial Highway (134 foot highway with 6 lanes with left turn pockets)
- Intersection alignment is conceptual only. Please see Special Issues discussion.



Source: Kunzman Associates

DELETED SEGMENT OF PORTER STREET