

**AGENDA
REGULAR MEETING
CITY OF BANNING
BANNING, CALIFORNIA**

June 10, 2008
6:30 p.m.

Banning Civic Center
Council Chambers
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

Report by City Manager

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 Nicole Warrington, Event Coordinator for Riverside County Department of Animal Services – “Boot Scoot on Down to the Pound” – June 14, 2008
- 2) Presentation of Solar Cup Certificates – Art Welch, Sr. Field Representative, Assembly Paul Cook’s Office

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 16

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

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

1. Approval of Minutes – Regular Meeting – 05/27/08 1
2. Resolution No. 2008-19, Declaring the City’s Support for the Green Builder (“CGB”) Program. 32
3. Resolution No. 2008-46, Initiating Proceedings for the Vacation of a Portion of Juarez Street Between Barbour St. and Westward Ave. . . . 37
4. Resolution No. 2008-56, Authorizing Staff to Submit a Grant Application to the California Transportation Commission (CTC) For a Highway Railroad Crossing Safety Account (HRCSA) Grant For the Sunset Avenue Grade Separation Project. 46
5. Resolution No. 2008-62, Approving an Agreement with the County of Riverside for Review of Geologic Reports Under the Earthquake Fault Zoning Act. 50
6. Resolution No. 2008-65, Providing for Certain Nuisance Abatement Charges to be Added to the Tax Rolls of Riverside County, CA. 63
7. Resolution No. 2008-66, Adopting Regulations for Candidates for Elective Office, Pertaining to the Electorate and the Costs Thereof For the General Municipal Election to be Held in the City on Tuesday, November 4, 2008. 79
8. Resolution No. 2008-67, Calling a General Municipal Election on November 4, 2008. 81
9. Resolution No. 2008-68, Authorizing the Chief of Police or His Designee to Execute Any Actions Necessary to Complete and Submit Grant Applications on the Local, State, and Federal Levels. . . 83

10. Resolution No. 2008- 72, Approving Cooperation Agreement for the Community Development Block Grant and Home Investment Partnership Program Funds for Fiscal years 2009-2010, 2010-2011, and 2011-2012	86
11. Resolution No. 2008-73, Approving an Advance to the San Gorgonio Child Care Consortium in the Amount of \$25,000	101
12. Resolution No. 2008-74, Awarding the Contract to Civic Solutions, Inc. for Third Party Project Management Services for the Pardee Homes-Butterfield Specific Plan and Appropriating the Necessary Funds for the Project in an Amount Not to Exceed \$60,000.00	105
13. The "City of Banning Clean & Green Report & Recommendations" ..	109
14. Approve Final Parcel Map No. 34878 (two lots located one lot west of the southeast corner of George St. & Hargrave St.)	126
15. Award the Construction Contract for Project No. 2007-40, Landscape Improvements to the Sunset Reservoir to Rock Bottom, Inc. of Bakersfield, California, in the amount of not to exceed \$119,624.96	129
16. Amending the Existing Consultant Services Agreement for Design of the Transmission Pipeline to Deliver State Water Project Water to Banning with Metcalf & Eddy, Inc. to Include the Upsizing From 24" to 54" Diameter Pipeline for a Stand Alone Design Package for San Gorgonio Pass Water Agency in the Amount Not-to-Exceed of \$95,215.00	131

- 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. Repeal of Resolutions 2006-128, 129 130 and Ordinance No. 1353.
Staff Report
- Recommendation: **The City Council open the public hearing, take testimony, and repeal Resolutions 2006-128, 129, 130 and Ordinance 1353.**

- 1) **Resolution No. 2008-69, Setting Side and Vacating Adoption of Resolution No. 2006-128, Vacating Adoption of Resolution No. 2006-128 Certifying the Final Black Bench Environmental Impact Report (SCH No. 200411024), Adopting a Statement of Overriding Considerations and Mitigation Monitoring Program.**
- 2) **Resolution No. 2008-70, Setting Side and Vacating Adoption of Resolution No. 2006-129, Vacating Adoption of Resolution**

No. 2006-129 Approving General Plan Amendment #06-2502 to Modify Certain Changes to the General Plan Circulation Element in Connection with the Black Bench Project.

- 3) **Resolution No. 2008-71, Setting Side and Vacating Adoption of Resolution No. 2006-130, Approving Lot Split #04-4509/Tentative Tract Map 34001 Pertaining to the Property Generally Located North of Wilson Street, West of Bluff Street, Between Sunset Avenue and Highland Springs Avenue.**
- 4) **Ordinance No. 1389**

Mayor asks the City Clerk to read the title of Ordinance No. 1389

"An Ordinance of the City Council of the City of Banning, California, Vacating and Repealing Ordinance No. 1353, Approving Specific Plan #04-209, to Establish the Development Standards and Guidelines to Allow the Development of Up to 1,500 Residential Units, A 13.1 Acre School Site, 81.2 Acres of Parks, and 869 Acres of Open Space on a 1,488 Acre Site Generally Located North of Wilson Street, West of Bluff Street, Between Sunset Avenue and Highland Springs Avenue.

Motion: I move to waive further reading of Ordinance No. 1389.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1389 pass its first reading.

(A minimum of three votes required)

2. Tentative Tract Map (TTM) 33540 Time Extension. Located Generally North of Gilman Street and West of 8th Street (APN: 535-110-002; -006; -011; -012; 535-311-006 through -23; 535-312-001 through -024; 535-070-014.

Staff Report 371

Recommendation: That the City Council adopt Resolution No.

2008-59, approving a one-year extension of time to September 26, 2009 for Tentative Tract Map No. 33540.

V. REPORTS OF OFFICERS

1. Ted Yarbrough, Fire Marshal/Emergency Services Coordinator
 - A. City of Banning's 2008 Disaster Survival Exposition. . . . 411
2. Brian Nakamura, City Manager
 - A. City Council Provide Further Staff Direction Regarding the Proposed Transient Occupancy Tax (TOT) and Warehouse Tax Ballot Measures 412

Recommendation: That the City Council provide further direction to staff regarding the proposed Transient Occupancy Tax and Warehouse Tax ballot measures.

- B. City Council Consider Staff Recommendation Regarding
the Proposed Modification of Redevelopment/Economic
Development Director to Redevelopment Manager 418

Recommendation: **That the City Council provide further direction
to the City Manager regarding the reclassification of
Redevelopment/Economic Development Director to
Redevelopment Manager.**

VI. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items –

1. Review of “Green Plan” in All Departments (*Machisic-10/9/07*) (*Earhart*) (*ETA 6/08*)
2. Annual Review of General Plan (*Hanna- 10/9/07*) (*Comm. Dev.*) (*ETA 7/22/08*)
3. Schedule Meeting with the Beaumont City Council (*Salas- 11/27/07*) (*City Mgr.*)
4. Schedule Special Jt. Meeting the Banning Unified School District Board –
(*Botts – 11/27/07*) (*City Mgr.*)
5. Schedule Special Jt. Meetings with the City’s Various Committees (Planning
Commission, Economic Development Committee, Parks & Recreation) –
(*Franklin – 11/27/07*)
6. Review of Development Fees (*Hanna – 12/11/07*) (*Johnson*) (*ETA 6/08*)
7. Jt. Meeting with Morongo Band of Mission Indians Tribal Council (*Hanna – 05/27/08*)

FUTURE MEETINGS

1. Joint City Council, Utility Authority and Redevelopment Agency Budget
Workshop – June 11, 2008 at 6:30 p.m. – Council Chambers

VII. CLOSED SESSION

1. Initiation of Litigation by City
The City Council will meet in closed session pursuant to the provisions of
Government Code Section 54956.9(c) to confer with legal counsel with regard to
one (1) matter of potential initiation of litigation.
2. Potential Litigation:
The City Council 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 (1) matter of significant exposure to litigation.
 - A. Opportunity for Public to address closed session items.
 - B. Convene to Closed Session

VIII. 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].

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

05/27/08
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Salas on May 27, 2008 at 6:55 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

BOARD MEMBERS ABSENT: None

OTHERS PRESENT: Brian Nakamura, City Manager
Julie Hayward Biggs, Agency Counsel
Duane Burk, Public Works Director
Jim Earhart, Public Utility Director
Leonard Purvis, Police Chief
Chris Paxton, Human Resources Director
Matt Bassi, Interim Community Development Director
Heidi Meraz, Recreation Director
George Thacker, Asst. Public Works Dir., Water/Wastewater
Perry Gerdes
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 Pastor Carlo Alce, Living Hope Christian Center.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS
ANNOUNCEMENTS/APPOINTMENTS

Report by City Attorney – There was nothing to report at this time.

Report by City Manager - There was nothing to report at this time.

PUBLIC COMMENTS – *On Items Not on the Agenda*

Ellen Carr, 471 W. George Street addressed the Council stating that she was speaking for all the animal shelters and all the rescue groups and to the public to please spay and neuter your pets. We are in the middle of kitten season and millions and millions of kittens are being born right now and unfortunately there are not millions and millions of homes for all of them. Soon after this come puppies. She asked if there was anything the

City could do to have like spay and neuter day, a proclamation or something. It could also be put in the utility bills and she can provide the number where you can get vouchers and a list of veterinarians who accept these. We need to make the people aware and educate them

Mayor Salas encouraged her group to work with Animal Services to come up with a proclamation and a day when maybe they can bring the mobile clinic out and do spay and neuters here.

Mayor Pro Tem Franklin said that on June 10th, PASSCOM will be having a speaker from Animal Services to talk about what to do in the event of an emergency with your animals. We want to encourage people who are interested to attend the meeting. It will be held in the modular building located at the hospital.

Bill Dickson, 5700 W. Wilson addressed the Council thanking everyone that came and participated and donated time and effort for the Mexican-American Scholarship Fund. It is a shame that not more word got out through the school district. They ended up at the last minute scrambling to put together nine scholarships of \$500. He would encourage everyone to talk to your friends and the people who are associated with the school and let's make the next year a banner year and have far more applications.

Charlene Sakurai, 43000 Dillon Road followed up on what Mayor Pro Tem Franklin said in that Animal Services is coming to the PASSCOM meeting on June 10th at 8:30 a.m. The speaker is Denise Westbrook from the Department of Animal Services with the County of Riverside and she will be speaking on how to prepare for emergency evacuation. She would encourage anyone who is participating in a planning group to plan for a disaster to attend this meeting.

Robert Gates addressed the Council stating that he is a junior at Banning High School and invited the Council to attend the Baccalaureate Celebration at Banning High School on June 8th at 1:00 p.m. at Banning High School Multi Purpose Room. He believes that it is very important that as many people from the community attend because it is a very important attend. We should take great pride that they have been able to get this far and they are graduating.

Jack White, 5700 W. Wilson addressed the Council regarding monies needed to fund a proposed concert to help draw more traffic into the city of Banning. He is here to appeal for monies needed to fund a proposed major concert to be held on 8/9/08 at the Playhouse Bowl. He went over what would be needed for the concert and the amount would be less than \$3000. He also went over the list of entertainers that would perform at the concert.

Mayor Salas referred this to staff and would let them follow-up with any questions they may have after reading the proposal.

CORRESPONDENCE: *None*

PRESENTATIONS:

1. WRCOG (Western Riverside Council of Governments)

Presentation by Rick Bishop, Executive Director said that he appreciates the opportunity to be here and provide a quick overview of their organization. He said WRCOG is one of about 14 or 15 sub-regional organizations in Southern California and these organizations range in their complexity and their levels of staffing and their levels of mandate. They are formed pursuant to a Joint Powers Authority much like other regional agencies such as Riverside Transit Agency, Riverside County Transportation Commission, Southern California Association of Governments, etc. Mr. Bishop started his power-point presentation stating that in regards to Agency Powers/Functions it is a forum for consideration, assemble information and explore practical avenues for intergovernmental cooperation. Those are really the trappings of what make Council of Governments and particularly, what makes WRCOG are the issues that came to local jurisdictions back in the early 1990's as they pertain to transportation, air quality, solid waste, housing and growth in general. They are issues that are important at the local level but really need to be dealt with on a regional or a sub-regional level as well. He said that their mission statement boils down to six words and their job is to respect local control but it is to provide regional perspective to our member entities. Today the Agency has a membership from each of the fourteen cities in Western Riverside County, the County of Riverside and most recently they added the Eastern and Western Municipal Water Districts. On July 1st they will welcome the new City of Wildomar as their 15th city. He continued his power-point presentation in regards to: County growth projections; sub-region's challenges; Major Programs such as TUMF, Regional Planning, GIS, Interregional Partnership, Solid Waste Cooperative Program, Cleanest County in the West, Clean Cities Coalition, Legislative Activities, Communication and Outreach, General Assembly, and Bus Tours. They have been fortunate over the course of the last few years to receive a number of awards and to be recognized for their efforts and that the recognition comes from a real broad spectrum of environmental and economic interests. As they look ahead their major goals are to serve our members agency interest, pursue excellence in existing programs, build WRCOG's reputation in the region and state; improve existing and develop new relationships with the private sector. As they look ahead to the future there are some issues that the Executive Committee is interested in and they range from real broad regional issues like goods movement and electricity restructuring, to continue working on air quality, AB 32 which is the landmark legislation passed in 2006 on greenhouse gas reductions. So they are looking forward to being able to work with all of the local jurisdictions so that they develop uniform responses to those mandates that will come down. He thanked John Machisic, representative from the City of Banning. Also he knows that each and everyone of the Council has been engaged and involved in WROCG activities and he appreciated the opportunity to have discussion with each and everyone of the Council Members on things that WRCOG is doing or things that are occurring within other agencies such as RTA or RCTC or in the environmental arena that can impact them as well so they really, really appreciate the involvement and engagement of every one in WRCOG and hopefully they will be able to serve the City's interest in the future as well.

Councilman Machisic reminded the Council that at the last Council meeting he mentioned that TUMF provided the City with \$4.2 million for the grade separation at Sunset. Also, the amount of publicity about what is happening because when you talk about billions of dollars people want to know where the billions are going and they have done an outstanding job in providing that information in a number of ways and that is great.

ANNOUNCEMENTS/COUNCIL REPORTS:

Councilmember Hanna –

- Said she toured a great portion of the State Water Project as a guest of the San Geronio Pass Water Agency who is the local participant of the California State Water Project and they had been planning this trip for 2 years. 35 attended from Banning which included City staff, Banning Chamber, Beaumont, Cherry Valley Water District, San Geronio Pass Water Agency, Yucaipa Water District, and San Bernardino Water District. When you actually see a good portion of this water project you begin to realize how complex and how expensive it is not only to have developed it but to maintain it on an annual basis. She would like to make a recommendation for consideration at some point that the City of Banning be a future host maybe in two years of this similar type of trip where Council Members could go and invite this whole group of folks involved in water. This was a wonderful opportunity.

Councilmember Machisic –

- Said last Wednesday he attended along with Mayor Salas and Mayor Pro Tem Franklin the 30th Annual Law Enforcement Appreciation Dinner and Awards Assembly at the Riverside Convention Center. There were three people from the Police Department who were recognized. In the category of Investigative Excellence, - Staff Sgt. Nicholas Schoen was honored. Excellence in Community Service honorees were Sgt. Alex Diaz and Detective Doug Monte. He said that Lt. Phil Holder was on the Steering Committee and it makes him proud that the City of Banning Police Department is involved in these things and more importantly they are being recognized for the outstanding job they do.
- At the Rotary Club he found out that our deputy person in charge of electricity gave some assistance to a high school project dealing with solar energy. He asked Mr. Earhart to explain.

Jim Earhart, Electric Utility Director said that they were approached by the Banning Alternatives Education School to see if the City would be interested in helping them with their solar project for the Annual Solar Cup (the boat race). The Banning Utilities Department sponsored them and they will be presented with some certificates at the next Council Meeting.

- Last week he and Chief Purvis went to Morongo Casino and listened to Bonnie Garcia, Assemblywoman from Palm Springs and she talked about the Indian Funds. Those who are not familiar with it over the past three years the City has received

approximately \$4.4 million dollars for police and fire. One of the things that has happened is that the money that the Tribe contributes is not part of the State budget but part of a trust that is controlled by the Governor. This year the Governor has pigeon-holed \$30 million dollars and has not released the money yet and this is for 2008-2009. Additionally, he has pigeon-holed money for the next year for \$30 million dollars. Assemblywoman Garcia went through it in much detail and she would like the City and people in the community to write letters to the Governor and to the Speaker of the Assembly, as well as, the Senate to see if we can get that money released because this law that has been in effect for three years and will sunset December 30, 2008 and if the money is not allocated to the local tribes to distribute to cities such as Banning, that money will be absorbed into the General Fund. For instance our paramedics that are on our fire trucks costs are approximately \$700,000 and this comes from gaming funds. Also, they have provided things to the Police Department in the ways of cars, special equipment, school resource officers, etc. and the total allocation between the two is approximately \$1.4 million dollars this past year. It is important to give as much pressure as we can on the legislators so that we get that money released because the year is fast coming to an end. We are working on a budget and when you talk about \$1.4 million dollars in our budget of about \$16 million that is a big bite. So we have to do whatever we can. If there are groups in the community who would like to write some letters, they can provide some information through the City Manager's office. It is vital that we do it now because they are talking about the budget at the State capitol.

Mayor Pro Tem Franklin –

- Attended the “7.8 Shakeout” last week and that was a session put on by the City of Riverside to talk about the exercise that the State of California is going to be doing to help people prepare for the earthquake. Dr. Lucy Jones was the speaker and what she talked about was what the probabilities are for a 7.8 earthquake to occur on the San Andreas Fault and the chances are very good. The State will have an activity in November and our City will be participating. They are looking at this being 200 miles long and it would go from the Coachella Valley to Los Angeles and the damage can be very severe as you go along the way and it will be not only the damage from the earthquake but damage from the resulting fires.
- Attended the Poverty Symposium held last Thursday at the Morongo Community Center and the keynote speaker was John Husing but also Ken Young, Superintendent of Schools for Riverside County, Jamil Dada, Workforce Development Director and Dr. Gilbert, Public Dept. of Health Services also spoke and they all talked about the impact of poverty on our community and especially on our children. Some of the keynote talked about was the amount of diabetes that is happening among our young people and also the State budget and the direct impact it is having on our communities. Dr. Young talked about one of the things he found in talking to the young people that are in Juvenile Hall is that when he asked them what were the things that got them to the point of being at juvenile hall the number one answer was that the kids did not feel that people cared about them and the number two answer was that they got behind in school and the number three reason was that they had given up hope. She thinks that those are things we really need to focus on and we

live in an area that is very blue collar and as our economy is changing we are going to find more and more people are spiraling into poverty. Even when you talk about the level of what they say an average income is to be in poverty we have a lot of people in that category and we are talking about families of four making less than \$25,000 a year. It is something for the Council to look at as they talk about things they are going to be offering in our community for our own residents.

- Attended the Apache Trail Roundabout Meeting and starting today until July 1st the Cabazon and Apache exists will be closed. They are working on a super speeded-up project to build two roundabouts one on the north and one on the south side of the freeway to help reduce the problems with traffic getting in and out of not only Morongo but also the outlets.
- She, Mayor Salas and Councilmember Hanna attended the grand opening of the helipad at the hospital and this will really help us not only with our traffic but also helping to get people in and out of the hospital when they need a helicopter.
- She and Councilmember Hanna have been sitting on the Ad Hoc Budget Committee and it is really an arduous process especially when you don't have a lot of money. They have tried to make sure that all of the Councilmembers and the City Treasurer receive a copy of the DVD's of every meeting that they had and they are asking that each Councilmember provide any questions that they have as to what they did and what they talked about and any concerns and forward these to the City Manager because there will be a budget meeting so everyone has a chance to weigh in on it.
- She didn't know how many people were aware that the City has a Public Benefits Program and we have quite a few rebates that are offered for people that have done any kind of activity that qualifies for rebate for the last three years and you have until the end of this year to submit your receipts and paperwork for it. You can call the Public Benefits Department or check on the City's website.

Mayor Salas –

- She and Councilmember Botts and the City Manager, as well as other staff attending the International Shopping Centers Council (ICSC). This is a nationwide conference where many developers, businesses and companies come together to show what they do, what restaurants they have, where they are looking to expand, and it gives the Council an opportunity to try to market our City and bring those types of services that our residents want to the area. It was an effective meeting and even though the market is the way it is, it was surprising that there were more in attendance this year than the previous year. Although they are not building as fast as they were whether it be some of the larger commercial or restaurants they are still looking at locations and starting to secure properties in different areas of the state so it still gives us that opportunity.

CONSENT ITEMS

Councilmember Botts pulled Consent Items 4 and 5 for discussion.

1. Approval of Minutes – Regular Meeting – 05/13/08

Recommendation: That the minutes of the Regular Meeting of May 13, 2008 be approved.

2. Resolution No. 2008-57, Approving the California Transportation Commission (CTC) Project Baseline Agreement for a Trade Corridors Improvement Fund (TCIF) Grant to Fund the Sunset Avenue Underpass Project.

Recommendation: That the City Council adopt Resolution No. 2008-57, Approving the California Transportation commission (CTC) Project Baseline Agreement for a Trade Corridors Improvement Fund (TCIF) Grant to Fund the Sunset Avenue Underpass Project and Authorize the Finance Director to certify that the City of Banning has matching funds that will be available to finance the project.

3. Resolution No. 2008-58, Temporarily Deferring the Collection of the City's Commercial and Industrial Development Impact Fees Until the Issuance of a Certificate of Occupancy.

Recommendation: that the City Council adopt Resolution No. 2008-58, temporarily deferring the collection of certain commercial and industrial development impact fees until the issuance of a Certificate of Occupancy permit.

6. Award of Annual Weed Abatement Contract to Inland Empire Property Service in the Annual Estimated Amount of \$70,000.

Recommendation: That the City Council award an annual weed abatement contract to Inland Empire Property Services for Fiscal Year 08/09 in an estimated yearly amount of \$60,000.

Motion Hanna/Machisic to approve Consent Items 1, 2, 3 and 6. Mayor Salas opened the item for public comments. There were none. **Motion carried, all in favor.**

4. Resolution No. 2008-61, Rescinding Resolution No. 2008-18 to Amend the Classification & Compensation Plan for the City of Banning.

Councilmember Botts said that he has had discussions with the City Manager and he has not had discussion with his colleagues. He said he wasn't totally aware of the reorganization proposed within staff dealing with the Development Director, Redevelopment and Economic Development. If his colleagues agree he would like to see this moved forward tonight except for the change in classification on the RDA Director. He would like to have some discussion on that topic. Just the issue that deals with Redevelopment where that persons reports and whether it is downgraded in classification.

Councilmember Hanna asked what he would recommend for the next step.

Councilmember Botts said he would like it as an agenda item for discussion either in open session or closed. Simply to have some discussion amongst the Council and City Manager on that piece of the reorganization and then could vote it up or down.

Councilmember Hanna asked if there was any reason they couldn't do this now.

City Attorney said that the organizational structure is a matter of a public discussion and there is no personnel issue involved in that. It is just the structure of how you are going to proceed.

Councilmember Botts said the personnel issue is a change in classification, a change in salary and that kind of thing and that is what is in this item. The reorganization, your right, is a separate issue that he has some concern about.

City Attorney said that is still not a closed session item. The personnel exception goes to individual kinds of things and not to the structure or the salary scales other than to the extent it is a bargaining issue.

City Manager said the brief discussion that he had with Councilmember Botts about this was where would this position land in terms of the pay scale and also the job duties and responsibilities and maybe if he can bring it back on an agenda with a full report with additional information on that specific position.

Councilmember Hanna said one the arguments is that this move to put Redevelopment and Economic Development back under the Community Development position would save money. She thinks that they would probably all agree that Economic Development and Redevelopment are probably our best way out of the hole in terms of financially making a difference to bring enough sales tax and property tax to provide the services that our community expects that is what the focus is and that would be her concern also. A Community Development Planning Person has a number of major issues to deal with and they all need to work as a team. She is concerned that the Economic Development consultant or position reports to Redevelopment who reports to Planning Director and kind of gets lost and is not of an equal basis. She has found that in recent times that they each didn't know what the other was doing and it is just a real problem. It is at the City Manager's purview how he designs it. She just wants to see the outcome that they are working as a team and that each one knows what the other is doing and they are moving forward and this is recognized as a high priority of the Council.

Councilmember Machisic said he was at a Redevelopment Meeting in Anaheim and he talked to a number of people from a number of cities and one of the problems that they are having is hiring Redevelopment Directors and they are at a premium and also they are asking for a premium salary. You're looking at something approaching \$175,000 to \$180,000 because you have to get someone who is qualified, has experience, etc. and you are competing with cities as a group that are all bigger than we are and if they are bigger they have more financial resources. That would be a consideration that the Council

would have to take and that is why they have to consider this possible restructure a little more seriously.

Mayor Pro Tem Franklin said that she thinks that this is something that may be well to bring back later to discuss a little bit further only because one of the issues has been whether or not everybody is working together and putting together a structure that makes sure that all the different departments are working together would be beneficial for everybody. Also looking at the fact that we are looking at what can we do to reduce our budget during lean times withstanding though what Councilmember Hanna said that Economic Development is one of the areas that we are saying we need to focus on.

Councilmember Hanna said one of the things that she picked up at the Redevelopment Conference was things like the owner participation agreements that they will be talking about on Friday. We don't do them all that often but for any highly technical kinds of legal agreements we can use a Redevelopment consultant just for the purpose of negotiating it and making sure that all of the things that need to be considered are considered. That is an option that we don't necessarily have to have a Redevelopment Manager that has the full wealth of knowledge on everything.

Councilmember Botts said he would probably agree with that but like he said to the City Manager if we are making this decision based upon economics, that is a mistake and it is a mistake to base it on a tight budget. If you don't have a Redevelopment Director who really understands redevelopment, economic development and real estate transactions, you're going to have the consultant's at \$250 to \$400 dollars writing those along with our City Attorney at \$235 an hour so it is a real debatable subject in his mind that we save a few dollars and then we are going to go out and hire consultants and attorneys to put the real estate transactions together. It is his feeling that, and he indicated to the City Manager, he would stand in front of everyone in this room and everyone in this city if we truly believe that we need retail, retail sales tax, we need jobs, that the number one priority is Redevelopment/Economic Development revitalization of the downtown, then that ought to be our number one priority. And burying that department within the Development Department and reducing the classification and the salary he would hate to see the Council do that when in fact the most important thing that they ought to be doing is Redevelopment/Economic Development. Not to be simplistic, obviously we have infrastructure and electric and water and all the other things we are doing but operationally and organizationally it is a very significant change. The Council said do we afford a really top notch City Manager and the Council said yes and we will pay what we need to get and obviously they paid significantly but they were willing to do that to move the City forward. He thinks that they need to do the same thing. He is not suggesting that they change anything on the Development person because there is a significant need to move that up and H. R. and the rest of that. The other issue that came out loud and clear on this was the issue of working together and that has been an issue since he has been on the Council and longer than that and he doesn't believe the way you fix that is to take what was reasonably successful in the past which was Redevelopment/Economic Development and to blend them in just because we want them to work together he doesn't think is good strategy.

Councilmember Machisic said he thinks this idea of coordination under one head is very vital because he has heard at times through the Council that they are concerned about cooperation between Economic Development and Redevelopment. He thinks this is vital for us and it vital also in regards to the one-stop permits.

Councilmember Hanna said she is sure that she doesn't know all the complexities but she knows that the Community Development in the past two years hasn't been able to bring forward the annual review of the General Plan and she presumes that the Community Development Department has been very, very busy and it is amazing how busy this town is and how much there is to do. So the idea of putting more on that role or person, Community Development Manager she would like to understand.

Mayor Salas said regardless of them being combined or separate she would like to have some type of strategy as to how this is going to benefit business and doing the things that we would like to accomplish and she looks to the City Manager and his leadership to let the Council know what it is they need because he is here on a day to day basis. The City Manager is kind of the doctor doing the analysis, him and the department heads, and she trusts that what they are going to bring forward is going to help them as a Council find those policies that we need to be business friendly and move in the direction that we are definitely working towards.

Mayor Salas asked if this was a clear direction and that it would be brought back.

City Manager said yes and essentially the comments he has heard are exactly what they had discussions about at the department director level when they were making these decisions. They don't make decision behind closed doors but try to have a discussion or dialogue as to how they can achieve the Council's goals as most efficiently and effectively as possible but also within the parameters of where we are headed with our budget and where we are headed with what we want to do. One of the things that they looked at was how do we utilize our current existing staff to help those department directors as we move along because as you know as we create departments which he understands we have currently exists the Redevelopment, the Community Development Department and an Economic Development Consultant we are also looking at how do we utilize our resources because as you know each department is going to need staff assistance and it would be pretty much impossible to have one member departments to be able to run those organizations. It is also important to have the one-stop shop in place and make sure that moves forward as well. Those were considerations given and it wasn't to try to diminish any of the organization or the importance within the organization. It was an economic decision to some extent but it was also trying to blend in as many resources as we could. He said that Councilmember Machisic made a great point in that he has had probably two discussions with individuals very interested in coming to work for the City of Banning but unfortunately, from a compensation perspective, it was not a reasonable desire. He is not saying that just for Banning he is saying that as the market everywhere you will find that department directors and city

managers is very difficult to negotiate very reasonable compensation packages but again how do we define reasonable.

There was some further discussion in regards to this position structure.

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

Motion Botts/Machisic to approve Consent Item No. 4 to adopt Resolution No. 2008-61, amending the City's Classification Plan to reflect new job classifications and salary ranges in accordance with a reorganization plan previously submitted by staff and approve by minute order those changes noted in attached "Exhibit A" except for the change in classification of the Redevelopment Director. Motion carried, all in favor.

5. Resolution No. 2006-63, Awarding the Contract to Civic Solutions, Inc. for Third Party Project Management Services for the Liberty XXIII Biofuels Project, Inc. and Appropriating the Necessary Funds for the Project in an Amount Not to Exceed \$60,000.00.

Councilmember Botts said he wanted to make sure that he understood that Liberty is going to pay for a staff person or consultant that would do typical City planning/development work and that person would report to the Development Director and where would they be housed.

Jim Earhart, Electric Utility Director said that was correct and they will not be housed in the City. They will be reporting to himself and the Community Development Director. This is to oversee the environmental study as far as the Liberty Energy project. It is just an amendment to the existing reimbursement contract. They will be in and out but will not have an office.

Motion Botts/Franklin to approve Consent Item No. 5 approving an amendment to the current Deposit/Reimbursement Contract with Liberty XXIII Biofuels Power, Inc. for the Senior Project Management Services, award of contract to Civic Solutions, Inc. in the amount not to exceed \$60,000, and approve Resolution No. 2008-63, authorizing an additional appropriation of funds. Mayor Salas opened the item for public comments. There was none. Motion carried, all in favor.

PUBLIC HEARINGS

1. The 1.5 MGD Expansion of the Water Reclamation Facility and Phase I Recycled Water Project.
(Staff Report - Jim Earhart, Electric Utility Director and George Thacker, Asst. Public Works Dir., Water/Wastewater)

Mr. Thacker said that they will be reviewing the environmental documents for the expansion of the Wastewater Treatment Plant and the Phase I Recycling Water System. They have in

attendance from Parsons Rosemarie Crisologo and Madhu Kundu who will be making the presentation. They are the design engineers plus they prepared the CEQA document.

Rosemarie Crisologo addressed the City Council thanking them for allowing them to make this presentation. She showed eight slides that gave an overview of the project and included the key environmental findings and project schedule. This project is a proposed expansion of the existing plant and the addition of a recycled water system. A purple pipeline from the existing wastewater treatment plant to the Sun Lakes community to the west. The purpose of this project is to bring advanced treatment to meet Title 22 Water Quality Requirements without filtration. This project would support the planned recycled water storage and distribution in accordance with the Banning Recycled Water Master Plan. The project would meet the on-going and projected water supply needs and surplus water during certain years and could be stored in reservoirs or percolated into the east Banning ground water aquifer. The proposed expansion and recycled water system would increase the capacity of the plant from 3.6 mgd to 5.1 mgd. It would add the advanced treatment using a membrane bioreactor and recycled water would be produced from the wastewater plant for use by Sun Lakes community irrigation of parks, golf courses, Caltrans, street medians, greenbelts and other areas in Phase 1. The project would be funded by State Revolving Funds, grants or loans. She showed a preliminary site plan of the Wastewater Treatment Plant which is currently approximately 126 acres. The new proposed facilities would include a new control building, a laboratory, a new 100 foot diameter water storage tank, membrane bioreactors, fine screening facility and sludge drying beds. There is a Well R-1 northeast of the plant which would be retrofitted to enable it to extract ground water that would be conveyed to the treatment process and that would require approximately 3500 feet of new pipeline from the well to the existing treatment plant. Construction of this project would include two activities – expansion of the wastewater treatment plant into the 16 acres west of the existing plant to build the new facilities and would take approximately 16 months and at the same time there would be approximately 5 miles of buried recycled water line and those lines would run from the existing treatment plant to Sun Lakes community. That would be along Charles Street, Hathaway, Lincoln, Sunset and east along the unpaved extension of Westward Avenue terminating at Sun Lakes. Parsons prepared the environmental study for the proposed project in accordance with the California Environmental Quality Act (CEQA) and she went over the key environmental findings of this report. The initial study resulted in a finding that the project qualified for a mitigated negative declaration so there would be mitigation measures such as site watering, biological monitor presents and the cultural resources. The draft CEQA Initial Study and Mitigated Negative Declaration was available November 2007 and it was released to the public at that time, posted on the City website, mailed to various government agencies and placed in the Banning Public Library. The City filed this document with the State Clearing House and with the Riverside County Clerk's Office. There was a 30-day public review period and notification was made to the six Native American Groups. Eight comment letters were received on the draft CEQA document and responses have been prepared to the comments raised in the six letters. The City published a Notice of Intent to adopt this Mitigated Negative Declaration in the Press Enterprise and Record Gazette on April 25th. If the Mitigated Negative Declaration is adopted by Council a Notice of Determination would be filed next month and construction would not begin until the end of this year lasting

approximately two years and this is because there are additional permits and approvals that are required as well as the funding.

Mayor Pro Tem Franklin asked if she could explain what the Phase I area is and how many phases are there

Ms. Crisologo said Phase I are the areas that have been identified that would receive recycled water initially and it is the known development and housing areas that would receive recycled water.

Madhu Kundu said it would be south of the I-10 freeway going to out to the Sun Lakes golf course and there are two phases.

Mayor Pro Tem Franklin asked what were the overall costs for the project. Mr. Thacker said that they are looking at the overall costs for both the expansion of the wastewater treatment plant will run in the range of \$20 million dollars and the recycled system will cost in the range of \$15 million to \$17 million dollars so they are looking at around \$37 million dollar project and they will be requesting SRF fund loans to cover that cost.

Councilmember Botts said that he wanted to make sure that Caltrans was in there for them to use this water, as well as, Sun Lakes and Pardee and others ultimately. He asked if it was a fair statement that whether it is Phase I or II if there is 2600 acre feet of new irrigation water is it a quid pro quo that we can say that if we use all of that 2600 for that purpose that we acquired 26 hundred acre feet of potable water or somewhere close to that. Ms. Crisologo said yes.

Councilmember Botts asked how many homes could 2600 acre feet of water support. Mr. Earhart said 5200 about half acre foot per year. It is safe to say that anything that they replace potable water with recycled water, yes we get that back in our account.

Councilmember Machisic said that timeline that you propose what happens between June 8th and December of 2008.

Mr. Thacker said that right now they are in the process of meeting all the items that the State requires for the State Revolving Fund Loan and grant so they will be processing that. This is just a major start because they will be coming back because they need a revenue program to pay for that loan or grant. Also, when you do an expansion to a treatment plant you have to get a new discharge permit from the Regional Water Quality Control Board and they have been talking with them and that will be part of this and also the State Health Department requires a permit for the recycled water so they will be processing those kinds of applications.

Councilmember Machisic said that Lennar was going to pay for some pipeline over their project and as well as into Sun Lakes and is he correct or wrong.

Mr. Thacker said that they were hoping that Lennar when they did their development would construct that recycled line to replace their potable water use with this recycled water and they know now because of the economics and the way development is going they have sort of backed off. They have always had in the back of their mind that they would go to the State for the recycled system and it is easier to get grants for it.

Councilmember Machisic said that when Lennar starts building again would they have a financial commitment for that pipeline that we have put in.

Mr. Earhart said absolutely but right now they are in a situation where they cannot sit back and wait on some of these developers so they have to take the lead and move forward on these projects and that is their intent. They will recoup some of the money and it will provide them recycled water for their project as well if and when they build it there.

There was some discussion regarding expansion of the existing plant and the use of recycled water on the north side of the freeway and storage of recycled water.

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

Motion Hanna/Machisic that the City Council adopt Resolution No. 2008-50 approving the following: 1) The City Council finds the construction of the 1.5 MGD Expansion of the Water Reclamation Facility and Phase I Recycled Water Project will not have a significant effect on the environment with the mitigation measures included in the Initial Study/Mitigated Negative Declaration. 2) The City Council adopts the Initial Study/Mitigated Negative Declaration-Wastewater Treatment Plant Expansion and Phase I Recycled Water System with a Mitigation Monitoring and Reporting Program; and 3) The City Council directs staff to file a Notice of Determination in accordance with the City's Environmental Guidelines. Motion carried, all in favor.

2. Resolution No. 2008-52, Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2008/09.
(Staff Report – Duane Burk, Public Works Director)

Mayor Salas asked the City Attorney since she owns property in the outlined areas is it okay for her to vote on this item. City Attorney said if she is treated no differently than anyone else in the area and is just a property owner then it is okay for her to go forward.

Mr. Burk addressed the Council stating that what they have before them is the final phase of the Landscape Assessment District. Staff is recommending that the Council confirm the diagram and the levy and collection of assessments within the City of Banning Landscape Maintenance District No. 1 for fiscal year 2008-09 and authorize and direct the City Clerk to file the diagram and assessment with the Riverside County Assessor/County Clerk-Recorder's Office. At this time Mr. Burk gave a power-point presentation on the Landscape Maintenance District and stated that the annual assessment charge for the District

will range from \$90.30 annually to \$183.01 which represents an increase of 3.4% based on the average Consumer Price Index (CPI) over the previous fiscal year for the Los Angeles-Riverside-Orange County area as reported by the U. S. Department of Labor. Per the Engineer's Report the limitation of the increase of annual assessment is 5% per fiscal year. The average unit can be increased without further notice by way of public hearing, by approving the CPI for the Los Angeles-Riverside-Orange County area during the preceding fiscal year. The utilities for the District are about \$46,000.00 a year and the current contract we have in place is with DLS Landscape, Inc. for an amount of \$162,718.00 per year and incidentals (advertising, data processing, Riverside County Assessors Role) comes to \$2,250.00 a year for a total cost for 2008/09 of \$211,000.00. He showed a slide that listed the current tracts, where they are located and what each tract is assessed annually. Some of the tracts that are not annexed or even built yet and there are some that will later be developed and added in to offset some of those revenues. There is a big gap between what we collect in taxes and what we pay out and there are a couple of reasons for that. He also said there are potential areas that would need to be upgraded.

Councilmember Botts said that they all have the same question as to why can't we collect enough to cover our costs. Why should we underwrite the developers or the builders?

Mr. Burk said that when they established the Landscape Maintenance District back in 1990 one of the first developments was Oregon Trail and Wilson Street. The Council's idea was that there would be improvements along Wilson Street maintained by taxes collected within just the housing tract for that area but the benefit would be received by all drivers on Wilson Street for beautification. There was a small gap problem with that and a long time history where the City did not bring forward to the elected officials this consumer price index increase. So with that window gone and not being able to go back and get that money we are always playing catch-up with that gap. In the 1990's there was a lot of developments that went south and some tracts went bankrupt. So he thinks that the City was not in a position at the time to try to levy a higher tax on development that wasn't really coming to Banning because you had a lot of vacant land out there with house pads. When development started coming back again the City Council at the time, he believes, was trying to entice development and not want to raise that tax higher. He said he cannot make up for the differences of what the Council's did or why his predecessors didn't bring forward an idea. In the past five years that staff has brought the CPI forward to the Council the gap has gotten larger because, of course, cost of labor has gone up and we have annexed larger areas and they cost more to maintain along with the retention basin at Wilson and Mountain Ave. He said that staff recognizes the gap. They are going to go out and put out flyers out to all of the residents and explain to them what the issues are and through the Prop 218 Act staff will see if they would participate in raising that tax. They are not doing it today. Staff would have to go out and actually realize what those true costs would be per tract and then forward that idea to the residents. He said that in one of his presentations he showed some proposed areas that needed to be upgraded because like everything else some of the landscaping is 18 to 19 years old and it can only grow so much and be trimmed so much and there is really no money in that budget to refurbish these areas. The idea would be someday to upgrade those areas. He knows that if they went out to the residents and said we would like to improve that area so it looks better in today's standards those residents may want to

participate if they knew it was going to improve. Staff would we have to go out and outreach to each individual also recognizing the fact that we may be criticized as staff.

Councilmember Hanna said that one of the slides had an Engineer's limitation of 5% increase per year and she didn't quite understand that.

Mr. Burk said the maximum that it can be increased is 5% per the Landscape Maintenance District Act of 1972. If it goes higher than that, they can only cap it as 5%.

Councilmember Hanna said that when they had a large surplus of 42% of our General Fund in reserve it was less painful but now it is up to \$86,318.00 and that is a police officer or a paramedic and that is substantial. Why shouldn't we increase it by 5% right now?

Mr. Burk said because they do not have the supporting documents. The CPI is based on the Los Angeles-Riverside-Orange County area as reported by the U. S. Department of Labor at 3.4% and that document supports the Council's ability to do it. If you are asking if you could make up the gap between the 5% that might be a legal questions.

Councilmember Hanna said so what you are saying is if the CPI were 6.5%, we would still only be able to charge an increase of 5%. Mr. Burk said that is his understanding.

Mayor Pro Tem Franklin asked if all of this they were talking about other than the park is it private property. Mr. Burk said no. All of this property belongs to the City. She also asked if the contractor is under contract for more than one year and do we ask in the bidding process for them to look at other ways to improve the landscaping because it is not overly attractive and neither is it water wise and how often do we go out to bid.

Mr. Burk said since his tenure of doing this they have actually had four different contractors doing this. They look at this annually and with the DLS landscape contractor the maximum that they give him is an annual contract. They put a caveat in there that staff would be able to take it back to Council and extend it up to three years but they don't every given them a three year contract. As far as asking the contractor to come in and re-landscape or get innovative would cost us money because that would be more on the capital side of the development of the landscaping. When it is put out to bid it is put out as a maintenance contract.

Councilman Machisic said the fee is increased by 3.1% and did the cost of the contract increase by 3.1%. Mr. Burk said no. Councilman Machisic asked what did it increase by. Mr. Burk said there is a reason why it is going to increase substantially in those numbers and that is because we are going to be annexing in but he doesn't know the percentage of it but he would eventually guess around 15% to 20% increase. And the reason why is that we are annexing in new development that are large areas.

Councilmember Machisic said for instance if I ask you did our part of the assessment increase more than 3.17%. Mr. Burk said yes.

Councilmember Machisic said there is an axiom that says, "the faster I go, the be hinder I get." And it sounds like the whole basic structure of the contract for instance you mentioned going to the people to ask if they would support more and as he looks at the percentages they are paying 60% of the contract and we are paying 40% of the contact. The other thing that he is concerned about also is that this is all based on assessed valuation and assessed valuation is going down and all they have to do is file an appeal with the Assessor's Office and pretty soon there may be a deeper and larger hole for the City's General Fund.

Mr. Burk said that the assessed value is based on a districting and not based on the value of their home. The nexus they created was that each tract would pay a percentage based on how much they had to maintain.

Councilman Machisic said this is a classic example of something that needs to be studied because the hole is bigger, deeper, and wider and next year it will be even more so and we need to look at the basic structure of this operation.

Mayor Pro Tem Franklin said it was mentioned about adding other development. When you are talking about adding them are they paying their fair share of coming on line? Mr. Burk said yes. Staff would bring that assessment or annexation back to the Council and then they become part of the annual revenue that can be assessed from the City Clerk. Part of the problem is that when you get into releasing bonds staff is very reluctant on releasing landscape maintenance district because they want to make sure that it is suitable for the residents that come in. The City really doesn't like to take them on until all development is over. It becomes a struggle between the City and the developer.

Mayor Pro Tem Franklin asked when we are adding them are we in the hole. Mr. Burk said no. Mayor Pro Tem Franklin said other than going to the residents and asking them if they are agreeable to pay more are there other methods to have us catch up.

Mr. Burk said he doesn't really know any as it pertains to the landscape maintenance district and that may be a legal question. When the City engaged into the 1972 Landscape Maintenance District Street Light Act they engaged to follow all of the rules that go along with it.

Mayor Pro Tem Franklin said in regards to the bid process did we already do it for this year. Mr. Burk said that they don't do it every year. They do it every three years and they only receive an annual contract. The difference is that you keep that number for the one year and the only way the number is raised is per the CPI. When that number is brought back to the Council it means that the contract has been increased for an additional year and they are entitled to the price increase of the CPI. But for example, if the contractor says they are not making any money and they want to be out of the contact, he too can get out of the contract in that one year.

Councilmember Hanna said along the lines of what Mayor Pro Tem Franklin is saying they are all agreeing that we need to do some out of the box thinking. She doesn't know what the Landscaping and Lighting Act of 1972 allows. Is it possible to get out of it and if it were

possible to get out of it, is there an alternative. We need to look at something that is going to work because as we approach our following year budget we are not going to want to be spending \$80,000.00 more on this district.

There was some further discussion regarding landscape maintenance areas and the difference of how they are maintained.

Councilmember Machisic said he mentioned having a session to discuss this but he would like to recommend to the Council that we have this problem presented to the City Manager and the appropriate staff and let them come back with possible solutions.

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

Motion Machisic/Franklin that the City Council adopt Resolution No. 2008-52: 1) Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2008-09, Pursuant to the provisions of Part 2 of Division 15 of the California Streets and Highways Code; and 2) Authorize and direct the City Clerk to file the diagram and assessment with the Riverside County Assessor/County Clerk-Recorder's Office and as amended to include having staff work on this and come back with some other ideas for the Council. Motion carried, all in favor.

3. Tentative Tract Map (TTM) 31924 (Formerly known as the "Teff" project) time extension. Located Generally West of San Geronio Avenue and South of Westward Avenue (APN: 543-020-021; 543-030-004; 543-040-001, -002; 543-050-001, -002, -003).
(Staff Report – Matthew Bassi, Interim Community Development Director)

Mr. Bassi said the project before you is one-year time extension for Tract Map 31924. The original approval was granted by the Council on May 2005 and in June 2007 the applicant requested a time extension and Council approved that. This is a 352-acre project that has 478 single family homes all half acre lots with open space and flood areas. The applicant has indicated that he is still working on engineering plans and with the economy financing is a little difficult so he is requesting a one-year time extension to complete all that. Staff's recommendation is approval.

Mayor Pro Tem Franklin said in regards to the actual ground and the topography because of the rains that have occurred since this was originally approved has anybody inspected this to see if there any significant changes that might affect the tract map.

City Manager said that he did speak with staff and they have been out to the site and the topography has not changed and there is clearly some erosion issues that have been consistent with that property but subsequent to his discussion with her they did have staff discussion that indicated that there were not any issues because there is no grading that is happening at this point.

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

Motion Botts/Franklin that the City Council adopt Resolution No. 2008-53, approving a one-year extension of time to May 10, 2009, for Tentative Tract Map No. 31924. Motion carried, all in favor.

REPORTS OF OFFICERS

1. City Council Direction to allow Interim Urgency Ordinance No. 1376 to Expire on June 25, 2008, and Direct Staff to Address Key Issues as Identified in the Kosmont Study.
(Staff Report – Brian Nakamura, City Manager)

City Manager said that this item is in regards to a study that was completed by the Kosmont group relative to the use of our land for industrial and commercial uses throughout the city. He believes this goes back to a concern that the Council had some time ago with respect to the amount of available land in the community and how that land should be best utilized whether it be for retail, commercial/industrial uses and specific uses related to whether or not it would generate revenue for the City whether it be through assessed value through sales tax revenues through some type of off set because as you know as we build we continue to increase the demand for services throughout our community. He said that Kosmont has done its study and has presented it to the Council and circulated to the public. If you focus on the narrative or the transmittal letter that is dated May 23, 2008 you will find some interesting comments that have been made with respect to specifically where certain types of development might be best suited for different areas throughout the community, specifically with industrial uses or warehousing and also what we should be doing to prepare for the growth and development that is surly to come as we heard with Mr. Bishop's presentation about the expansion of our economy and economic area, population growth and also what was presented tonight in other staff reports. Most importantly one of the things that the City Council has been most concerned about is with the moratorium on warehousing and where do we go from here and he thinks because of a lot of things that have transpired throughout the last year and specially within the last six months we've noticed that there has been a economic downturn and so maybe some of the vital concerns we had about the warehousing issue and what type of land uses we assume will take place have kind of resolved themselves somewhat because there is lack of a demand at this point for warehousing. But Mr. Kosmont does also suggest that maybe there is a need to support a study for a warehouse tax or some type of tax that could offset the potentials of maybe a retailer who may be located in a specific area that could be a sales tax generator. He thinks that Mr. Kosmont also suggests in his report that regardless of the type of development you have you will get jobs. An employment base will come with the types of land uses whether it is for retail, commercial or industrial. With that after thoroughly read the study and the transmittal letter and having personal conversations with Mr. Kosmont his recommendation at this time is that we allow Ordinance No. 1376, the Interim Urgency Ordinance for the Ten Months and Fifteen (15) Days Establishing a Temporary Moratorium on the Approval of

Self-Storage Facilities and Warehousing Uses Within the City to expire on June 25, 2008, which is the date of expiration and that you further direct staff to either conduct a study or analysis as directed by Mr. Kosmont for a possible warehousing tax and also that we also move forward with the infrastructure recommendations he has so that we can prepare for the next round of growth which is surly to come throughout the Pass Area.

Councilmember Hanna said she would really like to request a presentation by Kosmont on the Study. She doesn't feel that the questions they originally asked have been entirely answered and there are statements, questions and phrases that she would like to understand better. She wondered if this could be tabled until the next meeting.

City Manager said she brought up a good point and one of the things that they wanted to do, and it was a timing issue, was to have the Council be able to digest the information, develop questions if that was necessary and as we get closer to the moratorium date of June 25th we have a limited number of Council meetings if you will recall and he had the actual final document to the Council on Friday unfortunately for you to review but he would be glad to ask Mr. Kosmont to come and present that.

Councilmember Botts said that he doesn't want to be contrary but he is not sure that we are going to learn anything that we don't already know. If you look at his summary, if you read the document, if you look at his letter of transmittal two things 1) he has no idea what we asked him to do and he doesn't know that anyone in this room today knows what we asked him to do. Oscar Orci hired him as he understands it but he doesn't think anyone knows what Oscar asked him to do and he doesn't know what answers to expect; and 2) there was lot of discussion here and one of the alternatives we said was as we move forward with the concerns about the potential for lots and lots for warehouse distribution on prime land with our primary goal as retail and retail sales tax we had that discussion and one of the alternatives would be to lets open this up, lets take the moratorium off, we need to get out of the marketplace and let the market place operate. However, we did agree to say that perhaps there is some middle ground for a small per square foot development fee. Again, having spent a couple of hours with Larry Kosmont, one on one, and reading what he said he just doesn't know. He said we need to clean up Banning, need tough code enforcement, we need infrastructure and sure maybe you can consider a nominal per square foot warehouse tax.

Councilmember Hanna said he was right of course but she doesn't know what staff directed him but she knows what the Council's questions were. She doesn't think that the Council's questions were entirely answered by this and given the breath of his report she would like the value of his knowledge. She didn't have the opportunity that Councilman Botts had to meet with him for several hours. She asked for it but didn't have that opportunity. For example, one quote on page 19, he says, "merely allowing warehouse development does not mean that the desired development will occur." She understands that the thought is that the economy is so miserable that we don't have to worry about it. We can take off the moratorium and nothing is going to happen anyway, or something. That is not the way she likes to do planning. We paid for this report and she would like to get the benefit of his knowledge for the whole Council and the City to get the benefit of his knowledge.

Councilmember Botts clarified that he doesn't have, he thinks, any answers or information that you don't have. Earlier on in the process as you all know, he was advocating how do we take the City out of the market place and let the market place make their own decisions on what kind of development but in doing so impose a small per square foot fee. That was his discussion with Mr. Kosmont and they shared some ideas. But he doesn't have any answers or anything you don't have.

Councilmember Hanna said for example in the report he talks about Redlands approving an increase of a warehouse tax and that because of that they lost some warehouse opportunities to some other cities. She thinks that the Council knows that it will have a negative impact and she doesn't know what kind of study you need to determine that. It will be a deterrent to warehousing. She said our questions included she is sure is how much of our land could be developed into warehousing. Is that a good amount? Is that too much or too little? We don't want and we talked about this extensively, the whole Council that we don't want much of our bare land to go up into massive warehouses where it will limit the possibilities of any other type of development for the next twenty years at least. She believes that was the issue as she recalls and that hasn't really been answered.

Mayor Pro Tem Franklin said that we have scheduled on our Pending Items an annual review of the General Plan scheduled for our next meeting.

Mr. Bassi said he doesn't think the Planning staff is ready to bring that forward on June 10th. They might be able to get it accomplished at the June 24th meeting.

Mayor Pro Tem Franklin said when you do work on that is that going to include telling us exactly what we have that could be used for warehousing.

Mr. Bassi said no, the whole purpose of that particular item is to just let you know what we are doing on the goals and policies and action programs that was adopted in the 2006 General Plan. The intent of that is not to do assess warehouse or available land for industrial purposes.

Mayor Pro Tem Franklin asked Mayor Salas if Mr. Bassi could include that. Mr. Bassi said they could.

Councilmember Hanna said it would seem to her a review of the General Plan all policies and programs involves all the departments. She doesn't know if that could be achieved in two weeks or even four weeks.

Mr. Bassi said obviously he has only been here a short six/seven weeks and that particular item was not high on the priority list when first coming in but it could even be July before he could get it to the Council.

Councilmember Botts said is it fair to say that the General Plan and the zoning that falls out of that is set in place and we just dated that a year ago and if anyone looked at that you

would look and see where industrial can go, here is where warehousing can go, here is retail can go.

Mr. Bassi said as a general statement you have already established that policy through the land use map that was adopted with the General Plan. Warehousing is allowed in any industrial zoned property in the entire city so conceivably every parcel that is zoned industrial could be a warehouse building. He is not saying that the reality is that would happen but under the current zoning regulations which is pretty typical in most cities warehouse/industrial uses are permitted in the industrial zones.

Mayor Salas said the study was good and informational and she would also like to talk with Mr. Kosmont and hear from him and ask him questions directly. There has to be a way that we can make it a win, win for everyone. Doing an entire moratorium across the board is so extreme and at the same time there has to be a way we can provide some type of document that if they are bringing in what it is we are looking for, then we can provide them with a letter of some sort. We are looking to you as staff to come up with some solutions where it is not so extreme on one end or the other.

Councilmember Botts said staff was recommending he thought not to take the moratorium off but for us to vote tonight to let the moratorium expire on June 25th and that is his concern. He will not reiterate all the reasons why he did or didn't support the moratorium as a business guy but he thinks we are at the end of the line and whatever we have we need to take the moratorium off.

Councilmember Hanna said that she thinks that they could wait until we could do a presentation on June 10th and that would be sufficiently in advance of June 25th.

City Manager said the whole goal was to move this forward and have this discussion or future discussions and questions that they could possibly answer.

Councilmember Botts said but if the decision, after Larry Kosmont comes and talks to us, is to lift the moratorium then that is not a problem for the 25th if we do that on the 10th.

City Attorney said there is no problem with lifting the moratorium or just letting it expire. The issue is whether you want to extend because if you decide that you do want to extend the moratorium then on the 10th of June we do need a report from Planning telling everybody what you have done up till now just so that is available to the public prior to the 24th so that we can comply with the statute in the event you want to extend. And there will be a notice period that comes up but it will be after the 10th of June for the hearing to extend. So yes, you can let it lapse by doing nothing and that is not an issue. If you change your mind and choose to extend, there are certain steps that need to be taken in advance.

Councilmember Machisic said he would like to remind the Council that the Council has indicated many times over that the kind of development we want here are jobs for our people who are traveling on the road. And the second thing we want is some tax and he thought when we talked about a warehouse tax that was kind of like plan B that we get half

of the pie but we don't get necessarily the jobs and he thought that was kind of like a second level of acceptance. He thinks that anything you do with warehousing from his point of view absolutely has to have a tax of some kind. We need to generate some revenue for the City because we are certainly not going to get the jobs.

Councilmember Botts said that he senses that we should probably hear from Larry Kosmont and he assumes that there are several votes here to hear from him as long as we could go ahead and let the moratorium expire on the 10th which Council has said that. One of the other things he was going to propose not knowing where they were going with this is to put together a small task force of two Council Members, two staff and some developers that are involved currently, perhaps a couple of large land owners just to sit down and discuss where the City is going and where we think we need to go. It doesn't mean that they can't have Larry Kosmont come and make the presentation but he thinks they ought to have some communication and dialogue.

Mayor Salas said why couldn't correspondence from the warehouses be mediated through the City Manager and that way the entire Council is abreast of any information that comes forward.

Councilmember Botts said he was suggesting sitting across the table with no paper and no pencils just talking to each other about what the City is trying to accomplish. Just to sit down and talk about it and not to send correspondence and information. He still feels strongly as he has said all along and the Council supported him in this that they need to look at having some little increased revenue from warehousing distribution and self-storage. If you look in the report, these gentlemen in this room right now are already asking for a lot of money from us to help with their projects. From the south side of the freeway but north of the airport there is \$150,000 that has been plugged in to our capital budget to help that developer. He is not suggesting that is good or bad and ultimately we make that decision but the point is that we could get warehousing distribution and get requests from the north and south side of the freeway for millions and millions of dollars of assistance and in his mind there is a little conflict there.

Councilmember Machisic said that we authorized this study and several of you have indicated that you don't know what the charge was and this is a person who deals with these types of things and he is making a recommendation and he thinks that before we go and do anything in groups he would be in agreement with Councilmember Hanna's point of view that we need to be able to put our questions to this person and ask him what he means in this because this is a person who supposedly works in this field and he is making a recommendation to us. He thinks that they ought to at least understand what he is recommending before we go off and do anything else. Because if we don't, we are going to go out and get some other recommendations without ever consulting this person.

Councilmember Botts said the report is very clear whether Larry is here or not. It says we should look at and consider some form of a per square foot tax. His words were nominal; that is his recommendation along with the others. All he is suggesting is that they move this process along.

Mayor Pro Tem Franklin said that it has already been voiced by enough of the Council that we do want to hear a little bit more from Mr. Kosmont and she thinks there is some interest in a majority of the Council to have either a workshop or some kind of discussion where we can talk about what we want to do after we hear from him. She would recommend that the Council continue this or table it to our next meeting and not to put off our very patience audience but we all want to make sure that we are doing the best that we can and that means that we get as much information as we can before we make our decision.

Mayor Salas opened the item for public comments.

Jeff Gordon, 250 Newport Center Drive, Newport Beach addressed the Council stating that basically he was hoping you would support Mr. Nakamura's recommendations and let the moratorium expire which is what the Kosmont Study says to do. You certainly can have Larry here and he personally thinks it is clear what Larry said. They may have not answered some questions that were asked early on but he is not sure as Mr. Botts said that he was actually directed specifically to do that so that is another issue. Again, he would hope that the Council would vote to let the thing expire and there are some real problems if you don't he thinks and at the same time you talk about this warehouse tax. Mr. Kosmont does say in here look at it and a couple of times he says study it but he also says it is a detriment to do that. He thinks it is a little bit counterproductive to let this moratorium expire and at the same time slap a tax on as Mr. Nakamura's report says to local distribution business. It is just kind of sending the wrong message to the development community and the brokerage community that we are kind of open for business again but you are going to pay for it. The marketplace is the marketplace. He was labeled last time by somebody he got introduced to as the warehouse guy. He said he is not a warehouse guy. He has built a lot of warehouses but he also built retail complexes, mixed-use complexes, office buildings and master-planned residential communities; they do it all. But they do develop where things should be developed so they bought 60 acres in your town zoned industrial, zoned to allow warehouses and that is what they intended to do because that is what should be there. He understands that the City has revenue issues. Why don't you do as Mr. Botts' says? They will sit down with the development community and maybe there is a way they can figure out how to do something that is not necessarily a warehouse tax. You can have a systems tax, a systems fee like they have in Rancho Cucamonga and you get a wonderful company that comes in here with a thousand employees and stuff and maybe you could waive that fee for them and do it backwards. There is a lot of different ways but you have to sit down with them and figure out ways to solve it. He knows that a lot of the Council members hate warehouses but that is what is happening in this part of the world today. The economy is tough and he doesn't have anybody for his property and he has been waiting for three and half years out there and doesn't have anybody in the wings. He would just like to be able to advertise that you could build out here if that is what you wanted to do.

Bill Dickson, 5700 W. Wilson said as you know the Planning Commission has been very much involved in the things that are transpiring here this evening and he would like to have the Planning Commission involved in this with Mr. Kosmont because he thinks that this is something that would be extremely beneficial for them making decisions in the future on

such projects. So he would just like to throw the request in that they are included when this group gets together.

Councilmember Hanna said it would make sense also to have the Economic Development Community included.

Lloyd Fields, Beverly Hills and land owner in Banning addressed the Council stating that the amount of a tax would generate is infinitesimal compared to what development could produce. He had a discussion with Jeff Gordon earlier and he told him that there is about 10 million square feet available for warehouse development in Sections 11 and 12 and there is a potential of developing 5 million square feet of warehouse space at about \$40 a square foot and that is about \$200 million dollars in construction and that would be assessed at about \$60 a square foot which would give you an appraised value of about \$300 million dollars at 1% that would generate property taxes of about \$3 million dollars a year of which 60% would go to the Redevelopment Agency or about \$1.8 million dollars a year; 40% to the County or about \$1.2 million a year. There would be 2500 to 3000 employees at about \$40,000 a worker which is about \$100 million dollars a year in wages and you're playing around for a few \$100,000 dollars a year in warehouse taxes; it doesn't compute. You spent a whole hour talking about an \$800,000 dollar acquisition of an art center and worried about whether you pay 6.5% or 7.5% on a \$200,000 dollar mortgage. You worried about \$200,000 dollars a year and you're letting this all go by to make 5 or 10 cents a foot in 10 million square feet of potential warehouse development land. The proportions just don't match. He doesn't understand the Council's reasoning. He thinks that the Council has done enough damage already and he thinks it is time to let go and let the market decide what will happen and just restore everything to the way it was before this stupid moratorium was created.

Joel Cibener addressed the Council stating that he represents Mr. Fields and he would like to add two things. He has been working on his properties for a long time and in the last four or five years they have entered into negotiations and contracts with very large companies starting with Wal-Mart, going through Excel, Trammel Crow and First Industrial of whom talked only about developing warehouses on the property and didn't think anything else was feasible and in fact, there were pretty close to closing with First Industrial when the moratorium was declared and they walked away from the deal. The other part that he would like to point out is the time factor. In negotiating these contacts usually there are long periods of times and they want options, they want due diligence periods and he thinks the longer you wait in deciding this the longer it takes to get these people back in the picture. Right now a lot of them are discouraged. He would suggest very strongly that you make up your mind as quickly as possible so that they can move ahead on this.

John Maloney with Lee and Associates Commercial Real Estate, residing at 16453 Old Forest Rd., Hacienda Heights said he represents Louie Lopez who owns 28 acres on the east side of Hathaway and again he has been trying to sell his property for about two to three years and has been in escrow with different developers and they are about 15 days away from ending a contingency period which lasted about six months and they slapped the moratorium on him and he was very upset. He asked him to come down and he wants to lift the moratorium and with the brokerage community in general the City is getting a bad name

for itself. He thinks it is more of a General Plan issue on where you want retail and industrial development. You developed a new one in 2006 and we just don't understand why there is a big change right now. There is still some demand for industrial development out here and you guys just need to start working on a General Plan.

Mr. Fields asked Councilmember Botts if he every discussed this moratorium with Art Welch? Councilmember Botts said he never had reason to.

L. R. Sanders, Trabuco Canyon with Grubb & Ellis Company addressed the Council stating that he represents a couple of land owners on the south of the 10 freeway over in the airport area. A couple of the parcels in particular that he has been marketing he has taken over 75 different developers and they are national and local in scope. As he has talked with the City Manager and the Planning Department your City does have a very bad name and reputation out there as far as not being business friendly and the classification and how you feel about warehouse and what is warehouse and how do you determine it. You could have a 3000 square foot tenant and all he does is warehouse or you could have a million square foot tenant that warehouses. He would respectfully ask that you drive back west and look at operations that are in Redlands, that are in Ontario and the High Desert and look at some of the warehouses such as Big 5 and you will not find a building that is 800,000 sq. feet, 600,000 square feet that employs only 5, 10, 20 people. There will be considerably more needed just for that operation. You have to take a look at your employee base that you have here, a large retirement community that probably is not going to go back to work, and the different skill levels that you have. Everybody would like to have high-paying, high-tech jobs and then you have to have something that is going to offer why come to this city, why be here. Mayor Salas mentioned in some of here discussions the economic development, redevelopment, ICSC important things that you wanted to do for the City and this moratorium does not do anything that you are talking about. He concurs with Mr. Fields and Mr. Cibener and the gentleman from Messenger Development that you should let it expire. He would be glad to sit down and be part of this round-table discussion and throw out some ideas. He would recommend not going in the direction of the warehouse tax because that just adds additional rent that has to be passed on to a tenant that is going to come in and say lets land here in Banning or shall we go down to the Coachella Valley. He said he has two projects down there that are over 280 acres that they are in process right now of entitlements for large big box development. If you take and look at your aerial photo of your city and actually look at how many large pieces you have that would be able to handle a project like a couple of his pieces and others, there is only a handful. Retail development is not south of the Banning Airport. That is not going to happen and he thinks you would all concur on that. You have the possibility of putting together a high quality, good industrial park or missing some things. You do have infrastructure, sewer, water, gas, fiber optic, power they are all in the streets down in that south portion and not every developer is going to ask for a handout. There are a lot of different ways and he thinks that the City Manager and the Planning Department can go through ways that you will be able to clear the cloud of negativity for the City and be able to attract developments that are going to give you what you would like as far as tax revenues. No developer knows who is going to end up being his tenant. There are a lot of deals that get put together that part of the operation is

manufacturing and part of it is warehousing; you just don't know. He would like to help throw out some ideas that you can all consider to try to move forward.

Councilmember Hanna said you were saying that there are perhaps only a handful of these large properties in Banning but that they wouldn't fill up and is that what you are saying.

Mr. Sanders said no he didn't say they wouldn't fill up. The desire for developers to come this far east or go to the High Desert is because of availability of what he would call large parcels. Large parcels being over 20 to 25 acres to 50 to 100 acres. You only have a couple of those and he would be glad to give you an aerial and mark them all out. The 5 acre and 10 acre developments out here at this stage of the market are not going to be the big rush to come out because there is plenty of smaller product available back in the Riverside/Ontario/Moreno Valley etc. in the markets and it is also pretty quiet and pretty dead but it takes an year or two to get your entitlements, do your studies, EIR's or whatever is going to be required before you are actually going to be building.

Councilmember Hanna said what she is hearing from our discussions and comments from our Attorney is that if we want to drop the moratorium, we can do that June 10th or just let it cease. If we are going to continue it, then we need to take action. She personally would be willing to allow the moratorium to expire but continue with this because we need to understand and develop this plan and have Mr. Kosmont make a presentation and respond to questions from the Planning Commission, Economic Development Committee and the City Council. She would move the motion.

Councilmember Botts asked her to clarify that. Councilmember Hanna said that she will move staff's recommendation to let the moratorium expire and that we have a session with Larry Kosmont and develop our strategy and develop this plan. Mayor Pro Tem Franklin seconded the motion.

Mayor Salas said we have a motion and a second. She asked for final comments from the public.

Mr. Fields said he would like to know why the Kosmont Report has taken so long to be published. He said that Oscar Orci told him in September of 2007 that he expected it to be completed by year end and that it would recommend that the moratorium be rescinded in January. There simply were not enough roof tops to support the kind of retail expansion that you people want and that everyone in the real estate business knows that and the report took until this month to be released. What was happening during all that time? Were you getting back recommendations that you didn't like? Were you trying to persuade Kosmont to give you what you wanted?

Mayor Salas asked staff to get back to Mr. Fields about this question.

Mr. Fields said he would like to read one statement from the Kosmont Report or preliminary draft because he didn't get the final report until today which summarizes the whole issue better than it could be summarized any other way. "Creating additional taxes could be a

deterrent for industrial development. By implementing these taxes the City is in a sense asking business to choose between paying a higher cost of doing business for additional drayage to move logistic efforts to the booming High Desert.” That is the dilemma that you present to logistic developers. This may ultimately have to be decided at the ballot box.

Councilmember Botts asked if there was any consideration or support for entering into some informal discussions with the development community.

Mayor Salas said we have a move to the question and a motion and a second.

Councilmember Botts said he would move to amend the motion and include forming a task force to sit down and have some dialogue with the development community.

Mayor Salas said we have a motion and a second and a move to the question and we can come back to that after the vote.

Councilmember Botts said he thinks he made the motion before there was a call for the question.

Councilmember Machisic said if an amendment is offered, it requires a second.

Councilmember Botts said he was asking if there was any support for that in addition to listening to Larry and lifting the moratorium tonight and letting it expire.

Councilmember Hanna said she is happy to have discussions and would like to have discussions with the folks that have presented tonight and others. She is just not sure she wants a committee to do it. That is her hesitation for seconding the motion. There may be ways of doing that informally that don't require an ad hoc committee.

Mayor Salas said there is no second so we will move forward with the vote. It sounds like we are all on the same page, we...

Councilmember Botts said there is a motion on the floor; can we call for the question.

Mayor Salas said can I continue my comment. Councilmember Botts said call for the question is non-debatable.

Mayor Salas said we just had a call for the question and it was so which is it. How are we going to follow through with our rules?

Councilmember Hanna said technically calling for the question requires a vote on whether the question should be called. It doesn't require that there actually be a vote on the question.

Councilmember Botts withdrew the motion for the amendment. It died for a lack of a second.

Mayor Salas called for the vote.

City Attorney clarified for the record that the vote is to allow the moratorium to expire and to schedule a meeting with a representative from Kosmont to hear and to question the contents of the report.

Motion carried, all in favor.

Councilmember Franklin asked if staff would be able to get together with some developers and bring forth some ideas so that when we are listing Mr. Kosmont we are able to all get the same information at the same time.

Mayor Salas said there was Council consensus and she asked staff to bring it back to make sure that they all have the same information.

ITEMS FOR FUTURE AGENDAS

New Items –

Mayor Pro Tem Franklin asked for a full Council budget meeting and wanted to add a date for this workshop. There was Council discussion and the date was set for Wednesday, June 11, 2008 at 6:30 p.m.

Councilmember Hanna said that the meeting with the Morongo Tribal Council needed to be added to the pending item list. Mayor Salas asked the City Clerk to get a list of dates from the Tribe.

Mayor Salas said it had been mentioned that the Senior Lunches had been cut and asked the City Manager to find out if that was true and how many and what is the budget on that. She said that maybe they could work with the County Supervisor or some of our other offices to see if we can get a little bit of help or there might be non-profit groups that could help with that.

Mayor Pro Tem Franklin wanted to know if they could get a more accurate date regarding the General Plan Review since it looks like it will not be ready for June. City Manager said that he would work with Mr. Bassi on this item.

Mayor Salas said that if a member of the public or a member of the City Council comes up with an idea she thinks that it is important to always bring things back to the Council for items for future agenda versus allowing them to just move forward when we are working on other items already. This would be any requests above the scope of the City Manager. We want to make sure that the Council always stays on course with our goals. Stick to the projects at hand unless the Council redirects.

**Motion Machisic/Franklin to continue the meeting past the 10:00 p.m. curfew.
Motion carried, all in favor.**

Pending Items –

1. Review of “Green Plan” in All Departments (*Machisic-10/9/07*) (*Earhart*) (ETA 6/08)
2. Annual Review of General Plan (*Hanna- 10/9/07*) (*Comm. Dev.*) (ETA 6/08)
3. Schedule Meeting with the Beaumont City Council (*Salas- 11/27/07*) (*City Mgr.*)
4. Schedule Special Jt. Meeting the Banning Unified School District Board – (*Botts – 11/27/07*) (*City Mgr.*)
5. Schedule Special Jt. Meetings with the City’s Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) – (*Franklin – 11/27/07*)
6. Review of Development Fees (*Hanna – 12/11/07*) (*Johnson*) (ETA 6/08)
7. Update on Warehouse Moratorium (*Salas/Franklin – 03/25/08*) (*City Mgr.*) (ETA 5/27/08)

FUTURE MEETINGS

1. Redevelopment Workshop on OPA and Façade Grant Programs – May 30, 2008 at 3:00 p.m. – Council Chambers
2. Joint City Council and Planning Commission Workshop Regarding Housing Element - May 30, 2008 at 5:00 p.m. – Council Chambers

CLOSED SESSION

City Attorney said that the City Council will meet in closed session to:

- 1) confer with legal counsel pursuant to the provisions of Government Code Section 54956.9(a) with regard to the following matters of pending litigation:
 - Highland Springs Conference and Training Center v. City of Banning - (RIC 460950)
 - Center for Biological Diversity v. City of Banning – (RIC 460967)
 - Cherry Valley Pass Acres and Neighbors, and Cherry Valley Environmental Planning Group v. City of Banning – (RIC 461035)
 - Banning Bench Community of Interest Association, Inc. v. City of Banning – (RIC 461069); and
- 2) confer with legal counsel pursuant to the provision of Government Code Section 54956.9(a) with regard to the following matter of pending litigation: Banning Airport Associates; Andrew Marocco vs City of Banning (RIC 497338); and
- 3) will meet in closed session Pursuant to Government Code Section 54957.6 Conference with Labor Negotiators. Employee organizations: CBAM (City of Banning Association of Managers) Agency Designated Representatives: Brian Nakamura, Bonnie Johnson and Chris Paxton; and
- 4) pursuant to Government Code Section 54957 with regard to City Attorney evaluation.

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

Meeting went into closed session at 10:15 p.m. and returned to regular session at 10:50 p.m. with no reportable action.

ADJOURNMENT

By common consent the meeting adjourned at 10:50 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 AGENDA
CONSENT ITEM**

Date: June 10, 2008
TO: Honorable Mayor and City Council
FROM: James D. Earhart, Public Utilities Director
SUBJECT: Resolution No. 2008-19 Declaring the City's Support for the California Green Builder Program

RECOMMENDATION: The City Council adopt Resolution No. 2008-19, declaring the City's support for the California Green Builder ("CGB") Program.

JUSTIFICATION: It is in the best interest of the City of Banning to support the CGB Program and provide voluntary incentives to residential builders that participate in the CGB Program and exceed Title 24 requirements by at least 15 percent on residential projects located within the City boundaries. It has been demonstrated that supporting this program has a positive impact on the community as well as the overall environment.


BACKGROUND: The CGB Program is a voluntary program that was developed by the Building Industry Institute ("BII") which is the research arm of the California Building Industry Association ("CBIA"). Although it was developed by the building industry to improve the "green" aspects of residential home building, it includes independent third party inspections and diagnostic testing of energy features to ensure compliance. The CGB Program helps improve the environment through the following methods:

- CGB Homes use 15-20 percent less energy than homes built to California's exacting Title-24 requirements. It is estimated that CGB homes save on average 70 therms of gas and 700 kWh, resulting in saving 137,100 lbs of CO2 for every 100 homes built.
- CGB homes reduce water usage by at least 20,000 gallons/year compared to contemporary "non-green" homes, resulting in lower water bills. Additionally, water delivery and treatment costs are reduced by building green, benefiting the public.
- During construction, builders divert at least 50 percent, sometimes as much as 80 percent of their on-site construction wastes. This reduces landfill consumption and helps create new uses for second-hand products.
- CGB homes have better indoor air quality because of advanced HVAC designs, MERV filters and increased use of low VOC materials.
- Four credible, sustainable forest certifiers are included in CGB, including the Sustainable Forestry Initiative (SFI), the American Tree Farm System (ATFS), the Canadian Standards Association's Sustainable Forest Management System Standards (CAN/CSA), and the Forest Stewardship Council (FSC). Other sustainable forest certifiers may be included when warranted.


Staff supports the intent of the CGB Program and recommends that Council approve Resolution No. 2008-19, declaring the City's support of the Program.

FISCAL DATA: The fiscal impact of this program will be determined based on the number of residential projects by participating CGB developers. However, funds are currently available in the Public Benefits Program budget and will continue to be available as funds collected through the State mandated 2.85% Public Benefits Charge. There are currently caps on the incentive levels available for each program, but Staff will work with individual CGB developers to ensure they receive the maximum benefit possible.

RECOMMENDED BY:


James D. Earhart
Public Utilities Director

APPROVED BY:


Brian Nakamura
City Manager

RESOLUTION NO. 2008-19

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
DECLARING THE CITY'S SUPPORT FOR THE CALIFORNIA GREEN BUILDER
("CGB") PROGRAM**

WHEREAS, the Banning City Council supports "green building" initiatives, policies, and construction standards in order to ensure that the City of Banning benefits from the voluntary, resource-effective and cost-effective residential building policies and practices; and

WHEREAS, local demand for housing and for associated resources including, but not limited to, energy, water, and wood have grown, and it is expected that residential housing demand for resources will continue to grow in the foreseeable future to support growing population and building needs; and

WHEREAS, voluntary energy and resource-effective designs for residential construction are cost-effective ways to protect our environment by improving air quality, reducing pollution, and conserving natural resources; and

WHEREAS, it is vital for the City of Banning to voluntarily and cost-effectively improve the way we build, and to incorporate voluntary, cost-effective, resource-effective building strategies into future building practices; and

WHEREAS, the City of Banning seeks to reward voluntary, energy efficient and green, residential building programs that benefit the general public; and

WHEREAS, the City of Banning supports voluntary programs that provide incentives to developers and homebuilders that develop and build at least 15% above Title 24 Energy Efficiency Standards; improve indoor air quality, conserve water and wood, and divert construction waste from landfills; and

WHEREAS, cost and resource-effective building programs are proven to reduce adverse environmental impacts and to increase the spending power of local citizens; and

WHEREAS, the City of Banning seeks to promote innovative methods and construction technologies used to design and build new homes within the City of Banning, in order to help conserve water and reduce energy and resource consumption to achieve our sustainability goals; and

WHEREAS, it is the general desire of the City of Banning to ensure that new housing units are built responsibly, to minimize adverse economic and environmental impacts; and

WHEREAS, Banning leaders acknowledge that focusing on new residential construction when starting "green building" initiatives provides significant benefits; and

WHEREAS, Staff has identified the California Green Builder Program as being consistent with the City's water resource and environmental protection goals; and

WHEREAS, the California Green Builder Program documents quantifiable environmental benefits;

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

1. That the City of Banning supports a commitment to sustainable residential building practices, and will provide leadership and guidance in promoting, facilitating, and instituting such practices in the community.

2. That the City of Banning supports the California Green Builder Program as an effective method to help meet long-term community economic and environmental goals.

3. That the City of Banning will provide incentives to all California Green Builders per the applicable Public Benefit Program Guideline(s).

PASSED, APPROVED, AND ADOPTED this 10th day of June 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
City of Banning

CERTIFICATION

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-19 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 10th day of June, 2008 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

**CITY COUNCIL
CONSENT CALENDAR**

DATE: June 10, 2008

TO: City Council

FROM: Kahono Oei, City Engineer

(P)

SUBJECT: Initiating Proceedings to Vacate a Portion of Juarez Street

RECOMMENDATION: Adopt Resolution No. 2008-46, initiating proceedings to vacate Juarez Street from Barbour Street to future Westward Avenue, and setting the date, time, and place for the public hearing as July 8, 2008, 6:30 p.m., in the Council Chambers at 99 E. Ramsey Street.

BACKGROUND: On February 28, 2008, the City received a written request from the applicant (Hunsaker & Associates of Irvine, California) to vacate a portion of Juarez Street from Barbour Street to future Westward Avenue. The applicant's client (CR & R, Inc. of Stanton, California) desires to use that portion of Juarez Street as a part of a future industrial project.


The property in question is a strip of undeveloped land (no street improvements have been constructed) approximately 30 feet wide by 580 feet in length. It is bounded on the west by a 1.93 acre parcel zoned Industrial that has frontage on Barbour Street (a single family dwelling currently exists on this site). It is bounded on the east by a 3.90 acre undeveloped parcel owned by the applicant's client. To the southwest is a residential subdivision (Fair Oaks) constructed in 2005 that is zoned Very Low Density Residential. To the southeast is a 4.54 acre undeveloped parcel zoned Industrial. The portion of Juarez Street proposed for vacation is more particularly described in Exhibit A legal description and Exhibit B plat. A location/vicinity map is included with the report for reference.

On May 6, 2008, the Planning Commission, by adoption Resolution No. 2008-07, considered this request and determined that the proposed street vacation is consistent with the General Plan in accordance with Streets and Highways Code § 8313(b) and Government Code § 65402.

Next, the Streets and Highways Code (§ 8320) requires that proceedings be initiated by the legislative body and the date, time, and place for a public hearing be set. The procedure includes a public notice published in a local newspaper and the posting of the site prior to the public hearing.

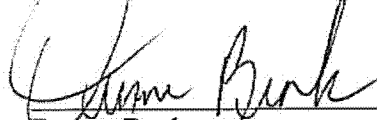
FISCAL DATA: Should the applicant complete the proposed project, the project will generate revenues to the City in the form of one-time building permit fees as well as annual property taxes.

PREPARED BY:



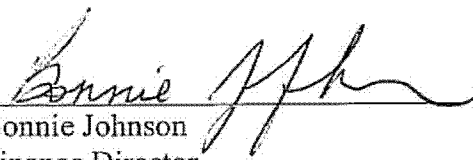
Brian Guillot
Planning Engineer

RECOMMENDED BY:



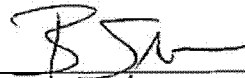
Duane Burk
Public Works Director

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

CC Exhibits:

- 1) Resolution No. 2008-46
Exhibit A legal description and Exhibit B plat.
- 2) Location/vicinity map.

RESOLUTION NO. 2008-46

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF BANNING, CALIFORNIA INITIATING PROCEEDINGS
FOR THE VACATION OF A PORTION OF JUAREZ
STREET BETWEEN BARBOUR STREET AND
WESTWARD AVENUE**

WHEREAS, the City of Banning received a written request to vacate that roadway commonly known as Juarez Street between Barbour Street and Westward Avenue more particularly described as shown in attached Exhibit A legal description and Exhibit B plat made a part by this reference; and

WHEREAS, pursuant to California Streets and Highways Code Sections 8300 et seq., the City Council has the authority and responsibility to resolve to vacate streets and highways within the City; and

WHEREAS, on May 6, 2008, the Planning Commission adopted Resolution No. 2008-07, finding that the vacation of Juarez Street between Barbour Street and Westward Avenue is consistent with the City of Banning's General Plan and recommending that the City Council vacate Juarez Street between Barbour Street and Westward Avenue;

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

SECTION 1. The City Council hereby declares its intention to vacate that portion of Juarez Street from Barbour Street to Westward Avenue more particularly described in attached Exhibit A legal description and Exhibit B plat.

SECTION 2. The City Council hereby sets the date, time, and place of the public hearing as July 8, 2008, 6:30 p.m., in the Council Chambers at 99 E. Ramsey Street.

SECTION 3. The City Council hereby orders the City Clerk to publish and post notice of the public hearing pursuant to Streets and Highways Code (§8322 and §8323).

PASSED, APPROVED, AND ADOPTED this 10th day of June, 2008.

Brenda Salas, Mayor

**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 the foregoing Resolution No. 2008-46, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of June, 2008.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

Exhibit 1

(Resolution No. 2008-46 including Exhibit A legal description
and Exhibit B plat)

EXHIBIT A

Juarez Street Abandonment

In the City of Banning, County of Riverside, State of California;

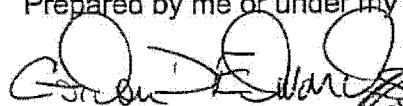
All that portion of that certain parcel of land described in a deed to the City of Banning recorded April 14, 1986 as Instrument No. 84327 of Official Records and those portions of Lots A and B of Parcel Map No. 27635 per map recorded in Book 182, pages 29 and 30 of Parcel Maps, records of Riverside County, more particularly described as follows:

The west 30 feet of Block 183 of Map of Part of Banning Colony Lands, recorded in Book 3, page 149 of Maps, records of San Diego County. Except for the southerly 40 feet thereof.

That portion of Block 183 of Map of Part of Banning Colony Lands, recorded in Book 3, page 149 of Maps, records of San Diego County lying northwesterly of a curve concave to the Southeast having a radius of 20 feet, said curve being tangent to the north line of said block and tangent to a line distant 30 feet east of and parallel with the west line of said block.

Lot A and that portion of Lot B of Parcel Map No. 27635, per map recorded in Book 182, pages 29 and 30 of Parcel Maps, records of Riverside County, lying north of a line distant 40 feet north of and parallel with the south line of said block.

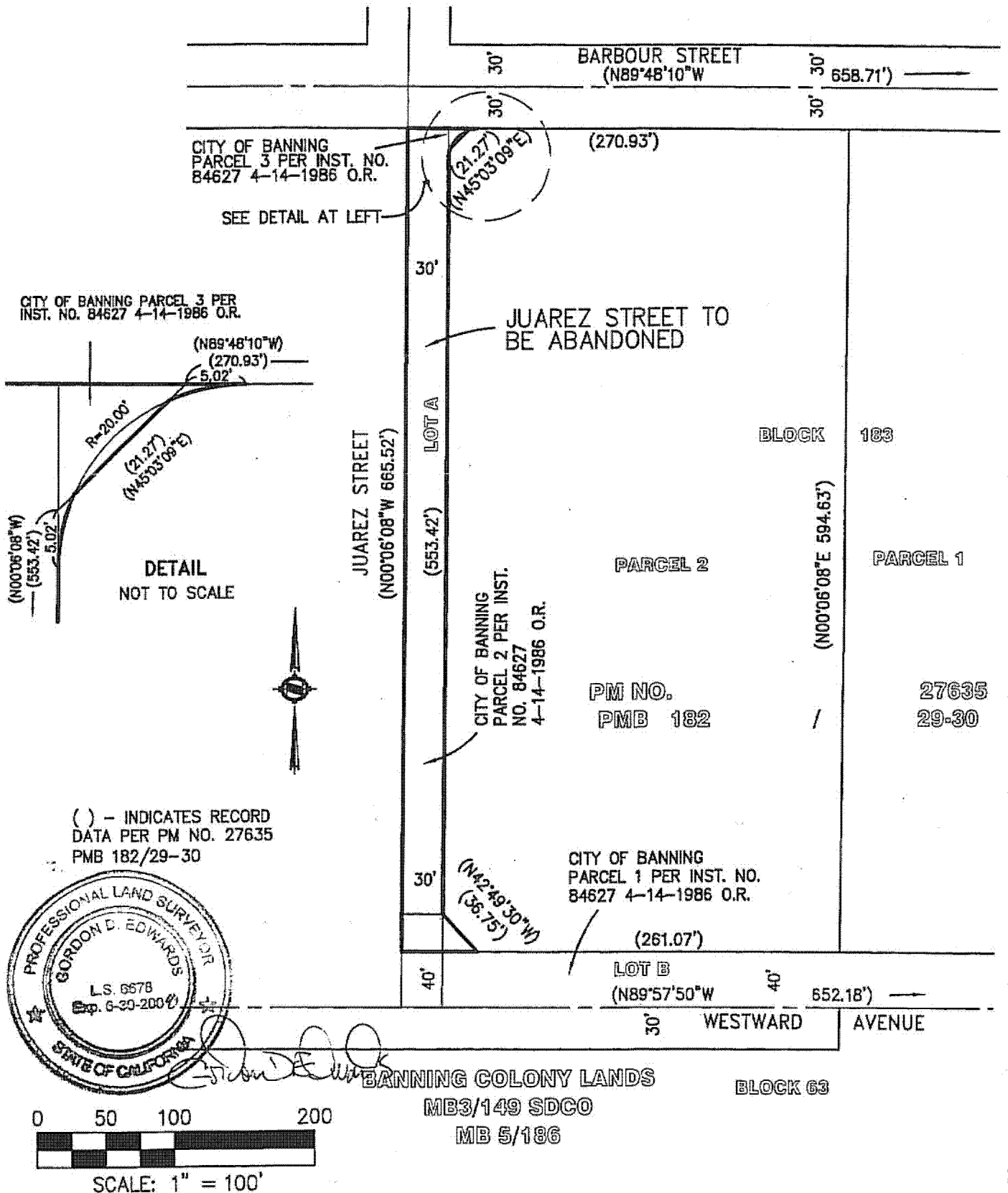
Prepared by me or under my supervision



Gordon D Edwards
PLS 6678
Expiration 6-30-2008



EXHIBIT B



HUNSAKER & ASSOCIATES
IRVINE, INC
INLAND EMPIRE REGION
2600 ADAMS STREET, SUITE A-15
RIVERSIDE CA 92504 (951) 352-7200
PLANNING/ENGINEERING/SURVEYING/GOVERNMENT RELATIONS

ABANDONMENT OF JUAREZ STREET
BETWEEN BARBOUR STREET
AND WESTWARD AVENUE
CITY OF BANNING, CALIFORNIA

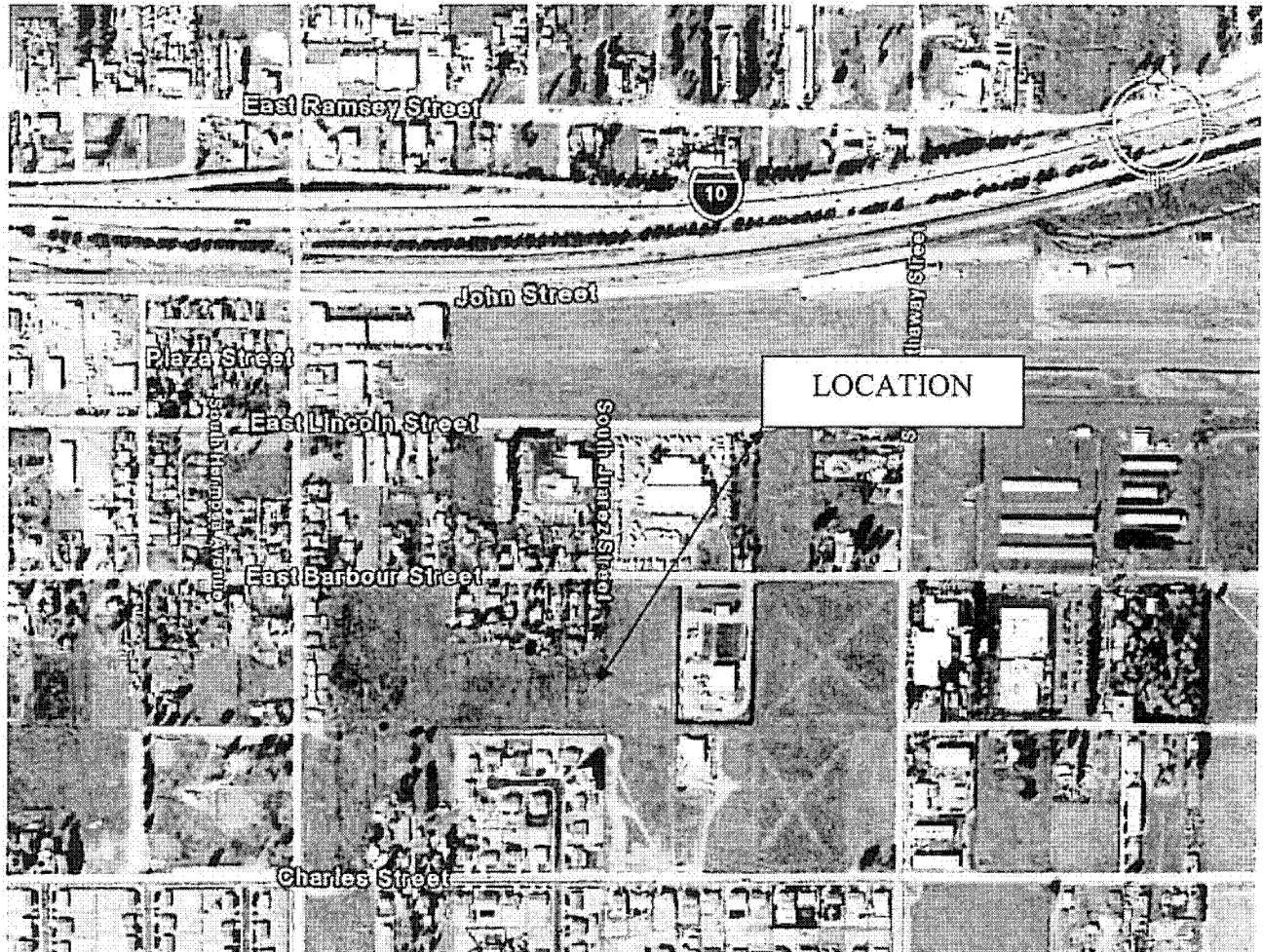
43

Exhibit 2

(Location/Vicinity map)

Exhibit 2

Location Map



**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: June 10, 2008

TO: Honorable Mayor and City Council

FROM: Duane Burk, Public Works Director

SUBJECT: Resolution No. 2008-56, "Authorizing Staff to Submit a Grant Application to the California Transportation Commission (CTC), for a Highway Railroad Crossing Safety Account (HRCSA) Grant for the Sunset Avenue Grade Separation Project"

RECOMMENDATION:

- I. Adopt Resolution No. 2008-56, "Authorizing Staff to Submit a Grant Application to the California Transportation Commission (CTC) for a Highway Railroad Crossing Safety Account (HRCSA) Grant for the Sunset Avenue Grade Separation Project."
- II. Authorize Engineering Division staff to prepare the application and authorize the City Engineer to execute and submit it to the CTC.
- III. Authorize the Finance Director to certify that the City of Banning has matching funds that will be available to finance the project.

JUSTIFICATION: It is essential for the City Council to authorize the submittal and execution of the application for a Highway Railroad Crossing Safety Account (HRCSA) grant to the CTC in order to be considered for State Proposition 1B funds for the Sunset Avenue Grade Separation project. Additionally, the Finance Director must certify that the City of Banning has the necessary matching funds that can be committed to the project.

BACKGROUND: The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, approved by California voters as Proposition 1B in 2006, authorized \$250 million to be deposited in the Highway-Railroad Crossing Safety Account (HRCSA) to be available, upon appropriation by the Legislature, to the California Department of Transportation (Caltrans), as allocated by the CTC, for the completion of high-priority grade separation and railroad crossing safety improvements.

The total \$250 million HRCSA program grant funds has been separated by Proposition 1B into two subprograms: "Part 1" has allocated \$150 million to projects on the priority list established by the Public Utilities Commission (PUC) pursuant to the process established in Chapter 10 of Division 3 of the Streets and Highways Code. "Part 2" has allocated the remaining \$100 million to fund other high-priority grade separation projects that are not part of the process established in Chapter 10 of Division 3 of the Streets and Highways Code. The Sunset Avenue Grade Separation project is listed on the priority list established by the Public Utilities Commission and is therefore eligible for HRCSA "Part 1" funding, to be used

towards construction costs. This priority list was established in March of 2008 and was based on a PUC grant application prepared and submitted to them in October of 2007 by Engineering Division staff.

Under Proposition 1B, eligible projects are the construction costs of high-priority grade separation and railroad crossing safety improvement projects. Public agencies (including cities and counties), regional agencies, the California Department of Transportation, and port authorities are among the agencies that are eligible to receive this grant funding.

Due to budget constraints, additional funding sources are still necessary in order to design and construct the project as planned. Engineering Division staff shall prepare the application in house and the City Engineer shall execute and submit it to the CTC, whereby it will be scored on a highly competitive basis. Staff is requesting \$7 million in HRCSA Grant Funds. The applications are due on June 16, 2008 and the CTC staff shall score and rank the projects by August of 2008.

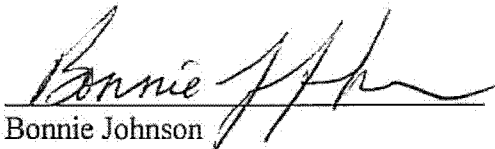
FISCAL DATA: The preliminary cost estimate to complete all phases of the project, including design, Right of Way acquisition, environmental studies, construction, construction management, etc., is approximately \$36.5 million. If approved, the City may receive up to the requested \$7 million in HRCSA Grant funds for the Sunset Avenue Grade Separation project. Per the "Part 1" grant requirements, the City's match can be funded by local, federal or private funds. Sources of funds for this project include the \$7.5 million "SAFETEA-LU" grant, a \$10 million Trade Corridor Improvement Funds (TCIF) grant, Transportation Uniform Mitigation Fee (TUMF) funding, federal appropriations sponsored by Congressman Jerry Lewis, low interest commercial paper, and developers' fees.

RECOMMENDED BY:



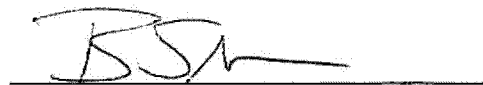
Duane Burk
Director of Public Works

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

RESOLUTION NO. 2008-56

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING STAFF TO SUBMIT A GRANT APPLICATION TO THE CALIFORNIA TRANSPORTATION COMMISSION (CTC), FOR A HIGHWAY RAILROAD CROSSING SAFETY ACCOUNT (HRCSA) GRANT FOR THE SUNSET AVENUE GRADE SEPARATION PROJECT

WHEREAS, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, approved by California voters as Proposition 1B in 2006, authorized \$250 million to be deposited in the Highway-Railroad Crossing Safety Account (HRCSA) to be available to the California Department of Transportation (Caltrans), as allocated by the CTC, for the completion of high-priority grade separation and railroad crossing safety improvements; and

WHEREAS, the HRCSA program has been split into two parts, with the City of Banning qualifying for "Part 1" because the Sunset Avenue Underpass Project was scored competitively and ranked high enough to be listed on the Public Utilities Commission's priority list of projects in March of 2008, and the CTC has allocated \$150 million to "Part 1" projects pursuant to the process established in Chapter 10 of Division 3 of the Streets and Highways Code; and

WHEREAS, \$10 million was obtained by Engineering Division staff in April of 2008 from the Trade Corridor Improvement Fund (TCIF) Grant Program funded by Proposition 1B; and

WHEREAS, due to budget constraints, additional funding sources are still necessary in order to design and construct the project as planned.

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

- Section I.** The City Council of the City of Banning hereby authorizes Engineering Division staff to prepare and submit a grant application for the HRCSA Grant to the CTC, for the Sunset Avenue Grade Separation Project.
- Section II.** The City Council of the City of Banning hereby authorizes the City Engineer to execute the grant application for the CTC's Highway Railroad Crossing Safety Account (HRCSA) Grant.
- Section III.** The City Council of the City of Banning hereby authorizes the Finance Director to certify that funds are available to provide the City of Banning's matching costs to finance the remainder of the project.

PASSED, ADOPTED AND APPROVED this 10th day of June, 2008.

Brenda Salas, Mayor

ATTEST:

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

**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. 2008-56 was adopted by the City Council of the City of Banning at a regular meeting thereof held on the 10th day of June, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:


Marie A. Calderon
City Clerk of the City of Banning

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**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: June 10, 2008

TO: Honorable Mayor and City Council

FROM: Kahono Oei, City Engineer 

SUBJECT: Resolution No. 2008-62, Approving an agreement with the County of Riverside for Review of Geologic Reports Under the Earthquake Fault Zoning Act.

RECOMMENDATION: Adopt Resolution No. 2008-62, Approving an agreement with the County of Riverside for *Review of Geologic Reports Under the Earthquake Fault Zoning Act*.

JUSTIFICATION: Program 2.A "Environmental Hazards" of the General Plan directs that the City enter into an agreement with the County Geologist to review geologic reports submitted with development proposals.

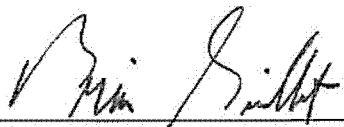
BACKGROUND: The Alquist-Priolo Earthquake Fault Zoning Act was signed into law December 22, 1972, and went into effect March 7, 1973. The purpose of this Act is to prohibit the location of most structures for human occupancy across traces of active faults and to mitigate the hazard of fault rupture. Cities affected by zones must regulate certain development projects within the zones. They must withhold development permits for sites within the zones until geologic investigations demonstrate that the sites are not threatened by surface displacement from future faulting. The General Plan identifies Fault Zones primarily along the northerly side of the City. These areas are now being considered for development and the review of geologic reports is now necessary.

The Act requires that the reviewer of geologic reports be an experienced geologist familiar with the investigative methods employed and the techniques available to the profession. In California the reviewer must be licensed by the State Board of Registration for Geologist and Geophysicists in order to practice. This is a very specialized profession and the City does not employ such an individual. The purpose of this Agreement is to utilize the available professional services of the County of Riverside, which will save the City time and the costs associated with reviewing the reports for individual development projects.

As specified in the Agreement, the services to be supplied by the County Geologist are on a "as needed" basis and the City will charge only for services rendered in accordance with the rates specified in attached Exhibit 2 for individual project submittals. Currently, the City has a similar arrangement with the Riverside County Flood Control and Water Conservation District for the review of drainage studies and drainage plans for large development projects.

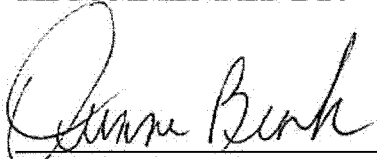
FISCAL DATA: Section I.4 of the Agreement requires that fees be paid to the County of Riverside for Alquist-Priolo report review in accordance with Riverside County Ordinance 547 and 671. Additionally, the County requires a 2% surcharge be added to the fee amount. At this time the Riverside County fee is a \$1,200.00 base fee plus other applicable fees as shown in attached Exhibit 2.

PREPARED BY:



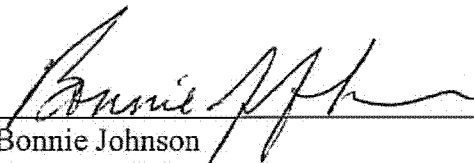
Brian Guillot
Planning Engineer

RECOMMENDED BY:




Duane Burk
Director of Public Works

REVIEWED BY:



Bonnie Johnson
Director of Finance

APPROVED BY:



Brian Nakamura
City Manager

Exhibits:

Exhibit 1 – Resolution No. 2008-62, Approving an agreement with the County of Riverside for Review of Geologic Reports under the Earthquake Fault Zoning Act

Exhibit 2 – Riverside County Fee Schedule

EXHIBIT 1

(RESOLUTION NO. 2008-62, APPROVING AN AGREEMENT WITH THE COUNTY OF
RIVERSIDE FOR REVIEW OF GEOLOGIC REPORTS UNDER THE EARTHQUAKE
FAULT ZONING ACT)

RESOLUTION NO. 2008-62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING AN AGREEMENT WITH THE COUNTY OF RIVERSIDE FOR REVIEW OF GEOLOGIC REPORTS UNDER THE EARTHQUAKE FAULT ZONING ACT

WHEREAS, Section 2623(a) of the Alquist-Priolo Earthquake Fault Zoning Act states that the City shall require, prior to the approval of a project, a geologic report defining and delineating any hazard of surface fault rupture; and

WHEREAS, the City of Banning General Plan adopted on January 31, 2006, identified environmental hazards within the City and further directed that the City establish a cooperative agreement with the County Geologist to review and determine the adequacy of geotechnical and fault hazard studies prepared within the City; and

WHEREAS, the County of Riverside has a State Registered Geologist who has expertise and knowledge to perform the services needed by the City; and

WHEREAS, the City has received development proposals that are affected by earthquake fault zones;

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

Section I. Adopt Resolution No. 2008-62, Approving an Agreement with the County of Riverside for *Review of Geologic Reports under the Earthquake Fault Zoning Act* in substantially the form attached herein to this resolution as Exhibit A.

Section II. The City Engineer is directed to collect the fees required in the Agreement for *Review Under Earthquake Fault Zoning Act* and pass them on to the County of Riverside.

Section III. The Mayor is authorized to execute the agreement with the County of Riverside for *Review of Geologic Reports Under the Earthquake Fault Zoning Act*, and this authorization will be rescinded if the parties do not execute the contract agreement within ninety (90) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 10th day of June, 2008.

Brenda Salas, Mayor

ATTEST:

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

**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. 2008-62, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of June, 2008.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

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AGREEMENT FOR REVIEW UNDER EARTHQUAKE FAULT ZONING ACT

This agreement is made and entered into this _____ day of , _____, 2008, between the County of Riverside (hereinafter "COUNTY"), on behalf of its Transportation and Land Management Agency/Planning Division ("TLMA"), and the City of Banning (hereinafter "CITY").

RECITALS

1. CITY has a need for review of site-specific geologic reports prepared and submitted pursuant to the Alquist-Priolo Earthquake Fault Zoning Act ("Act") regarding the incorporated areas of the CITY.
2. TLMA has a State Registered Geologist who has the expertise, and knowledge to perform the services needed by the CITY.
3. COUNTY and CITY desire to specify the terms and conditions under which the services shall be provided.

Section I

TLMA agrees:

1. Upon request from CITY, to provide the review and approval by a State Registered Geologist prior to permit approval by the CITY as required by the Act.
2. To perform the services to the same extent and in the same manner as it does similar review services for itself, in accordance with the following procedure:
 - a. The following items should be transmitted to TLMA:
 1. Four (4) wet signed copies of the site specific,

geologic/fault hazard report.

2. The assessor's parcel number(s) for the applicable lots.

3. The CITY's case number and appropriate case maps.

4. A check, payable to Riverside County Planning Department for the current review fee charges by the County for Alquist-Priolo report review. See County Ordinance 547 and 671. These fees are subject to a two percent (2.0%) Land Management System Fee Surcharge. This surcharge is added to the total fees per the fee schedule. A copy of the current fee schedule is attached.

b. Upon receipt of the report and fees, the report is assigned a County Geologic Report Number. The report is reviewed and a site visit is made within 30 days of receipt of the transmittal package. COUNTY will work directly with the Registered Geologist who prepared the report, to obtain an acceptable report. Copies of review letters with comments will be sent to the CITY.

c. Upon an acceptable report being obtained, a letter that includes the conclusions and recommendations of the consultant's report, appropriate conditions of approval for the project, and a statement indicating approval of the report is prepared. Copies of the final, approved report and the letter will be transmitted to CITY and the California Division of Mines and Geology, in compliance with the Act.

3. To retain, consistent with State law, all documents submitted and documentation thereafter generated by COUNTY relating to the services performed hereunder.

Section II

CITY agrees:

1. To submit all necessary documentation for review to COUNTY.
2. To collect and forward to COUNTY with the documentation, the appropriate fee evidencing the cost of review.
3. That CITY shall indemnify and hold COUNTY, its officers, agents and employees free and harmless from any liability whatsoever based or asserted upon any claims arising out of the performance of this Agreement, for property damage, bodily injury or death or any other element of damage of any kind or nature, relating to or in anyway connected with the services contemplated by this agreement to the same extent as CITY is required to indemnify and hold its officers, agents and employees free and harmless. CITY shall defend, at its expense, including reasonable attorney fees, COUNTY its officers, agents and employees in any claim asserted and in any legal action based upon such alleged acts or omissions.

Section III

It is mutually agreed as follows:

1. All arrangements for services hereunder shall be made between CITY ENGINEER for the CITY and the TLMA Chief Engineering Geologist.
2. The parties shall meet at mutually agreeable times to review

performance of services and resolve any problems that may develop.

3. The term of this agreement shall commence upon execution thereof by the parties and shall terminate July 1, 2013; provided, however, that either party hereto may terminate this agreement by giving 30 days written notice to the other party.
4. This Agreement shall not be delegated or assigned by CITY or COUNTY, either in whole or in part.
5. This Agreement constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof and all prior or contemporaneous agreements of any kind or nature relating to the same shall be deemed to be merged herein. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
6. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
7. Any notice required or authorized under this Agreement shall be in writing. If notice is given by United State mail, it shall be sent registered or certified mail, return receipt requested, addressed as follows:

City of Banning
City Engineer
99 E. Ramsey Street
Banning, CA 92220

County of Riverside
TLMA/Director of Planning
4080 Lemon St., 9th Flr
Riverside, CA 92501

8. This agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the provisions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This agreement may be changed or modified only upon the written consent of the parties hereto.

Date: _____

County of Riverside

ATTEST:
Gerald A. Maloney
Clerk of the Board

By _____
Chairperson, Board of
Supervisors

By _____
Deputy

(SEAL)

Dated: _____

City of Banning

ATTEST:

By _____
Brenda Salas, Mayor

By _____
Marie Calderon, City Clerk

EXHIBIT 2

(RIVERSIDE COUNTY FEE SCHEDULE)

OTHER APPLICATIONS/CEQA

APPLICATION OR PERMIT TYPE		E A	BASE FEE	PER LOT	PER UNIT	PER ACRE	NOTES / OTHER FEES IF APPLICABLE
PRE-APPLICATION REVIEW (PAR)			1,472				DEPOSIT BASED FEE SEE NOTE 8
HOG RANCHES (ORD NO. 431)	NEW APPLICATION INSPECTION FEE (LESS THAN 788 HOGS) INSPECTION FEE (MORE THAN 789 HOGS) LATE FEE AMEND PERMIT CHANGE # HOGS PER 10(A) AMEND PERMIT INCR. MAX # HOGS PER 10(B)	*	2014 150 27% 36 202		19		DEPOSIT BASED FEE SEE NOTE 8 FOR 788 HOGS OR LESS \$19 PER 100 HOGS OVER 789 OF INSPECTION FEE SECTION 10(a) SECTION 10(b)
ALQUIST PRIOLO ACT	GEOLOGIC REPORT APPROVAL - ORD NO. 547 WAIVER GEOLOGIC REPORT - ORD NO. 547		1200 140				DEPOSIT BASED FEE (Both) + \$22 ea ACRE OVER 10 (\$823 MAX. ACRE COMPONENT) + \$372 IF SUBMITTED TO THE STATE
ORD NO. 555	SURFACE MINING PERMIT RECLAMATION PLANS APPEAL PLANNING COMMISSION DECISION SUBSTANTIAL CONFORMANCE REVISED PERMIT	*	9,360 3,587 398 723 3,231				DEPOSIT BASED FEE SEE NOTE 5,8 DEPOSIT BASED FEE SEE NOTE 5,8 + \$81 IF ROAD CONDITIONS APPEALED DEPOSIT BASED FEE SEE NOTE 8 DEPOSIT BASED FEE SEE NOTE 5,8
ORD NO. 559	TREE REMOVAL APPLICATION		250				DEPOSIT BASED FEE SEE NOTE 8
ORD NO. 578	CERTIFICATE OF HIST. APPROPRIATENESS APPEALS		705 129				DEPOSIT BASED FEE SEE NOTE 8
ARCHIVAL SEARCH FOR PLANNING INFORMATION RESEARCH FEE FOR PLANNING INFORMATION PROFESSIONAL PLANNER SERVICES PROFESSIONAL GEOLOGIST SERVICES			63/Hr. 72/Hr. 172/Hr. 184/Hr. ----- 384				(\$15.75 PER 1/4 HR) (\$18.00 PER 1/4 HR) (\$43.00 PER 1/4 HR) (\$46.00 PER 1/4 HR) — DEPOSIT BASED FEE FOR COUNTY COUNSEL - NOTE 8
REVIEW OF COVENANTS, CODES & RESTRICTIONS BY COUNTY COUNSEL							
REVIEW OF SPECIFIC PLAN ZONING ORD. BY COUNTY COUNSEL			1,920				DEPOSIT BASED FEE FOR COUNTY COUNSEL - NOTE 8
AGRICULTURAL PRESERVES	ESTABLISHMENT/ENLARGEMENT (APPLICANT INITIATED)		1,640				DEPOSIT BASED FEE + NON-REFUNDABLE \$138 PER OWNER'S PETITION \$138 PER EACH CONTRACT, APPR'L - NOTE 8
	DISESTABLISH/DIMINISHMENT AG PRESERVE PURSUANT TO NOTICE OF NON-RENEWAL		1,550				DEPOSIT BASED FEE SEE NOTE 8
	ESTABLISHMENT/ENLARGEMENT (BOARD OF SUPERVISORS INITIATED)		147				DEPOSIT BASED FEE +\$138 PER CONTRACT - NOTE 8
	CONTRACT WITHIN ESTABLISHED PRESERVE		147				DEPOSIT BASED FEE (FEE IS PER EACH CONTRACT)
	CANCELLATION/DIMINISH. OF AG PRESERVE (APPLICANT INITIATED)	*	1,550				DEPOSIT BASED FEE SEE NOTE 8
	CANCELLATION/DIMINISH. AG PRESERVE (BOARD OF SUPERVISORS INITIATED)		N/C				
	NOTICE OF NON-RENEWAL		252				DEPOSIT BASED FEE SEE NOTE 8
CALIFORNIA FISH & GAME	NEGATIVE DECLARATION EIR COUNTY CLERK DOCUMENT FEE		1,876.75 2,606.75 64				REQUIRES COUNTY CLERK DOCUMENT FEE REQUIRES COUNTY CLERK DOCUMENT FEE
RULES TO IMPLEMENT CEQA	APPLICATION FOR GRADING PERMIT		951			6	DEPOSIT BASED FEE SEE NOTE 8 (MAX \$2,729)
	APPLICATION FOR COMMERCIAL WECS PERMIT		507			6	DEPOSIT BASED FEE (MAX ACREAGE \$2,201) + \$329 PER MW - SEE NOTE 8
	APPLICATION FOR TREE REMOVAL ALL OTHER APPLICATIONS		259 462			6	DEPOSIT BASED FEE SEE NOTE 8 DEPOSIT BASED FEE SEE NOTE 8 (MAX \$2,464)
ENVIRONMENTAL IMPACT REPORT	SPONSOR PREPARED PREVIOUSLY PREPARED		8,439 1,936				DEPOSIT BASED FEE SEE NOTE 8 DEPOSIT BASED FEE SEE NOTE 8
LAFCO	CATEGORICAL EXEMPTION REVIEW INITIAL STUDY		80 N/C 562				
GEOLOGY CEQA	FAULT HAZARD REPORT REVIEW GEOLOGIC WAIVER LIQUEFACTION REPORT		1,200 140 1,200				DEPOSIT BASED FEE (ALL) SEE NOTE 8 +22 EA ACRE OVER 10 (MAXIMUM ACRE COMPONENT \$823)
DEVELOPMENT AGREEMENTS			5,000				DEPOSIT BASED FEE, ADDITIONAL \$ MAY BE REQUIRED
SCHOOL MITIGATION PLANS	APPEALS		743				DEPOSIT BASED FEE SEE NOTE 8
EXCEPTIONS TO NOISE ORDINANCE NO. 847	EXEMPT FROM CEQA NOT EXEMPT FROM CEQA	*	378 854				DEPOSIT BASED FEE SEE NOTE 8 DEPOSIT BASED FEE SEE NOTE 8

*ENVIRONMENTAL ASSESSMENT REQUIRED (SEE RULES TO IMPLEMENT CEQA)

Revised: 5/1/08

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62

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: June 10, 2008

TO: City Council

FROM: Matthew Bassi, Interim Community Development Director

SUBJECT: Nuisance abatement charges to be added to the tax rolls of Riverside County, California.

RECOMMENDATION: The City Council adopt Resolution No. 2008-65, a resolution providing for certain nuisance abatement charges to be added to the tax rolls of Riverside County, California.

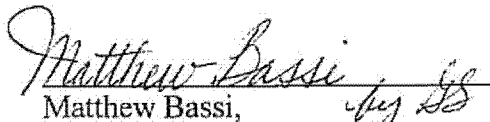
JUSTIFICATION: The City has incurred costs in the process of abating certain nuisances; adoption of the subject Resolution provides for the collection of such costs. Presentation of such Resolution to the City Council is done on an annual basis and can be considered "standard operating procedure" for purposes of cost recovery.

BACKGROUND: The City Council adopted Ordinance No. 1326 (Attachment "2"); the Ordinance establishes the procedures for creating assessment liens; authorizing the recordation of liens assessed against certain properties; and requesting the Riverside County Board of Supervisors to levy and collect such charges. According to the terms of this Ordinance, and the procedures required by the Riverside County Auditor's office, it is necessary for the City Council to adopt a Resolution each year requesting the Board of Supervisors to place the liens on the tax rolls. Liens on all of the subject parcels have been previously recorded against the properties in the office of the County Recorder.

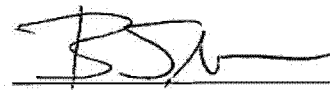
FISCAL DATA: The total amount of the assessments to be placed on the tax roll is \$35,380.74. The assessments will be placed on the Auditor-Controller's Tax Rolls in August of this year and collected with the ad valorem taxes and any other assessments against the properties.

For purposes of clarification, the City participates in the Teeter Plan, whereby the County will reimburse the City 100% of the \$35,380.74 amount placed on the tax roll for weed abatement. This amount is received in two payments during the following year (2008). If for whatever reason the tax bill is not paid for a duration of five years the property possessing the lien is offered at a tax sale at which point, if sold and there are excess proceeds, the City is reimbursed.

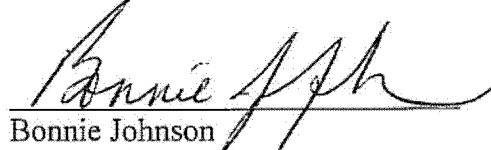
RECOMMENDED BY:


Matthew Bassi,
Interim Community Development Director

APPROVED BY:


Brian Nakamura
City Manager

REVIEWED BY:


Bonnie Johnson
Finance Director

Attachments:

1. Resolution No. 2008-65
2. Ordinance No. 1326

TAX ROLL LIENS

*RESOLUTION
NO. 2008-65*

EXHIBIT “1”

RESOLUTION NO. 2008-65

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF BANNING PROVIDING FOR CERTAIN
NUISANCE ABATEMENT CHARGES TO BE
ADDED TO THE TAX ROLLS OF RIVERSIDE
COUNTY, CALIFORNIA.**

WHEREAS, pursuant to the authority contained in Chapter 8.48 of the Code of the City of Banning, California, and in California Government Code Sections 38773 and 38773.1, the City of Banning did cause a nuisance to be abated on certain properties in the City of Banning, California, and have had liens levied against them for nuisance abatement charges; and

WHEREAS, all proceedings required by Ordinance No. 1326, of the City of Banning, have been duly complied with,

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

SECTION 1: That the report of the Building and Safety Department, on file with each proceeding along with their report of the cost of abatement be, and the same is hereby approved. That a copy of said account containing a list of all properties by assessment number and the cost of abating the nuisance thereon, is marked "Exhibit A", attached hereto, and made part hereof by reference.

SECTION 2: That the parcel numbers shown on "Exhibit A" are hereby certified to be correct according to the latest records of the Riverside County Assessor.

SECTION 3: That the maintenance of the public nuisance on each of the properties shown by assessment number on "Exhibit A" attached hereto, did constitute a health and safety hazard.

SECTION 4: That the amounts shown on said "Exhibit A" shall be a lien on the respective properties shown by assessment number, and said liens were levied without regard to property valuation.

SECTION 5: Request is hereby made of Riverside County Board of Supervisors that the amount shown on said in the attached "Exhibit A" be added to the current tax rolls for the respective parcels indicated thereof, and collected along with other taxes assessed against said parcels.

SEE ATTACHED EXHIBIT A

PASSED, APPROVED, AND ADOPTED this 10th day of June 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
City of Banning

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-65 was duly adopted by the City Council of the City of Banning, California, at regular meetings thereof held on the 10th day of June 2008, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

"EXHIBIT A"

<u>APN</u>	<u>FUND NO.</u>	<u>ASSESSMENT</u>
532 120 011	68-2053	\$440.21
532 130 008	68-2053	\$400.21
532 160 008	68-2053	\$882.10
534 022 014	68-2053	\$439.96
534 040 001	68-2053	\$458.96
534 040 002	68-2053	\$312.71
534 050 001	68-2053	\$605.21
534 121 008	68-2053	\$400.21
534 143 016	68-2053	\$517.96
534 151 017	68-2053	\$417.71
534 151 019	68-2053	\$365.21
534 151 005	68-2053	\$434.96
534 151 023	68-2053	\$400.21
534 151 026	68-2053	\$426.46
534 182 017	68-2053	\$365.21
534 183 001	68-2053	\$365.21
534 194 005	68-2053	\$400.21
534 200 019	68-2053	\$638.78
534 211 009	68-2053	\$300.21
534 221 020	68-2053	\$300.21
534 282 008	68-2053	\$365.21
535 080 003	68-2053	\$539.96
535 080 015	68-2053	\$655.46
535 223 031	68-2053	\$387.71
535 371 011	68-2053	\$330.21
537 090 038	68-2053	\$400.21
537 090 039	68-2053	\$365.21
537 090 042	68-2053	\$365.21
537 090 040	68-2053	\$365.21
537 090 041	68-2053	\$365.21
538 102 004	68-2053	\$305.21
538 102 010	68-2053	\$417.71
538 150 014	68-2053	\$394.71
538 150 042	68-2053	\$300.21
538 172 022	68-2053	\$365.21
538 190 014	68-2053	\$637.21
538 261 001	68-2053	\$662.71
538 250 004	68-2053	\$687.46

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"EXHIBIT A"

<u>APN</u>	<u>FUND NO.</u>	<u>ASSESSMENT</u>
540 082 006	68-2053	\$400.21
540 103 024	68-2053	\$305.21
540 161 007	68-2053	\$365.21
540 170 016	68-2053	\$305.21
540 250 002	68-2053	\$612.96
540 250 003	68-2053	\$578.71
540 250 036	68-2053	\$507.46
541 042 010	68-2053	\$365.21
541 044 007	68-2053	\$400.21
541 044 008	68-2053	\$365.21
541 044 010	68-2053	\$365.21
541 051 012	68-2053	\$330.21
541 055 006	68-2053	\$400.21
541 055 012	68-2053	\$365.21
541 081 002	68-2053	\$551.28
541 081 003	68-2053	\$621.28
541 082 028	68-2053	\$330.21
541 094 020	68-2053	\$357.21
541 110 011	68-2053	\$435.21
541 121 037	68-2053	\$330.21
541 121 045	68-2053	\$402.96
541 122 010	68-2053	\$528.46
541 131 004	68-2053	\$330.21
541 133 016	68-2053	\$365.21
541 133 018	68-2053	\$400.21
541 134 009	68-2053	\$400.21
541 161 024	68-2053	\$340.21
541 162 010	68-2053	\$467.21
541 170 001	68-2053	\$330.21
541 170 004	68-2053	\$365.21
541 170 005	68-2053	\$347.71
541 170 006	68-2053	\$385.71
541 170 007	68-2053	\$435.21
541 232 011	68-2053	\$300.21
541 233 017	68-2053	\$300.21
541 260 004	68-2053	\$305.21
541 273 004	68-2053	\$1,378.21

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"EXHIBIT A"

<u>APN</u>	<u>FUND NO.</u>	<u>ASSESSMENT</u>
541 300 008	68-2053	\$340.21
541 300 009	68-2053	\$357.71
541 300 025	68-2053	\$300.21
541 300 027	68-2053	\$340.21
541 310 007	68-2053	\$340.21
543 070 017	68-2053	\$300.21
543 133 013	68-2053	\$300.21
543 133 016	68-2053	\$305.21
543 140 010	68-2053	\$340.21

TAX ROLL LIENS

*ORDINANCE
NO. 1326*

EXHIBIT “2”

ORDINANCE NO. 1326

**AN ORDINANCE OF THE CITY OF BANNING
PROVIDING FOR THE RECOVERY OF COSTS AND
ATTORNEYS' FEES FOR NUISANCE ABATEMENT AS
CONTAINED IN CHAPTER 11C OF THE BANNING CITY
CODE**

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

SECTION 1. Existing Article IV: Cost of Recovery is repealed in its entirety.

SECTION 2. New Article IV: Cost of Recovery is hereby added to Chapter 11C of the Banning City Code as follows:

Section 11C-47. Nuisances – General.

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

Section 11C-48. Nuisance Abatement.

(a) The abatement of any public nuisance by the City as prescribed in this Code shall be at the sole expense of the persons creating, causing, committing or maintaining such nuisance. The cost of abatement of any public nuisance and related administrative costs shall include, but not be limited to: inspection costs; investigation costs; attorneys' fees and costs; and costs to repair and eliminate all substandard conditions. All such fees and costs shall be a personal obligation against any person held responsible for creating, causing, committing or maintaining a public nuisance.

(b) The prevailing party in any action, administrative proceeding or special procedure to abate a public nuisance pursuant to this section may recover its reasonable attorneys' fees in those individual actions or proceedings wherein the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to any prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

(c) The City may collect the cost of abatement of any nuisance and related administrative costs, including but not limited to inspection costs, investigation costs, attorneys' fees and costs, and costs to repair and eliminate all substandard conditions by either: (i) obtaining a court order stating that this reimbursement requirement is a personal obligation of any person held responsible for creating, causing, committing or maintaining a public nuisance, recoverable by the City in the same manner as any civil judgment; (ii) recording a nuisance abatement lien pursuant to this Code against the parcel of land on which the nuisance is maintained, or (iii)

imposing a special assessment pursuant to this Code against the parcel of land on which the nuisance is maintained.

Section 11C-49. Nuisance Abatement Lien.

(a) Prior to the recordation of the lien against the parcel of land on which the nuisance is maintained, the owner of record of the parcel of land shall receive notice. The notice of the recordation of the lien against the parcel of land on which the nuisance is maintained shall be served on the owner of record of the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll, or the supplemental roll, whichever is more current. Such notice shall be served in the same manner as a summons in a civil action in accordance with Sections 415.10 et seq. of the Code of Civil Procedure. The date upon which service is made shall be entered on or affixed to the face of the copy of the notice at the time of service. However, service of such notice without such date shall be valid and effective.

(b) A nuisance abatement lien shall be recorded in the Riverside County Recorder's office and from the date of recording shall have the force, effect, and priority of a judgment lien.

(c) A nuisance abatement lien authorized by this section shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

(d) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection (b) of this section of this Code shall be recorded by the City. A nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

(e) A nuisance abatement lien may be foreclosed by the City as a money judgment. The City may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien or as a condition of removing the lien upon payment.

Section 11C-49.1. Special Assessment.

(a) As an alternative to the recordation of a nuisance abatement lien, the City may make the cost of abatement a special assessment against the parcel of land on which the nuisance is maintained.

(b) Notice shall be given by certified mail, to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. Notice pursuant to this section of this Code shall be given at the time of imposing the assessment and shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice pursuant to this section of this Code.

(c) The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for with ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

(d) The City shall duly execute a report detailing the amount of the special assessment and shall send same to the tax division of the County Auditor-Controller's office, whereupon it shall be the duty of the Auditor-Controller to add the amounts of the respective assessments to the next regular tax bills levied against the respective lots and parcels of land for municipal purposes; and, thereafter, the amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency as provided for ordinary municipal taxes.

(e) City may conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent, subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code.

(f) Notices or instruments relating to the abatement proceeding or special assessment shall be entitled to recordation.

Section 11C-49.2. Graffiti Abatement – General Provisions.

(a) The abatement of any nuisance resulting from the defacement of the property of another by graffiti or any other inscribed material as prescribed in this Code shall be at the sole expense of the person, minor or other person creating, causing or committing the nuisance.

(b) If the person creating, causing or committing the nuisance is a minor, the parent or guardian having custody and control of the minor shall be jointly and severally liable with the minor. The City shall make the expense of abatement of any nuisance, resulting from the defacement by a minor of the property of another by graffiti or any other inscribed material, a lien against the property of a parent or guardian having custody and control of the minor and/or a personal obligation against the parent or guardian having custody and control of the minor.

(c) The prevailing party in any action, administrative proceeding or special procedure to abate a nuisance pursuant to this section may recover its reasonable attorneys' fees in those individual actions or proceedings wherein the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to any prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

(d) The City may collect the cost of abatement of any nuisance, resulting from the defacement of the property of another by graffiti or any other inscribed material, and related administrative costs by either: (i) obtaining a court order stating that this reimbursement requirement is a personal obligation of the minor or other person or parent or guardian having custody and control over the minor who committed the defacement, recoverable by the City in the same manner as any civil judgment; (ii) recording a nuisance abatement lien against a parcel of land owned by the minor or other person or parent or guardian having custody and control over the minor who committed the defacement; or (iii) making the cost of abatement of a nuisance resulting from the defacement of the property of another, a special assessment against a parcel of land owned by the minor or other person or parent or guardian having custody and control over the minor who committed the defacement.

Section 11C-49.3. Graffiti – Nuisance Abatement Lien.

(a) Prior to the recordation of a graffiti nuisance abatement lien, notice shall be given to the person or parent or guardian having custody and control over the minor who committed the defacement by graffiti or any other inscribed material. Such notice shall be served in the same manner as a summons in a civil action in accordance with Sections 415.10 et seq. of the Code of Civil Procedure. The date upon which service is made shall be entered on or affixed to the face of the copy of the notice at the time of service. However, service of such notice without such date shall be valid and effective.

(b) A graffiti nuisance abatement lien shall be recorded in the Riverside County Recorder's office and from the date of recording shall have the force, effect, and priority of a judgment lien.

(c) A graffiti nuisance abatement lien authorized by this section shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

(d) If the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection (b) of this section of this Code shall be recorded by the City. A graffiti nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

(e) A graffiti nuisance abatement lien may be satisfied through foreclosure in an action brought by the City. The City may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien or as a condition of releasing the lien upon payment.

Section 11C-49.4. Graffiti – Special Assessment.

(a) As an alternative to the recordation of a graffiti nuisance abatement lien, the City may make the cost of the abatement of any nuisance resulting from the defacement by a minor or other person of property of another by graffiti or other inscribed material, and related

administrative costs, a special assessment against a parcel of land owned by the minor or other person or by the parent or guardian having custody and control of the minor.

(b) The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

(c) Notices or instruments relating to the abatement proceeding or special assessment may be recorded.

(d) Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding a minor or other person or parent or guardian having custody and control of a minor responsible for a condition that may be abated as a nuisance pursuant to subsection (a) of this section of this Code, the court may order such minor or other person or parent or guardian having custody and control of such minor to pay treble the costs of the abatement."

Section 11C-49.5. General Penalty.

(a) In addition to any other remedy provided by law, the City may recover any fee, cost or charge, including any attorneys' fees incurred in the enforcement of any provision of the Zoning Code, the Housing Code, Building Code, Electrical Code, Plumbing Code, Mechanical Code or the Uniform Code for the Abatement of Dangerous Buildings as provided in this Code. The amount of any such fee, cost, or charge, including any attorneys' fees shall not exceed the actual cost incurred performing the inspections and enforcement activity, including but not limited to permit fees, fines, late charges and interest.

(b) Subsection (a) of this section of this Code, shall not apply to any enforcement, abatement, correction or inspection activity regarding a violation of any provision of sections of the Zoning Code, the Housing Code, Building Code, Electrical Code, Plumbing Code, Mechanical Code or the Uniform Code for the Abatement of Dangerous Buildings as provided in this Code in which the violation was evident on the plans that received the building permit.

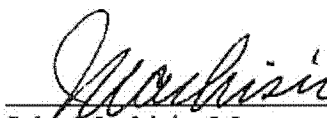
(c) Subsection (a) of this section of this Code shall not apply to owneroccupied residential dwelling units.

SECTION 3. The City Clerk shall cause this Ordinance to be published in a newspaper of general circulation printed and published in the county and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code, shall certify to the adoption and publication of this Ordinance, and shall cause this Ordinance and its certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

SECTION 4. Severability. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional, or otherwise invalid such decision shall not affect the validity of the remaining sections of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause and phrase thereof irrespective of the fact that any one or more other sections, subsections, clauses, or phrases be declared invalid.

INTRODUCED at the regular meeting of the 9th day of August, 2005.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Banning at a regular meeting held on this 13th day of September, 2005.



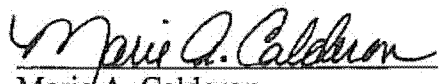
John Machisic, Mayor

APPROVED AS TO FORM
AND LEGAL CONTENT:



Julie Hayward Biggs
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. 1326 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 9th day of August, 2005, and was duly adopted at a regular meeting of said City Council on the 13th day of September, 2005, by the following vote, to wit:

AYES: Councilmembers Hanna, Palmer, Salas, Welch, Mayor Machisic

NOES: None

ABSENT: None

ABSTAIN: None


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

RESOLUTION NO. 2008-66

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BANNING, ADOPTING REGULATIONS FOR CANDIDATES
FOR ELECTIVE OFFICE, PERTAINING TO THE ELECTORATE
AND THE COSTS THEREOF FOR THE GENERAL MUNICIPAL
ELECTION TO BE HELD IN THE CITY ON TUESDAY,
NOVEMBER 4, 2008.

WHEREAS, Section 13307 of the California Elections Code provides that the governing body of any local agency may adopt regulations pertaining to materials prepared by any candidate for a municipal election, including costs thereof;

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

Section 1. General Provisions. Pursuant to Section 13307 of the California Elections Code, each candidate for elective office to be voted for at the General Municipal Election to be held in the City of Banning on Tuesday, November 4, 2008 may prepare a candidate's statement on an appropriate form provided by the City Clerk. Such statement may include the name, age, and occupation of the candidate, and a brief description of no more than 200 words of the candidate's education and qualifications as expressed by the candidate. Such statement will not include party affiliation of the candidate, nor membership or activity in partisan political organizations. Such statement shall be filed in the office of the City Clerk at the time the candidate's nomination papers are filed. Except as provided in Section 13309 of the California Elections Code, such statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5:00 p.m. of the next working day after the close of the nomination period.

Section 2. Payment. The Riverside County Elections Department shall give the City Clerk an estimate of the total cost of printing, handling, translating and mailing the candidate's statements filed pursuant to the Elections Code, and require each candidate filing a statement to pay in advance his or her pro rata share as a condition of

having his or her statement included in the voter's pamphlet. As these costs are only estimated, the City Clerk shall bill each candidate for any cost in excess of the deposit and shall refund any unused portion of any deposit.

Section 3. The City Clerk shall provide each candidate or the candidate's representative a copy of this Resolution at the time the nominating petitions are issued.

PASSED, APPROVED AND ADOPTED this 10th day of June, 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. 2008-66 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of June, 2008, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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RESOLUTION NO. 2008-67

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF BANNING, CALIFORNIA CALLING A GENERAL
MUNICIPAL ELECTION ON NOVEMBER 4, 2008

WHEREAS, a General Municipal Election will be held in the City of Banning on the 4th day of November, 2008, for the full terms of four years for the following officers:

Councilmember - Incumbent Brenda Salas
Councilmember - Incumbent Barbara Hanna
Councilmember - Incumbent John Machisic
City Clerk - Incumbent Marie A. Calderon
City Treasurer - Incumbent John C. McQuown

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

1. The City Council hereby authorizes the Registrar of Voters to conduct the General Municipal Election on behalf of the City of Banning.
2. The polls will be open from 7:00 a.m. to 8:00 p.m. on November 4, 2008.
3. The General Municipal Election will be held and conducted in all manner as prescribed by Law.
4. The City Clerk of the City of Banning will give notice of such Election by publication in the local newspaper.
5. The Riverside County Registrar of Voters is requested to canvass said election for the City of Banning.
6. The City Clerk of the City of Banning is authorized and directed to file a certified copy of this Resolution with the Riverside County Registrar of Voters.

PASSED, APPROVED AND ADOPTED this 10th day of June, 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. 2008-67 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of June, 2008, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: June 10, 2008

TO: City Council

FROM: Phil Holder, Lieutenant

SUBJECT: Resolution No. 2008-68 Authorizing the Chief of Police as the Authorized Grant Agent


RECOMMENDATION: "The City Council adopt Resolution No. 2008-68, a Resolution of the City of Banning, California, authorizing the Chief of Police or his designee the authority to execute any actions necessary to complete and submit grant applications on the local, state, and federal levels."

JUSTIFICATION: Presently the City of Banning does not have a resolution officially recognizing the Chief of Police or his designee as an authorized agent to execute actions necessary to submit grant applications on the local, state, and federal level. While this has not been an issue in the past, new 2008 State Homeland Security Grant Program guidelines require the City Council to pass a resolution identifying an official agent responsible for executing grant applications.

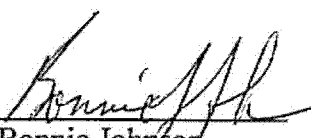
This resolution does not replace the requirement to receive City Council approval prior to accepting grants awarded to the city.

FISCAL DATA: There are no costs associated with this resolution.

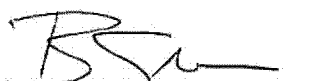
RECOMMENDED BY:


Leonard Purvis
Chief of Police

REVIEWED BY:


Bonnie Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

RESOLUTION NO. 2008-68

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA AUTHORIZING THE CHIEF OF POLICE OR HIS DESIGNEE TO EXECUTE ANY ACTIONS NECESSARY TO COMPLETE AND SUBMIT GRANT APPLICATIONS ON THE LOCAL, STATE, AND FEDERAL LEVELS.

WHEREAS, the City Council supports the police department's proactive search for grants to support law enforcement related activities; and,

WHEREAS, the City Council supports staying in compliance with federal grant guidelines; and,

WHEREAS, the City Council recognizes the importance of allowing the Chief of Police or his designee to submit grant applications in a timely manner.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning authorizes the Chief of Police or his designee to execute any actions necessary to complete and submit grant applications on the local, state, and federal levels.

PASSED, APPROVED, AND ADOPTED this 10th day of June, 2008.

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT

ATTEST

Burke, Williams, & Sorensen, LLP
City Attorney

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-68 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of June 2008, by the following to wit:

AYES:

NOES:

ABSENT:


ABSTAIN:

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

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: June 10, 2008

TO: Honorable Mayor and City Council

FROM: Kahono Oei, City Engineer 

SUBJECT: Resolution 2008-72, "Approving Cooperation Agreement for the Community Development Block Grant and Home Investment Partnership Program Funds for Fiscal Years 2009-2010, 2010-2011, 2011-2012"

RECOMMENDATION: Adopt Resolution No. 2008-72, "Approving Cooperation Agreement for the Community Development Block Grant and Home Investment Partnership Program Funds for Fiscal Years 2009-2010, 2010-2011, 2011-2012"

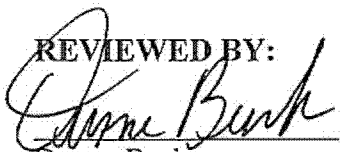
JUSTIFICATION: The approval of this resolution is essential in order to participate in the urban county designation and to obtain federally assisted community block grants.

BACKGROUND: The City of Banning, through the Riverside County Economic Development Agency, has been submitting various projects annually for funding under the CDBG Program. The HOME program authorized by the HOME Investment Partnerships Act (HOME) was enacted as Title II of the National Affordable Housing Act of 1990, has as its purposes: to expand the supply of decent, affordable housing for low and very-low income families with emphasis on rental housing; build State and local capacity to carry out affordable housing programs, and provide for coordinated assistance to participants in the development of affordable low-income housing. In regard to the CDBG Program, the Riverside County Economic Development Agency is the lead agency that helps the City of Banning obtain all CDBG grants.


In order to participate in this program, the City must execute and submit the "Statement of Participation and the Co-operation Agreement, as attached herewith as exhibits "A."

FISCAL DATA: N/A

REVIEWED BY:


Duane Burk
Director of Public Works

APPROVED BY:


Brian Nakamura
City Manager

RESOLUTION NO. 2008-72

**A RESOLUTION OF THE CITY COUNTY OF THE CITY OF BANNING,
CALIFORNIA, APPROVING THE APPROVING COOPERATION
AGREEMENT FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT
AND HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS FOR FISCAL
YEARS 2009-2010, 2010-2011, 2011-2012**

WHEREAS, the Housing and Community Development Act of 1974, as amended (Public Law 93-383) hereinafter called "ACT" provides that Community Development Block Grant, hereinafter referred to as "CDBG", funds may be used for the support of activities that provide decent housing and suitable living environments and expanded economic opportunities principally for persons of low and moderate income; and

WHEREAS, the HOME program authorized by the HOME Investment Partnerships Act (HOME) was enacted as Title II of the National Affordable Housing Act of 1990, has as its purposes; to expand the supply of decent, affordable housing for low and very-low income families with emphasis on rental housing; build State and local capacity to carry out affordable housing programs, and provide for coordinated assistance to participants in the development of affordable low-income housing; and

WHEREAS, CDBG regulations require counties to re-qualify as an Urban County under the CDBG program every three years; and

WHEREAS, the execution of this Agreement is necessary to include the City of Banning as a participating unit of general government under Riverside County's Urban County CDBG and HOME program.

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

Section I. The Cooperation Agreement for the Community Development Block Grant and Home Investment Partnership Program Funds for Fiscal Years 2009-2010, 2010-2011, 2011-2012 be approved and authorize the Mayor to execute the Statement of Participation and the Agreement as attached herewith as exhibits "A."

Section II. Said authorization shall expire 90 days following the date herewith if the agreement has not been executed.

EXHIBIT "A"

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**COOPERATION AGREEMENT
FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT
AND HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS
FOR FISCAL YEARS 2009-10, 2010-11, 2011-12**

This Cooperation Agreement hereinafter referred to as "Agreement" is made and entered into this _____ day of _____ 2008, by and between the COUNTY OF RIVERSIDE, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and City of Banning an incorporated municipality within the geographical boundaries of the COUNTY, hereinafter referred to as "CITY," who together are sometimes referred to herein individually as "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Housing and Community Development Act of 1974, as amended (Public Law 93-383), hereinafter called "ACT", provides that Community Development Block Grant, funds hereinafter referred to as "CDBG", may be used for the support of activities that provide decent housing, suitable living environments, and expanded economic opportunities principally for persons of low and moderate-income; and

WHEREAS, the HOME program, authorized by the HOME Investment Partnerships Act (HOME), was enacted as Title II of the National Affordable Housing Act of 1990, has as its purposes to: expand the supply of decent, affordable housing for low and very-low income families with emphasis on rental housing; build State and local capacity to carry out affordable housing programs; and provide for coordinated assistance to participants in the development of affordable low-income housing; and

WHEREAS, CDBG regulations require counties to re-qualify as an Urban County under the CDBG program every three years; and

WHEREAS, the execution of this Agreement is necessary to include CITY as a participating unit of general government under COUNTY's Urban County CDBG and HOME program.

NOW THEREFORE, in consideration of the mutual covenants herein set forth and the mutual benefits to be derived there from, the parties agree as follows:

1
2 1. GENERAL.

3 This Agreement gives COUNTY authority to undertake, or assist in undertaking,
4 activities for Fiscal Years 2009-10, 2010-11, and 2011-12, that will be funded from the CDBG program,
5 the HOME Investment Partnership program, and from any program income generated from the
6 expenditure of such funds. COUNTY and CITY agree to cooperate, to undertake, or to assist in
7 undertaking, community renewal and lower-income housing assistance activities. COUNTY is qualified
8 as an "Urban County" under the ACT. CITY, by executing this Agreement, hereby gives notice of its
9 election to participate in an Urban County Community Development Block Grant program, hereinafter
10 referred to as "CDBG programs".

11 By executing this Agreement, CITY understands that it may not apply for grants from
12 appropriations under the Small Cities or State CDBG Programs for fiscal years during the period in which
13 it participates in the Urban County's CDBG program and that CITY may only participate in the HOME
14 program through the COUNTY'S Urban County program, not a consortium.

15 2. TERM.

16 The term of this Agreement shall be for three (3) years commencing on July 1, 2009, and
17 extending through the federal fiscal years 2009-2012, which ends June 30, 2012, unless an earlier date of
18 termination is fixed by U.S. Department of Housing and Urban Development, hereinafter called HUD,
19 pursuant to ACT.

20 This Agreement will be automatically renewed for participation in successive three-year
21 qualification periods, unless the COUNTY or the CITY provides written notice to the other Party that it
22 elects not to participate in the next three-year Urban County program. COUNTY will notify CITY of
23 CITY's right not to participate in the next three-year period no later than the date specified by HUD in the
24 *Urban County Qualification Notice*. CITY shall notify COUNTY no later than the date specified in
25 COUNTY's notification that CITY elects not to participate in the next three-year Urban County Program.
26 COUNTY will send copies of all notifications required by this Paragraph to the HUD Field Office.

27 The terms of this Agreement shall remain in effect until the CDBG (and HOME, where
28 applicable) funds and program income received with respect to activities carried out during the three-year

1 qualification period are expended and the funded activities completed. Furthermore, neither the COUNTY
2 nor the CITY may terminate or withdraw from this Agreement while it remains in effect.

3 3. PREPARATION OF FEDERALLY REQUIRED FUNDING APPLICATIONS.

4 The Riverside County Economic Development Agency, subject to approval of
5 COUNTY's Board of Supervisors, shall be responsible for preparing and submitting to HUD, in a timely
6 manner, all reports and statements required by the ACT and the Federal regulations promulgated by HUD
7 to secure entitlement grant funding under the CDBG and HOME program. This duty shall include the
8 preparation and processing of COUNTY Housing, Community, and Economic Development Needs
9 Identification Report, Citizen Participation Plan, the County Five-Year Consolidated Plan, One-Year
10 Action Plan, Consolidated Annual Performance and Evaluation Report (CAPER), and other related
11 programs which satisfy the application requirements of ACT and its regulations.

12 4. COMPLIANCE WITH FEDERAL STATUTES, REGULATIONS AND
13 OTHER APPLICABLE STATUTES, REGULATIONS AND ORDINANCES.

14 (a) COUNTY and CITY will comply with the applicable provisions of the ACT and
15 those federal regulations promulgated by HUD pursuant thereto, as the same currently exists or may
16 hereafter be amended. The COUNTY and CITY will take all actions necessary to assure compliance with
17 COUNTY's certifications required by Section 104 (b) of Title I of ACT. COUNTY and CITY will
18 comply with the provisions of the following: National Environmental Policy Act of 1969; Title VI of the
19 Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968; and Title 24 Code of Federal
20 Regulations part 570; the Fair Housing Act; Cranston-Gonzales National Affordable housing Act (Public
21 Law 101-625); Section 109 Title I of the Housing and Community Development Act of 1974 (42
22 U.S.C. §5309); Executive Order 11063, as amended by Executive Order 12259; Executive Order 11988;
23 the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §4630,
24 et. seq.); and other federal or state statute or regulation applicable to the use of CDBG or HOME
25 Investment Partnerships Act (enacted as Title II of the National Affordable Housing Act of 1990) funds.

26 (b) CITY agrees that CDBG funding for activities in, or in support of, CITY are
27 prohibited if CITY does not affirmatively further fair housing within its own jurisdiction or impedes
28 COUNTY actions to comply with its fair housing certification.

1 (c) CITY and COUNTY shall meet the citizen participation requirements of 24 CFR
2 570.301 and provide Riverside County citizens with all of the following:

3 i. The estimate of the amount of CDBG funds proposed to be used for
4 activities that will benefit persons of low and moderate-income;

5 ii. A plan for minimizing displacement of persons as a result of activities
6 assisted with CDBG funds and to assist persons actually displaced as a result of such activities;

7 iii. A plan that provides for and encourages citizen participation, with
8 particular emphasis on participation by persons of low and moderate-incomes, residents of slum and
9 blighted areas, and of areas in which funds are proposed to be used, and provides for participation of
10 residents in low and moderate-income neighborhoods;

11 iv. Reasonable and timely access to local meetings, information, and records
12 relating to the grantee's proposed use of funds, as required by the regulations of the Secretary, and
13 relating to the actual use of funds under the ACT;

14 v. Provide for public meetings to obtain citizen views and to respond to
15 proposals and questions at all stages of the community development program, including at least the
16 development of needs, the review of proposed activities and review of program performance. Meeting
17 shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries,
18 and with accommodation for the disabled.

19 (d) CITY shall develop a community development plan, for the period of this
20 Agreement, which identifies community development and housing needs and specifies both short and
21 long-term community development objectives.

22 (e) CITY certifies, to the best of its knowledge and belief, that:

23 i. No Federal appropriated funds have been paid or will be paid, by or on
24 behalf of the CITY, to any person influencing or attempting to influence an officer or employee of any
25 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of
26 Congress, in connection with the awarding of any Federal contract, the making of any Federal grant, the
27 making of any Federal loan, the entering into of any cooperative agreement, and the extension,
28 continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative
agreement.

1 ii. If any funds other than Federally-appropriated funds have been paid or
2 will be paid to any person for influencing or attempting to influence an officer or employee of any
3 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of
4 Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned
5 shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance
6 with its instructions.

7 iii. The CITY shall require that the language provided in Section 4(e)(i) and
8 (ii) of this Agreement be included in the award documents for all sub-awards at all tiers (including
9 subcontracts, sub- grants and contracts under grants, loans, and cooperative agreements) and that all sub-
10 recipients shall certify and disclose accordingly. This certification is a material representation of fact
11 upon which reliance was placed when this transaction was made or entered into.

12 (f) In accordance with Section 519 of Public Law 101-144, (the 1990 HUD
13 Appropriations Act), the CITY certifies that it has adopted and is enforcing a policy prohibiting the use of
14 excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in
15 non-violent civil rights demonstrations, and that it has adopted and is enforcing applicable State and local
16 laws against physically barring entrance to, or exit from, a facility or location which is the subject of such
17 non-violent civil rights demonstrations within its jurisdiction.

18 5. COMPLIANCE WITH POLICY AND PROGRAM OBJECTIVES.

19 The COUNTY's Board of Supervisors have adopted policies and procedures to ensure
20 efficient and effective administration of the CDBG and HOME programs. COUNTY will provide these
21 policies and procedures to CITY within a reasonable time after this Agreement's commencement date.
22 COUNTY and City agree to comply with these said policies and program objectives.

23 6. OTHER AGREEMENTS.

24 Pursuant to Federal regulations at 24 CFR 570.501(b), CITY is subject to the same
25 requirements applicable to sub-recipients, including the requirement of a written agreement set forth in
26 Federal regulations at 24 CFR 570.503. For each fiscal year during the term of this Agreement,
27 COUNTY and CITY shall enter into an additional agreement, commonly known as a Supplemental
28 Agreement, that will have a term coinciding with a CDBG Program Year and enumerate the project(s)
CITY will implement with its entitlement funds. Said Supplemental Agreement will set forth the time

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1 schedule for completion of said project(s) and any funding sources, in addition to entitlement funds, that
2 will be used in completing the project(s). If substantial compliance with the completion schedule, due to
3 unforeseen or uncontrollable circumstances, cannot be met by CITY, the schedule for the project(s) may
4 be extended by COUNTY. If COUNTY determines that substantial progress toward drawdown of funds is
5 not made during the term of the Supplemental Agreement, the entitlement funds associated with the
6 project(s) may be reprogrammed by COUNTY, to other activities as determined by COUNTY, after
7 COUNTY provides appropriate written notice to CITY. COUNTY's decision not to extend the
8 completion schedule associated with the project(s), or to reprogram the entitlement funds associated with
9 the project(s), will not excuse CITY from complying with terms of this Agreement.

10 7. DETERMINATION OF PROJECTS TO BE FUNDED AND DISTRIBUTION
11 OF ENTITLEMENT FUNDS.

12 CITY agrees to submit to COUNTY, no later than the date specified by COUNTY prior
13 to each program year, the activities that the CITY desires to implement with its entitlement funds, said
14 designation to comply with statutory and regulatory provisions governing citizen's participation. Said
15 designation is to be reviewed by the COUNTY's Economic Development Agency to determine that the
16 projects are eligible under federal regulations for funding and inclusion in the One Year Action Plan of
17 the County's Five-Year Consolidated Plan and consistent with both Federal and COUNTY policy
18 governing use of Community Development Block Grant (CDBG) funds.

19 Consistent with Paragraphs 3, 4, 5, 6, and 7 of this Agreement, COUNTY's Board of
20 Supervisors will make the final determination of the distribution and disposition of all CDBG funds
21 received by COUNTY pursuant to the Act.

22 8. COMMUNITY DEVELOPMENT BLOCK GRANT MANUAL.

23 CITY warrants that those officers, employees, and agents, retained by it and responsible
24 for implementing projects funded with CDBG have received, reviewed, and will follow the Community
25 Development Block Grant Manual that has been prepared and amended by COUNTY, and by this
26 reference, said Manual is incorporated herein and made a part hereof.

27 9. REAL PROPERTY ACQUIRED OR PUBLIC FACILITY CONSTRUCTED
28 WITH CDBG FUNDS.

When CDBG funds are used, in whole or in part, by CITY to acquire real property or to

1 construct a public facility, CITY will comply with the National Environmental Policy Act of 1969 (42
2 U.S.C. §§4321, et seq.), the California Environmental Quality Act (Cal. Pub. Resources Code §§21000, et
3 seq.), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C.
4 §§4630, et seq.), and the California Government Code Sections 7260 et seq., as those Acts may be
5 amended from time-to-time and any Federal or state regulations issued to implement the aforementioned
6 laws.

7 In addition, the following is to occur:

8 (a) Title to the real property shall vest in CITY;

9 (b) The real property title will be held by or the constructed facility will be
10 maintained by the CITY for the approved use until five years after the date that the project is reported as
11 "Completed" within the annual Consolidated Annual Performance and Evaluation Report.

12 (c) While held by CITY, the real property or the constructed facility is to be used
13 exclusively for the purpose for which acquisition or construction was originally approved by COUNTY;

14 (d) CITY shall provide timely notice to COUNTY of any action which would result
15 in a modification or change in the use of the real property purchased or improved, in whole or in part,
16 with CDBG or HOME funds from that planned at the time of acquisition or improvement, including
17 disposition.

18 (e) CITY shall provide timely notice to citizens and opportunity to comment on any
19 proposed modification or change;

20 (f) Written approval from COUNTY must be secured if the property or the facility is
21 to be put to an alternate use that is or is not consistent with federal regulations governing CDBG funds;

22 (g) Should CITY desire during the five (5) year period to use the real property or the
23 constructed facility for a purpose not consistent with applicable federal regulations governing CDBG
24 funds or to sell the real property or facility, then:

25 (i) If CITY desires to retain title, it will have to reimburse either COUNTY or
26 the Federal government an amount that represents the percentage of current fair market value that is
27 identical to the percentage that CDBG funds initially comprised to when the property was acquired or the
28 facility was constructed;

(ii) If CITY sells the property or facility, or is required to sell the property or

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1 facility, CITY is to reimburse the COUNTY an amount that represents the percentage of proceeds
2 realized by the sale that is identical to the percentage that CDBG funds comprised of the monies paid to
3 initially acquire the property or construct the facility. This percentage amount will be calculated after
4 deducting all actual and reasonable cost of sale from the sale proceeds.

5 10. DISPOSITION OF INCOME GENERATED BY THE EXPENDITURE OF
6 CDBG FUNDS.

7 CITY shall inform COUNTY of any income generated by the expenditure of CDBG
8 funds received by CITY from COUNTY. CITY may not retain any program income so generated. Any
9 and all program income shall be returned to the County and may only be used for eligible activities in
10 accordance with all CDBG requirements, including all requirements for citizen participation.

11 The COUNTY is required by HUD to monitor and report the receipt and use of all
12 program income. CITY is required to track, monitor, and report any and all program income as requested
13 by COUNTY.

14 11. TERMINATION.

15 Except as provided for in Paragraph 2, CITY and COUNTY cannot terminate or
16 withdraw from this Agreement while it remains in effect.

17 12. FORMER AGREEMENTS UTILIZING COMMUNITY DEVELOPMENT
18 BLOCK GRANT FUNDS BETWEEN COUNTY AND CITY.

19 All agreements between CITY and COUNTY regarding the use of CDBG funds for fiscal
20 years 1975-76 through 2007-2008, and any Supplemental Agreements there under, shall remain in full
21 force and effect. If the language of this Agreement is in conflict or inconsistent with the terms of any
22 prior said agreements between CITY and COUNTY, the language of this Agreement will be controlling.

23 13. INDEMNIFICATION

24 CITY agrees to indemnify, defend and hold harmless COUNTY and its authorized
25 officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or
26 liability arising from CITY acts, errors or omissions and for any costs or expenses incurred by COUNTY
27 on account of any claim therefore, except where such indemnifications is prohibited by law. CITY shall
28 promptly notify COUNTY in writing of the occurrence of any such claims, actions, losses, damages,
and/or liability.

1 CITY shall indemnify and hold harmless COUNTY against any liability, claims, losses,
2 demands, and actions incurred by COUNTY as a result of the determination by HUD or its successor that
3 activities undertaken by CITY under the program(s) fail to comply with any laws, regulations, or policies
4 applicable thereto or that any funds billed by and disbursed to CITY under this Agreement were
5 improperly expended.

6 14. COMPLIANCE WITH LAWS AND REGULATIONS.

7 By executing this Agreement, the Parties hereby certify that they will adhere to and
8 comply with all federal, state and local laws, regulations and ordinances.

9 15. ENTIRE AGREEMENT.

10 It is expressly agreed that this Agreement embodies the entire agreement of the Parties
11 in relation to the subject matter hereof, and that no other agreement or understanding, verbal or
12 otherwise, relative to this subject matter, exists between the Parties at the time of execution.

13 16. SEVERABILITY.

14 Each paragraph and provision of this Agreement is severable from each other provision,
15 and if any provision or part thereof is declared invalid, the remaining provisions shall remain in full
16 force and effect.

17 17. ASSIGNMENT.

18 The Parties will not make any sale, assignment, conveyance or lease of any trust or
19 power, or transfer in any other form with respect to this Agreement, without prior written approval of the
20 other Party.

21 18. INTERPRETATION AND GOVERNING LAW.

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

28 19. WAIVER.

Failure by a Party to insist upon the strict performance of any of the provisions of this

1 Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other
2 Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the
3 other Party with the terms of this Agreement thereafter.

4 20. JURISDICTION AND VENUE.

5 Any action at law or in equity arising under this Agreement or brought by a Party hereto
6 for the purpose of enforcing, construing or determining the validity of any provision of this Agreement
7 shall be filed in the consolidated Courts of Riverside County, State of California, and the Parties hereto
8 waive all provisions of law providing for the filing, removal or change of venue to any other court or
9 jurisdiction

10 21. AMENDMENTS

11 No change, amendment or modification to the Agreement shall be valid or binding upon
12 CITY or COUNTY unless such change, amendment or modification is in writing and duly executed.
13 CITY and COUNTY agree to adopt any necessary amendments to this Agreement to incorporate
14 changes required by HUD as set forth in the Urban County Qualification Notice. Amendments must be
15 submitted to HUD as provided in the Urban County Qualification Notice and failure to do so will void
16 the automatic renewal for such qualification period.

17 22. AUTHORITY TO EXECUTE.

18 The persons executing this Agreement or exhibits attached hereto on behalf of the
19 Parties to this Agreement hereby warrant and represent that they have the authority to execute this
20 Agreement and warrant and represent that they have the authority to bind the respective Parties to this
21 Agreement to the performance of its obligations hereunder.

22 23. INCORPORATION OF RECITALS

23 The Parties hereby affirm the facts set forth in the recitals above. Said recitals are
24 incorporated herein and made an operative part of this Agreement.

25
26 SIGNATURES ON FOLLOWING PAGE
27
28

1 IN WITNESS WHEREOF, the COUNTY and CITY have executed this Agreement on the date
2 shown below.
3

4 ATTEST:

5
6 Nancy Romero
Clerk of the Board

COUNTY OF RIVERSIDE

7
8 By: _____

By: _____
Roy Wilson, Chairman
Board of Supervisors

9
10 Date: _____

11
12 ATTEST:

CITY OF BANNING

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15 By: _____
City Clerk

By: _____
Mayor

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17 Date: _____
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Joe S. Rank
County Counsel

S:\CDBG\Urban County Program\COOP Agreements 2009-2012

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: June 10, 2008

TO: Honorable Mayor and City Council Members

FROM: Bonnie Johnson, Finance Director

SUBJECT: Resolution No 2008-73 Approving an Advance to the San Gorgonio Child Care Consortium in the Amount of \$25,000

RECOMMENDATION:

Council adopt Resolution No 2008-73 approving a short-term loan to the San Gorgonio Child Care Consortium which would be funded on July 1, 2008 and expire September 30, 2008, in the amount of \$25,000.

JUSTIFICATION:

State funding to the Consortium is granted once the Governor signs the State Budget. Actual receipt of the funding has often been delayed until August or later, from the State program which provides funding to the local child care facility. The Consortium provides full day childcare services to approximately one hundred and forty-five (145) children. Forty-nine (49) of these slots are funded from the State program.

BACKGROUND/ANALYSIS:

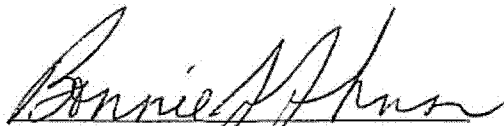
For the past fourteen years, the City has provided a short-term interest free loan to allow the Consortium to continue operations pending its first payment from the State. In the current fiscal year the loan was funded on July 1, 2007 and repaid on September 11, 2007.

A copy of the correspondence submitted by the Consortium is included for reference as *Exhibit A*. Resolution 2008-73 has been prepared for City Council's consideration and is also included with this staff report.

FISCAL DATA:

The proposed funding source is the General Fund. The loan would be interest free for three-months. The General Fund is projected to lose approximately \$188 of interest earnings assuming the funds were invested for two months at the LAIF's current yield of 3.01%.

RECOMMENDED BY:


Bonnie Johnson, Finance Director

APPROVED BY:


Brian Nakamura, City Manager

RESOLUTION NO. 2008-73

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BANNING AUTHORIZING A LOAN IN THE AMOUNT OF \$25,000 TO THE SAN
GORGONIO CHILD CARE CONSORTIUM**

WHEREAS, State funding to the San Gorgonio Child Care Consortium does not occur until the Governor signs the State Budget; and

WHEREAS, actual receipt of the funds has often been delayed until August or later from the State program which provides funding to the local child care facility; and

WHEREAS, the City Council desires uninterrupted services which might otherwise result from cash flow constraints; and

WHEREAS, there exists a cash flow shortage for the program,

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF BANNING,**

City Council hereby authorizes and directs the Finance Director to advance the sum of \$25,000 to the San Gorgonio Child Care Consortium as an interest free short-term loan, funded on July 1, 2008 and due no later than September 30, 2008.

PASSED, APPROVED, AND ADOPTED this 10th day of June 2008.

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM AND
LEGAL CONTENT:

Burke, Williams & Sorenson, LLP
City Attorney

102

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. 2008-73 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 10th day of June 2008, by the following vote, to wit:

AYES:

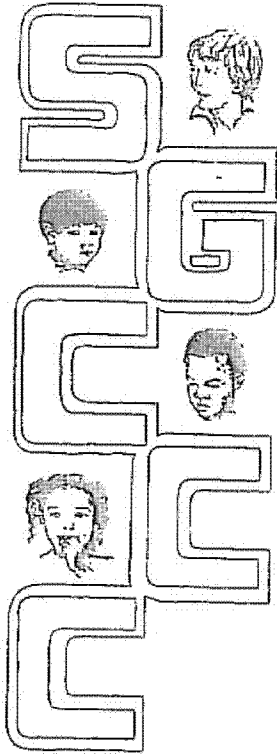
NOES:

ABSTAIN:

ABSENT:

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

103



SAN GORGONIO CHILD CARE CONSORTIUM
671 North Florida Suite A, Banning, California 92220
P.O. Box 1629
Telephone (951) 849-2930/849-2739
Fax (951) 849-2262

May 19, 2008

City Manager
City of Banning
99 E. Ramsey
Banning, Ca. 92220

Dear City Manager;

San Gorgonio Child Care Consortium is asking for a loan of \$25,000.00. This loan is needed due to the fact that the State Budget may not be signed in time to get us through the summer months. This \$25,000.00 will help to hold keep the center running until the State Department of Education's first allocation check is made for the new Fiscal Year 2008/2009.

Thank you in advance for your help.

Sincerely,

Linda Phillips

Program Director
Linda Phillips

Board of Directors

President
Deborah Franklin

Vice President
Marion Johnson

Secretary
Beverly Davis

Financial Officer
T. J. Moody

Pat Maloney

Judy Geske

Dorothy Mclean

Clara Soward

Sydni Mackey

Member Emeritus
Brigitte Page



CENTRAL COUNTY UNITED WAY

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104

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: June 10, 2008

TO: City Council

FROM: Bonnie Johnson, Finance Director

SUBJECT: Approve an amendment to Deposit/Reimbursement Contract with Pardee Homes-Butterfield for Senior Project Management Services and Award of Contract to Civic Solutions, Inc. for Third Party Senior Project Management Services for the Pardee Homes-Butterfield Specific Plan in the amount not to exceed \$60,000.

RECOMMENDATION: That the City Council approve an amendment to the current Deposit/Reimbursement Contract with Pardee Homes-Butterfield for the Senior Project Management Services, award of contract to Civic Solutions, Inc in the amount not to exceed \$60,000, and approve Resolution 2008-74 authorizing an additional appropriation of funds.

JUSTIFICATION: The Senior Project Manager (SPM) assigned to the Pardee Homes-Butterfield Specific Plan will provide day-to-day project planning support and technical expertise with project supervision being handled by the City's Interim Community Development Director.

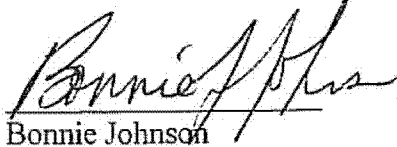
BACKGROUND/ANALYSIS: Pardee Homes-Butterfield (applicant) is currently in the process of submitting a General Plan Amendment, Specific Plan Amendment/Zone Change, Tentative Tract Maps and Environmental Impact Report for the development of a 1,543 acre multi-use community located in the northwestern quadrant of the City. The Senior Project Manager (SPM) assigned to the Pardee Homes-Butterfield Specific Plan project will provide day-to-day project planning support and technical expertise with project supervision being handled by the City's Interim Community Development Director.

Staff is requesting that the Council enter into a third party contract not to exceed \$60,000 by and between the City, the Applicant and Consultant for the day-to-day project management and planning support. The Applicant will deposit the contract amount which will be used by staff to pay for the Consultant's services. The Consultant will report directly to Staff.

Please note that the purpose of this report is to request that the Council enter into a contract with Civic Solutions, Inc. for third party Senior Project Management Services. The Pardee Homes-Butterfield Specific Plan is not a matter for discussion at this time.

FISCAL DATA: An appropriation of funds is being requested in the amount of \$60,000. This agreement will not have an impact on the City's General Fund; the applicant will be reimbursing the City for all costs associated to the Senior Project Management Services.

RECOMMENDED BY:



Bonnie Johnson
Finance Director

APPROVED BY:

Brian Nakamura
City Manager

RESOLUTION NO. 2008-74

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AWARDING THE CONTRACT TO CIVIC SOLUTIONS, INC. FOR THRID PARTY PROJECT MANAGEMENT SERVICES FOR THE PARDEE HOMES-BUTTERFIELD SPECIFIC PLAN AND APPROPRIATING THE NECESSARY FUNDS FOR THE PROJECT IN AN AMOUNT NOT TO EXCEED \$60,000.00.

WHEREAS, the two year budget cycle for the City of Banning for the Fiscal Year commencing July 1, 2007 and ending June 30, 2008 was approved and adopted on June 27, 2006; and

WHEREAS, the approved Budget is in accordance with all applicable ordinances of the City and all applicable statutes of the State; and

WHEREAS, The Reallocation of appropriations between departmental activities may be made by the City Manager, however Amendments (increases/decreases) to the Budget shall be by approval and Resolution of the City Council.

WHEREAS, The City has entered into a deposit/reimbursement agreement with Pardee Homes-Butterfield (Applicant). Applicant will reimburse the City for any costs associated with Senior Project Management Services.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning, California that the Community Development Account Number 001-2800-441.33-11 budget for the fiscal year ending June 30, 2008, is hereby amended to include an appropriation for \$60,000.00.

PASSED, APPROVED AND ADOPTED this 10th day of June, 2008.

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM AND
LEGAL CONTENT:

Burke, Williams and Sorensen, LLP
City Attorney

ATTEST:

Marie A. Calderon, City Clerk

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CERTIFICATION

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-74 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 10th day of June, 2008 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: June 10, 2008
TO: Honorable Mayor and City Council
FROM: James D. Earhart, Public Utilities Director
SUBJECT: The "City of Banning Clean & Green Report & Recommendations"

RECOMMENDATION: The City Council accept the City of Banning Clean & Green Report & Recommendations ("Report") attached herewith as Exhibit "A".

JUSTIFICATION: It is in the best interest of the City of Banning to expand existing programs and develop new programs and processes that will promote a "greener" environment within the City, and will enable the City to participate more fully in the effort to reduce Greenhouse Gases ("GHG"), fight Global Warming, and become more sustainable.

BACKGROUND: Over the past few years the State of California has passed numerous Legislative Bills pertaining to energy and water conservation and the environment in general. Many cities and counties throughout the State have developed and implemented programs and processes designed to promote water and energy conservation, "green" buildings, and overall environmental awareness.

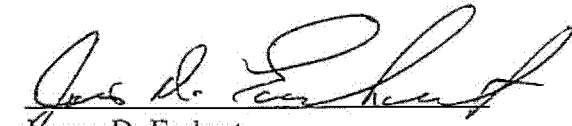
Previously the Banning City Council had directed Staff to develop a report and make recommendations regarding implementing "green" programs and processes within the City. To that end Staff reviewed a number of applicable reports that other cities had developed and adopted, and determined that the City of Riverside's Clean & Green Task Force Report best represented the format that Banning wanted to utilize. Banning Staff contacted the City of Riverside and obtained permission to utilize their report as the blueprint upon which the attached City of Banning Clean & Green Report & Recommendations is based.

After the draft Report was developed, all City departments were given the opportunity to review and comment on the document. Those comments have been incorporated into the final Report attached herewith as Exhibit "A".

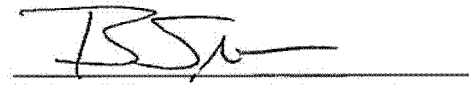
Staff supports the intent of the City of Banning Clean & Green Report & Recommendations and recommends that Council accept the Report and direct the City Manager to implement the programs and recommendations outlined in the Report in a prudent and fiscally sound manner.

FISCAL DATA: The fiscal impact to fully implement the recommendations outlined in the Report is unknown at this time. However, funds are currently available in the Public Benefits Program budget for qualifying expenditures, and will continue to be available as funds collected through the State mandated 2.85% Public Benefits Charge. Staff will perform a cost/benefit analysis on the various recommendations and ensure that prudent and fiscally sound decisions are made when implementing the recommendations. Staff will continue to seek Council direction on implementation issues when warranted.

RECOMMENDED BY:


James D. Earhart
Public Utilities Director

APPROVED BY:


Brian Nakamura
City Manager

Prepared by: Fred Mason, Power Resource & Revenue Administrator

Exhibit “A”



CITY OF BANNING CLEAN & GREEN

REPORT & RECOMMENDATIONS

JUNE 2008

ACKNOWLEDGEMENT & INTRODUCTION

Banning Staff would like to thank the City of Riverside and especially Riverside's Clean and Green Task Force, which allowed Banning to utilize its "Clean & Green Sustainable Riverside Report" as the blueprint upon which this report is based. It is very much appreciated.

The making of a clean and green city depends on civic leadership with the political will to adopt and fund needed programs and on an equally committed and educated citizenry willing to implement and support both public policy and private initiatives. We believe both requirements are met in Banning and we need only a comprehensive program to focus our collective effort to achieving full clean and green status.

This report lists existing programs as a benchmark upon which we recommend both expanded and new programs. The list includes official City programs, water and power agency programs and efforts at local schools, the combined impact of which is considerable.

The entire subject of energy efficiency, alternative fuels and local/on-site power generation requires further study and program development. The Banning Public Utilities Department has initiated some excellent programs that need additional support and funding, incentives to achieve broad market acceptance and educational programs to stimulate industry involvement and investment. Alternative fuels for automobile and power generation is a broad national topic gathering increasing attention and, we advocate, directed focus in a comprehensive national energy strategy.

EXECUTIVE SUMMARY

We have reached several conclusions: First, Banning has enormous potential to be a "Clean and Green" city that exemplifies sustainable living and becomes a model for the Pass Area. Second, Banning has an established foundation for sustainable living and civic action spearheaded by the Banning Public Utilities programs in renewable energy sources and photovoltaic power generation programs. Third, Banning has a core of interested and committed residents ready to devote themselves to a sustainable future.

Sustainability in the civic context means maximizing energy efficiency; optimizing resource use while minimizing negative environmental impacts; minimizing waste production and pollution; capturing the benefits of natural processes while minimizing damage from natural events and meeting the economic and social needs of all its people in a manner that does not degrade or destroy the productivity of its natural and man-made systems.

As Staff reviewed existing programs and discussed future applications, we came to understand that the range of issues pertaining to sustainable living can be as broad or as narrow as we choose. Our review of other cities' programs places our recommendations in the

middle ground of possible programs. We identified the following broad areas of interest for subsequent consideration:

- Public Policies, Regulations, Guidelines and Implementation Programs
- Regional Sustainability Issues
- Green Building Programs
- Facilities Operations and Maintenance

Sustainable thinking leads to a special kind of decision-making, i.e., choices based on a commitment to leave our children a place better for our having served as steward of their environment inheritance, a clearly defined civic conservation ethic and a deep regard for the quality of the total environment, both natural and man-made.

The genuine benefits of measurable improvements in the quality of the natural and man-made environment are both obvious and too numerous to list herein. A sustainable Banning is committed to a *continual improvement in the quality of both the built and natural environment* resulting in a legacy of genuine value.

PUBLIC POLICIES FOR A SUSTAINABLE BANNING

A deep rooted commitment to becoming a Clean and Green city requires policies and programs that create the basis for a sustainable future and the ability of the community to easily, affordably and intelligently pursue sustainable development. A formal statement of intent that commits the City to sustainability and outlines the broad scope of interest is necessary to lay the policy foundation for policies and programs to follow.

The current national sustainability movement dates from the late '80s to early '90s, the time period that roughly parallels the "Smart Growth" movement in community design. The two movements are simply different sides of the same environmental quality coin. Smart growth addresses the quality of community in terms of functional, aesthetic and social qualities with direct links to environmental quality in open space development, urban containment and alternative modes of transport/transit. Sustainability focuses on environmental quality in terms of energy efficiency, water conservation, use of renewable materials, increased densities to reduce the demand for raw land, optimizing indoor air quality with direct links to smart growth in walkable communities, alternative modes of transportation, mixed use developments, densification and an emphasis on infill, brownfield and redevelopment.

DRAFT POLICY STATEMENT

The values of legacy, conservation and respect are the foundation of a sustainable city. Just as the smart growth movement re-focused attention on the values of a humane and friendly urbanism, sustainability integrates environmental knowledge and ecological processes, the ethics of conservation, technological and design innovation, enlightened public policy and effective implementation programs.

The heart and core of almost every environmental effort revolves around the conservation of resources and their use in a manner that has zero impact on the environment or actually improves existing conditions. A sustainable Banning embodies a civic conservation ethic that mandates conservation as a prime decision-making criteria in the design, development, operation and management of our man-made environment while preserving and protecting the natural environment out of which we carve our human habitat.

Creating a Sustainable Banning requires the City to recognize the following five general procedural goals:

- Provide and update useful and timely data to inform our residents about the resources available on living sustainably and keeping our City clean;
- Adopt General Plan policies that integrate land use, circulation, open space, energy use and conservation practices so that a Sustainable Banning is the natural and inevitable consequence of the proper application of those policies;
- Ensure policy follow-through, adopt implementation plans, programs and regulations that facilitate sustainable development, maintenance and operations;
- The City also recognizes the need to lead by example and commits to developing pilot projects that demonstrate the benefits of proven sustainable action as well as those at the cutting edge;
- Particularly in the areas of clean air and traffic congestion, the City will work with regional agencies and adjacent cities and counties to design and implement regional programs to which Banning contributes and receives benefits.

Regional Sustainability

Regional Sustainability is wholly predicated on the region's constituent cities becoming sustainable themselves – no region with two-thirds of its residents living in cities can be sustainable without the City's full support and participation. A Sustainable Banning responds to regional issues with innovative programs for land use (mixed use, high density residential, transit oriented development, etc.), circulation and transit, open space development, waste water treatment, storm water handling and energy generation/conservation. Particularly in the areas of clean water, clean air and traffic congestion, the City will work with regional agencies and adjacent cities and counties to design and implement regional programs to which Banning contributes and receives benefits.

RECOMMENDATIONS:

In general, our recommendations are to: 1) endorse Sustainable Banning as a vital and necessary civic goal; 2) commit the resources necessary to explore each of the key areas of interest; 3) assess our current capabilities and policy status; 4) develop new policies, guidelines and codes/regulations; 5) create implementation programs that ensure sustainable action and 6) monitor and measure progress toward a Sustainable Banning.

General Plan Review

Appoint a Clean & Green Committee to review the draft Sustainable Banning Policy; examine the General Plan for consistency with the adopted Sustainable Banning Policy and recommend changes and additions to the General Plan to insure horizontal consistency and vertical integration and to initiate the process of defining programs and practices to implement the Sustainable Banning Policy.

Clean & Green Committee

To keep abreast of emerging information and potential programs, appoint a Clean & Green Committee staffed by the appropriate personnel and reporting to the City Council. This committee will act as the citizen review function for all sustainable programs, investigations, special projects and will provide leadership for emerging task forces and working groups that will from time to time be created for specific focused investigations and program development.

COST/BENEFIT SUMMARY

Sustainable design, building and operations is perhaps the most rapidly expanding amalgam of policies, programs and practices dealing with the entirety of the environment that we have witnessed as a culture. Still a young movement, it is based on ancient wisdoms combined with state-of-the-art technologies and is generating deep interest from those interested in environmental quality as well as the long term benefits of economic performance and an improved quality of life.

While every project is unique, generalized benefits have been observed and measured, including first cost savings through streamlined permitting, reduced infrastructure cost, potentially dramatic savings in waste handling, substantial savings in mechanical equipment and where available, tax credits and other incentives.

Operating costs can be reduced in lower energy, water and resource consumption, increased life of mechanical and electrical systems, reduced maintenance costs, reduced daily waste generation. There is now evidence of increased commercial property values, increased sales and lease-up, reduced employee turnover and easier recruitment.

More than any other institution, the City benefits from life cycle analysis of costs and benefits, and when sustainable features, equipment, materials and systems prove cost effective, and increasingly they do, it is incumbent upon the City to both employ them in municipal projects and to promote their use by the general public.

One of the most meaningful benefits is in the health and productivity arena where overall health is improved (fewer employee sick days), enhanced comfort zones, increased productivity and learning, faster recovery after illness and in commercial retail applications, increased retail sales.

The overall community benefits from reduced demand for civic services, reduced waste handling and reduced automobile use and congestion/pollution. Environmental benefits are manifold, including reduced consumption of depletable resources, reduced resource extraction and processing impacts, reduced toxic emissions, reduced transportation costs and impacts, reduced urban heat islands and the preservation of natural wildlands and agricultural areas.

PLANNING AND DEVELOPMENT PROGRAMS

Current planning and development documents do not reflect sustainability as a design criteria and may, in fact, conflict with sustainable practices as we currently understand them. A General Plan Sustainability Element should set forth planning and design principles upon which review and modification of statutes such as the Zoning Code or Citywide Design Guidelines could proceed.

Much more so than in typical development, sustainable planning and design is highly site sensitive and context responsive. It is worth noting that as in all newly emerging disciplines, more innovation, not less, is required to define the acceptable bounds of the solutions proposed. Therefore, as policies, regulations, practices and programs are reviewed and alternatives offered, a wide-ranging and comprehensive investigation should be the norm. Specifically we recommend review of Public Works policies and construction standards and the adopted building codes with the purpose of removing barriers and conflicts between existing standards and sustainable practices.

RECOMMENDATIONS:

As a general policy, sustainable standards and guidelines should supersede the traditional regulations wherever conflicts occur. It is inevitable some conflicts will remain in the various documents discussed below and these conflicts will be addressed as they arise.

Zoning Ordinance

Review the entire Zoning Code, identifying conflicts with sustainable planning/design principles. Draft alternative language for conflicting requirements and evaluate for horizontal consistency across the range of regulated issues.

Prepare a Sustainable PRD set of standards or an addition to the PRD ordinance for sustainable projects. As appropriate, use LEEDs and Green Building criteria and/or use such criteria by reference to a "to be adopted" program. This is the area in which consistency is critical to avoid a sustainable project that meets LEEDs or Green Builder criteria, but fails to meet zoning regulations that prohibit the very solutions that make the project sustainable.

Building Codes

The California Building Code should be reviewed for requirements and standards that are potentially in conflict with sustainability objectives and practices and where so identified, language crafted to resolve the conflicts.

Citywide Design Guidelines

Prepare alternative Sustainable Design Guidelines or better yet, include them in a Citywide Design book.

Public Works Standards

Prepare alternative Public Works Construction Standards and include them in the Standard Drawings for Construction. Prepare and adopt specifications for sustainable materials, systems and assemblies and revise bidding and contracting procedures to permit their utilization.

Parks and Recreation

Review the current design and construction standards for sustainability, prepare alternative language where appropriate and adopt the same bidding and contracting procedures as mentioned above.

Code Enforcement

Rigorously enforce all "clean" ordinances and require City enforced clean-ups to follow recycling practices. In such instances, the City should consider providing suitable recycling containers of the appropriate size and bill the responsible party for removal and handling.

INCENTIVE PROGRAMS

Sustainability is a qualitative issue, not a cheaper solution than traditional practices and as such requires incentives to push the issue in the marketplace. Sustainability is about doing things right, about reaching for excellence rather than settling for the status quo. Incentives are necessary for the simple reason that many beneficial sustainable products and practices are insufficiently available or utilized to have passed the profitability threshold or they are still so new that the trades have yet to build up a competitive labor pool of skilled workmen and qualified installers.

Incentives, which require a real financial component, need to be administered so that their use by the recipient yields genuine public benefit with a clear nexus to public policy. The basic rationale of incentives is that the personal or corporate use of sustainable goods and services also benefits the larger community by expanding the breadth and depth of sustainable programs. For example, the use of photovoltaic panels to generate electrical power for a home also reduces the need for additional generating capacity, increases disposable income and sales tax revenues by reducing utility costs and acts as example for others to involve themselves in the program.

RECOMMENDATIONS:

- Adopt the California Green Builder program for residential construction.
- Adopt LEED standards for municipal buildings.
- Identify all applicable funding opportunities and provide user friendly access and links.
- Apply for all applicable loans and grants available to the City and other non-profit groups.

EDUCATION AND PUBLIC AWARENESS

We have identified the following general categories of residents who could be well served by a comprehensive program of public information, program coordination and project guidance:

- Residents seeking to live more sustainably and with a greater participation in keeping Banning clean and beautiful.
- Students of any age seeking focused information on clean and green topics.
- Commercial enterprise seeking information on making their businesses more sustainable.
- Agencies, private organizations and citizens seeking to partner with others in clean and green activities.
- Developers and builders (from large national builders to residential home decorators) seeking to build more sustainably.

In the context of education (we use "education" to mean the delivery of usable and accurate information) we recommend the following kinds of information and data resources be made available to Banning residents and those doing business here:

- Guidelines, practices and "how to's" for living cleaner and greener;
- Specific information on locally available programs for achieving sustainability in the home, business, school and industry;
- Funding sources that assist in sustainable living and commerce;
- Focused educational information on sustainability.

RECOMMENDATIONS:

Media Campaign

- Print media - Business Press, banners, brochures, etc.
- Video media – cable TV channel, public access, etc.
- Publicize current accomplishments
- Work to expand increased ridership and use of green fuels and vehicles

Education

- Utilize current educational programs with Banning Public Utilities
- Establish speakers bureau from committee, engage other environmental groups (VAF, UCCE MG) and Chamber of Commerce to publicize/utilize with a program CD
- Establish/publicize model water efficient landscaping garden spots throughout the community
- Work with local retailers and nurseries to educate/advocate water efficient landscaping
- Booths at community events to publicize clean and green through use of promotional items
- In-service for City staff (appropriate department heads, supervisors, landscape maintenance personnel, etc.) on clean and green practices

Incentives

- Offer incentives to developers who exceed Title 24 standards
- Offer incentives to residents for remodeling to exceed Title 24 standards and/or water efficient landscaping

REGIONAL SUSTAINABILITY

The manner in which topics are assigned to larger categories is a decision based on intent and for our purposes, regional sustainability focuses on those two critical issues over which the City of Banning has little control, yet is severely impacted in a negative way: Clean air and transportation. Their separate but related challenges cannot be solved locally—our most effective response seems to be participation in regional planning and regulatory bodies.

Clean Air

- Continue promoting City Rideshare Programs
- Clean Fuel Fleet Program – under the guidance of the Fleet Maintenance Manager we continue to convert more vehicles to alternative fuels. Currently 9% of the fleet is alternative fuel vehicles (AFV) or hybrid vehicles.
- Freeway signs for CNG – signage for alternative fuels for the public. City signs are already in place.
- Banning has a public access CNG fueling station.

Transit and Transportation

The issue of transit as a significant component of an overall transportation strategy is controversial and thus subject to different studies supporting diametrically opposite positions. Few argue the benefits of transit use; the controversy seems to focus on the lack of market acceptance, the inconvenience of local distribution networks and the perceived nature of most transit modes as user friendly. Yet despite a dearth of support, transit planning is advancing along highly focused lines, for example the on-going WRCOG investigation into transit oriented development in selected community centers throughout the county.

It was predictable that as gas prices exceeded \$4 per gallon, transit ridership would spike upwards as those at the bottom of the economic ladder felt the pinch of economic necessity and switched from cars to busses. If and when prices stabilize, it is expected that some portion of the increased ridership will revert to car commutes leaving the balance to complement the core of traditional riders.

RECOMMENDATIONS:

Support WRCOG's investigation of transit oriented development and transit oasis as a viable development paradigm with staff support and coordination of interest group participation.

Review the General Plan and the City's contributions to regional transportation planning in terms of transit adaptive development parameters that, while not immediately necessary, will provide the needed infrastructure for the future retrofit.

Where appropriate, review land use policies for increased densities in neighborhood centers as a critical component of creating the "critical mass" needed for economical transit operations.

WATER: CONSERVED AND EFFICIENT

All new projects and whenever possible all redevelopment projects should be designed to keep storm water from running off into the storm drain system carrying the water and pollution into our waterways and out to the ocean. Instead, projects should be designed to keep as much water as possible on site to allow for penetration into the soil to filter and clean the water and recharge the aquifers. For example, small retention basins/drywells, pervious soil and paving, and landscaping can be used to minimize rainwater runoff.

Since the early 1990's Banning has passed a number of Ordinances establishing water conservation plans to reduce water consumption in the landscape environment, as well as the restriction of water use during water supply emergencies. In addition, the City updated its Urban Water Management Plan in 2005, which addressed the following areas:

- Water Sources
- Water Use
- Water Resource Reliability
- Supply and Demand Comparisons
- Water Shortage Contingency Plan
- Water Demand Management Measures
- Water Recycling

Banning has begun to develop a more comprehensive water conservation/customer incentive program which will be used to help achieve real water sustainability. These include the following four areas:

- First, conservation is founded in an expanded green building program through which reduced water consumption is achieved;
- Second, efficient equipment, appliances and irrigation systems will reduce demand and lower water costs;
- Third, implement requirements for all new and redeveloped private and public properties to capture all storm water runoff and provide methods for the water to filter into the soil to replenish the water aquifers; and
- Forth, implement and expand education programs to increase public awareness and knowledge of water conservation measures and incentives available.

Conservation: Reduced demand is the goal and the regard to development, designing and building more water efficient buildings and landscapes. Technology has increased significantly enabling developers and homeowners to build-in or retrofit buildings with equipment and appliances (faucet aerators, low flow shower heads, ULF toilets, etc.) and landscape/irrigation systems that will greatly reduce water demand.

Efficient use: Efficiency addresses the manner in which water is used after conservation has reduced demand. In buildings this principally comes down to how water is used for domestic or commercial applications within the structure, and irrigation/landscape use outside. Decreasing duration of showers, reducing frequency and length of landscape irrigation cycles, and turning off faucets when not directly using the water are just a few ways to efficiently use and conserve water.

RECOMMENDATIONS:

Conservation: Encourage and offer incentives for the installation of water efficient equipment, appliances and irrigation systems.

Efficient use: Encourage and offer incentives for reducing water consumption 20 percent or more over the previous year during the same time period.

Education: Develop new and expand existing education programs to increase public awareness and knowledge of water conservation measures and incentives available.

ENERGY: CONSERVED AND EFFICIENT

Banning has an aggressive public utility program to which four other components could be added to achieve real energy sustainability.

- First, conservation is founded in an expanded green building program through which reduced energy demand is achieved;
- Second, efficient equipment, appliances and systems will reduce demand and lower utility costs;
- Third, on-site generation via photovoltaics and other low cost site specific technologies reduce demand; and
- Forth, the expanded use of alternative fuels will reduce demand on fossil fuels and contribute to lower pollution levels.

Energy use and generation is an area of highly focused attention, new technologies are emerging as fossil fuel prices escalate and foreign supplies become tenuous. Energy independence seems a long way off, but is nonetheless an important national goal and clearly an essential component of a national security strategy. That said, local efforts might seem less than relevant, but it is clear that the combined effect of small improvements yields a powerful impact on energy use and hence, policy.

Conservation: Reduced demand is the goal and the regard to development, designing and building more effective envelopes that mitigate external environmental inputs, e.g., heat, cold, and fresh air, will result in lower design loads, in turn generating lower demand for power. Effective building envelopes are hyper-insulated, utilize passive heating/cooling features, employ sustainable landscapes and use natural functions to augment (and sometimes replace) active systems.

Efficient use: Efficiency addresses the manner in which power is used after conservation has reduced demand. In buildings this principally comes down to environmental controls and power for lighting and appliances/equipment within the structure. When buildings are built with highly insulated envelopes, the lower demand may also permit use of much less energy dependent heating/cooling systems; natural daylighting means fewer and less powerful fixtures and Energy Star appliances require less energy to cook, wash and entertain. Emerging examples include compressor-less AC systems, whole house fans, super efficient evaporative coolers, high efficiency fluorescent fixtures, low voltage illumination, etc.

Buildings with automated environmental and power system controls (smart buildings) employ highly sensitive monitoring devices combined with the sophistication of computer controlled equipment and appliances. Not only are very efficient micro-adjustments possible, but certain functions can be shifted to off-peak periods.

Local generation: On-site generation of electrical power promises the potential for very substantial energy savings as photovoltaic costs drop with increased use and consumers see direct reductions in monthly utility bills. Our environment is uniquely suitable to offer maximum advantage with long daylight exposures during the summer when peak demand loads occur.

RECOMMENDATIONS:

Conservation: Encourage and offer incentives for the use of hyper-insulation, passive heating/cooling features and other energy conserving features in the built environment.

Efficient use: Encourage and offer incentives for the use of compressor-less AC systems, whole house fans in lieu of AC, instant-on fluorescent bulbs, and other super efficient appliances, fixtures and systems.

Local generation: Encourage and offer incentives for the installation of photovoltaic systems, co-generation, and other non-polluting energy producing systems.

AVAILABLE REBATE & INCENTIVE PROGRAMS OFFERED BY THE BANNING PUBLIC UTILITIES DEPARTMENT

Photovoltaic (PV) Rebate – Residential and Commercial: Monetary incentives for the purchase and installation of photovoltaic (PV) or solar powered systems, which are typically installed on the rooftops of homes and businesses.

Commercial – Energy Conservation/Weatherization Rebate: Monetary incentives for commercial customers to replace inefficient materials with products that will improve the energy efficiency of their facility and reduce energy use. Commercial customers can receive rebates for a variety of energy saving efforts alone or together including: Window/Door Replacement, Attic Insulation, Exterior Wall Insulation and Lighting.

Residential – Energy Conservation/Weatherization Rebate: Monetary incentives for residential customers to replace and/or install conservation measures that will improve the energy efficiency of their homes and reduce energy use. Residential customers can receive rebates for a variety of energy saving efforts alone or together including: Window/ Door Replacement, Attic Insulation, Exterior Wall Insulation and Whole House Fans.

Commercial – Central Air Conditioning and Heat Pump Rebate: Monetary incentives for commercial customers who purchase a new high efficiency central air conditioner and/or heat pump unit, *replacing* an existing air conditioning and/or heat pump. Incentives are based on the energy efficiency and size of the unit (tonnage).

Residential – Air Conditioning Replacement Rebates: Monetary incentives to replace an existing central air conditioning unit with a new high-efficiency unit. Rebates are based on the size and seasonal energy efficiency rating (SEER) of the unit.

Commercial – New Construction Energy Conservation: Monetary incentives for new construction projects that exceed California's Title 24 efficiency standards pertaining to air conditioning equipment, lighting and insulation. This incentive is designed to encourage developers to use more energy efficient materials.

Residential – New Construction Energy Conservation: Monetary incentives for new single home construction projects that exceed California's Title 24 efficiency standards pertaining to air conditioning equipment, lighting and insulation.

Energy Star Refrigerator Purchase Rebate: A monetary incentive for replacing an old and inefficient refrigerator with a new energy efficient refrigerator that is at least 14.3 cubic feet.

Refrigerator/Freezer Recycling Rebate: Monetary incentives to remove and recycle operating old and inefficient refrigerators and freezers. Customers must use a qualified contractor to remove the old unit.

Energy Star Product Rebate – Residential and Commercial: Monetary incentives for purchasing products that meet the "Energy Star" criteria. Rebates are based on the amount of purchase and/or the efficiency rating of the product.

Ultra Low-Flush Toilet Rebate: A water conservation program that offers monetary incentives to replace high water use toilet fixtures with water saving toilets.

Residential – Shade Tree Rebate: Monetary incentives to plant shade trees around homes to help reduce the amount of energy used for air conditioning.

Energy Audits: This program provides residential and commercial customers with a variety of recommendations for reducing energy consumption in their homes and businesses.

**CITY COUNCIL MEETING
CONSENT ITEM**

DATE: June 10, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Kahono Oei, City Engineer



SUBJECT: Approve Final Parcel Map No. 34878

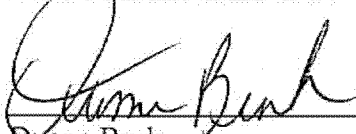
RECOMMENDATION: Approve Final Parcel Map No. 34878 as presented and authorize the City Engineer and the City Clerk to sign said map.

JUSTIFICATION: The Final Parcel Map has been examined and is found to be in substantial conformity with the Tentative Map and all conditions thereof have been met.

BACKGROUND: Parcel Map No. 34878, attached as Exhibit "A", consists of two lots located one lot west of the southeast corner of George Street and Hargrave Street. The Tentative Map was approved on December 7, 2006, and all of the engineering plan check fees have been paid.

FISCAL DATA: Not applicable.

RECOMMENDED BY:



Duane Burk
Director of Public Works

APPROVED BY:



Brian Nakamura
City Manager

OWNERS STATEMENT:

WE HEREBY STATE THAT WE ARE ALL AND THE ONLY PARTIES HAVING ANY INTEREST IN THE ABOVE DESCRIBED PARCEL AS SHOWN ON THE AMENDED MAP AND THAT WE CONSENT TO THE PREPARATION AND RECORDATION OF SAID MAP.

ISABEL PACHECO

CANDELARIA GUTIZ PACHECO

BENEFICIARY:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS HONORARY FOR AMERICA'S WHOLESALE LENDER, UNDER DEED OF TRUST RECORDED AUGUST 23, 2006, AS INSTRUMENT NO. 2006-069152, OFFICIAL RECORDS.

BY: _____ ITS: _____ BY: _____ ITS: _____

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF _____
ON _____ BEFORE ME, _____ A NOTARY PUBLIC,

PERSONALLY APPEARED ISABEL PACHECO AND CANDELARIA GUTIZ PACHECO, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSONS WHOSE NAMES ARE THE SAID INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE INSTRUMENT IN THE MANNER AND FOR THE PURPOSES AND WITH THE SIGNATURES ON PERSONS ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND.
SIGNATURE: _____
NAME PRINTED: _____
MY COMMISSION EXPIRES: _____
THE COUNTY OF MY PRINCIPAL PLACE OF BUSINESS IS: _____

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF _____
ON _____ BEFORE ME, _____ A NOTARY PUBLIC,

PERSONALLY APPEARED _____ WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE THE SAID INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAID INSTRUMENT IN THE MANNER AND FOR THE PURPOSES AND WITH THE SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND.
SIGNATURE: _____
NAME PRINTED: _____
MY COMMISSION EXPIRES: _____
THE COUNTY OF MY PRINCIPAL PLACE OF BUSINESS IS: _____

IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

PARCEL MAP NO. 34878

BEING A SUBDIVISION OF A PORTION OF THE NORTH 1/2 OF BLOCK 24 OF BANNING COLONY LANDS AS SHOWN BY MAP ON FILE IN BOOK 3, PAGE 149 OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, LING IN SECTION 10, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN
SITECH, INC.
JULY, 2007

TAX BOND CERTIFICATE:

I HEREBY CERTIFY THAT A BOND IN THE SUM OF \$ _____ HAS BEEN EXECUTED AND FILED WITH THE CLERK OF THE BOARD OF SUPERVISORS OF RIVERSIDE, CALIFORNIA, CONDITIONED UPON THE PAYMENT OF ALL TAXES, STATE, COUNTY, MUNICIPAL, OR LOCAL, AND ALL SPECIAL ASSESSMENTS COLLECTED AS TAXES, WHICH AT THE TIME OF THE FILING OF THIS MAP WITH THE COUNTY RECORDER ARE A LIEN AGAINST SAID PROPERTY BUT NOT YET PAYABLE AND SAID BOND HAS BEEN DULY APPROVED BY SAID BOARD OF SUPERVISORS.

DATED: _____, 2008
CASH, TAX BOND
PAUL McDONNELL
COUNTY TAX COLLECTOR

BY: _____ DEPUTY
NANCY ROJERO
CLERK OF THE BOARD OF SUPERVISORS

TAX COLLECTOR'S CERTIFICATE:

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF THE OFFICE AS OF THIS DATE, THERE ARE NO LIES AGAINST THE REAL PROPERTY SHOWN UPON THE WITHIN MAP FOR UNPAID STATE, COUNTY, MUNICIPAL, OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES NOW A LIEN BUT NOT YET PAYABLE, WHICH ARE ESTIMATED TO BE \$ _____.

DATED: _____, 2008
PAUL McDONNELL, COUNTY TAX COLLECTOR
COUNTY OF RIVERSIDE, CALIFORNIA

BY: _____ DEPUTY

PLANNING COMMISSION STATEMENT:

THE TENTATIVE MAP WAS APPROVED BY THE PLANNING DEPARTMENT ON _____

DATED: _____, 2008

BY: _____ SECRETARY, PLANNING COMMISSION

CITY COUNCIL'S ACCEPTANCE CERTIFICATE:

I, OSCAR ORTEGA, COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BY DUE PROCESS, HEREBY APPROVED THE AMENDED MAP OF PARCEL MAP 34878.

DATED: _____, 2008

BY: _____ OSCAR ORTEGA
COMMUNITY DEVELOPMENT DIRECTOR
CITY OF BANNING

RECORDERS STATEMENT

FILED THIS _____ DAY OF _____, 2008, AT _____, IN BOOK _____ OF PARCEL MAPS AT PAGE _____, AT THE REQUEST OF THE CITY OF BANNING.

FILE _____
LARRY W. WARD, COUNTY ASSESSOR-CLERK-RECORDER
BY: _____ DEPUTY

SUBDIVISION GUARANTEE BY CHICAGO TITLE INSURANCE COMPANY

SURVEYOR'S STATEMENT:

I, BERNARD K. WATERS, HEREBY STATE THAT I AM A LICENSED LAND SURVEYOR OF THE STATE OF CALIFORNIA AND THAT THIS MAP CONSTITUTING THE BASIS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE ARE BASED UPON A FIELD SURVEY BY ME OR UNDER MY DIRECTION AND IS COMPLETE AS SHOWN. ALSO ALL MONUMENTS SHOWN HEREON ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR WILL BE SET IN THE FUTURE WITHIN ONE YEAR OF MAP RECORDATION BY ME, AND ARE OR WILL BE SET WITHIN THE CORRECT TO BE RETRIEVED, I HEREBY STATE THAT THIS PARCEL MAP IS TECHNICALLY CORRECT TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

DATED: _____, 2008

BERNARD K. WATERS, L.S. 7319
EXPIRES 6/20/09

CITY ENGINEER'S STATEMENT:

I HEREBY STATE THAT I HAVE EXAMINED THE AMENDED MAP, THAT THE AMENDED MAP SHOWS THEREON IS SUBSTANTIALLY TRUE AS IT APPEARS TO BE, AND THAT I AM NOT PROVIDING ANY GUARANTEE HEREON AND THAT ALL THE PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE HAVE BEEN COMPLIED WITH AND I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.

DATED: _____, 2008

RAYMOND GEL, CITY ENGINEER
CITY OF BANNING
REG. 5262, EXPIRES 12/31/08

CITY LAND SURVEYOR'S STATEMENT:

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND THAT SAID MAP IS TECHNICALLY CORRECT RELATIVE TO THE PARCEL MAP BOUNDARY.

DATED: _____, 2008

ERIC A. WELSH, DEPUTY CITY LAND SURVEYOR
CITY OF BANNING
P.L.S. 5561, EXPIRES 9/30/09



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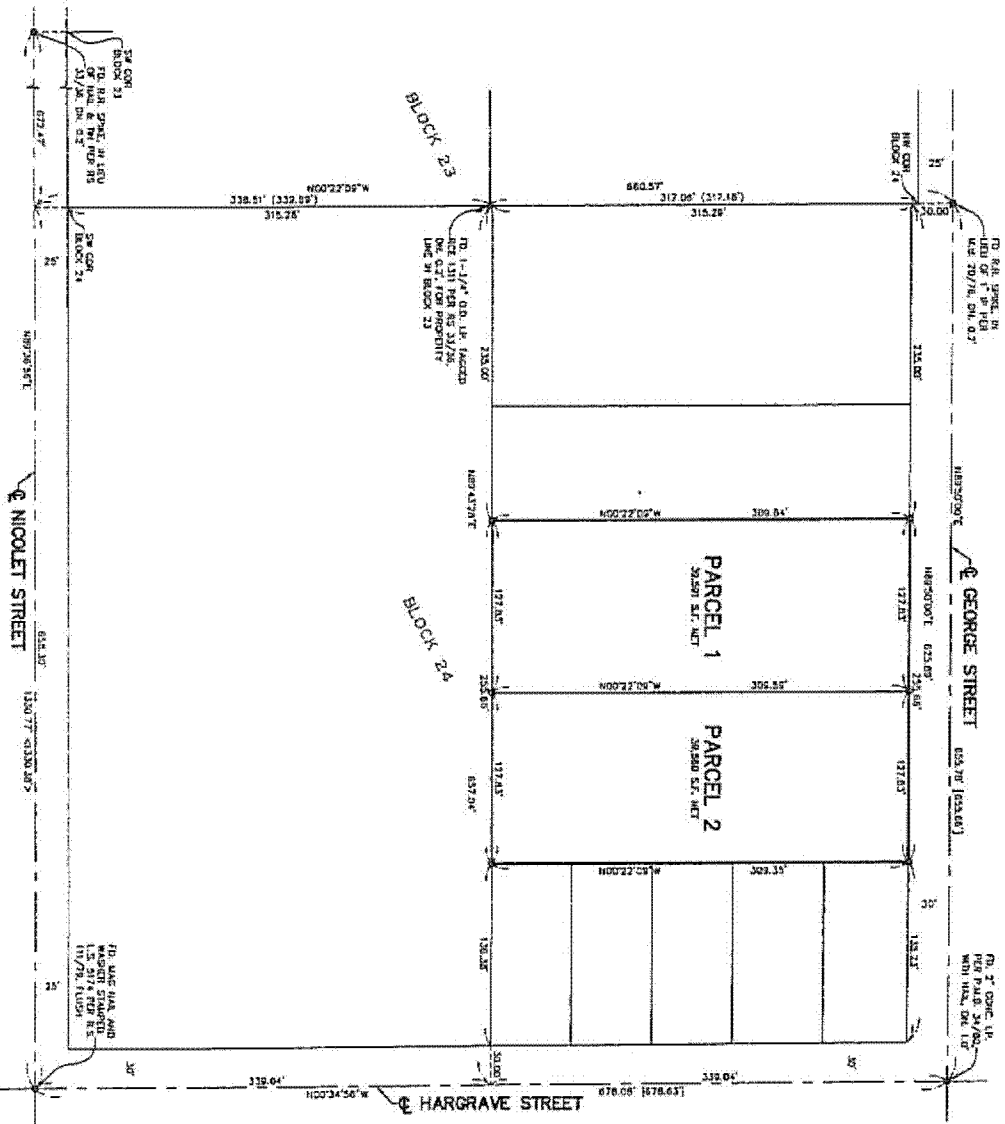
IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

PARCEL MAP NO. 34878

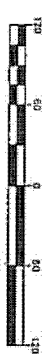
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SITECH, INC.

JULY, 2007



SCALE: 1"=60'



SURVEYOR'S NOTES:

- 1) THE SIZE OF SURVEYED AREA WAS 21 AC. 10/10/76.
- 2) -> INDICATES ROAD WIDENING AS NOTED.
- 3) -> INDICATES SET 1" IN 1" LINE, WITH PLASTIC FILM.
- 4) () INDICATES RECORD DATA PER RECORD OF SURVEY 21/76.
- 5) [] INDICATES RECORD DATA PER SURVEY-AREA RECORD.
- 6) [] INDICATES RECORD DATA PER SURVEY-AREA RECORD.
- 7) < > INDICATES RECORD DATA PER PARCEL MAP NO. 78-4.
- 8) - - - - - INDICATES SUBDIVISION BOUNDARY LINE.

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**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: June 10, 2008

TO: City Council

FROM: George Thacker, Assistant Water/Wastewater Director

SUBJECT: Award the Construction Contract for "Project No. 2007-40, Landscape Improvements to the Sunset Reservoir"

Recommendation: Award the Construction Contract for "Project No. 2007-40, Landscape Improvements to the Sunset Reservoir" to Rock Bottom, Inc. of Bakersfield, California, in the amount of not to exceed \$119,624.96.

JUSTIFICATION: Rock Bottom, Inc. is the lowest responsible bidder.

BACKGROUND: Project No. 2007-40, "Landscape Improvements to the Sunset Reservoir" is a project to replace existing plants, trees, bushes, irrigation system destroyed by the fire that happen in September of 2006 across the northern area of the City.

This project was advertised for bids on April 9, 2008, and ten bids were received and opened on May 29, 2008, with the following results:


	<u>Firm</u>	<u>Bid Amount</u>
1.)	Rock Bottom, Inc. – Bakersfield, CA	\$119,624.96
2.)	East Bay Construction Company, Inc. – Murrieta, CA	\$132,444.03
3.)	LCG Landscape – Corona, CA	\$138,518.34
4.)	Mariposa Horticultural Enterprises, Inc. – Irwindale, CA	\$169,273.69
5.)	Land Forms Landscape Construction – Laguna Niguel, CA	\$184,838.63
6.)	America West Landscape, Inc. – Downey, CA	\$212,798.11
7.)	Belaire-West Landscape, Inc. – Buena Park, CA	\$214,848.00
8.)	Diversified Landscape Mgmt, Inc. – Riverside, CA	\$224,324.31
9.)	Promised Land Nursery – Romoland, CA	\$232,773.87
10.)	Western Rim Constructors, Inc. – Escondido, CA	\$245,740.36

Rock Bottom, Inc. is a reputable firm in the Landscaping Industry and has extensive experience with installation of landscaping.

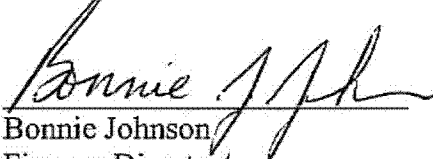
If approved, the project will commence immediately and it is anticipated that the project will be completed in November, 2008.

FISCAL DATA: Funding for the proposed project with Rock Bottom, Inc. is available in the Water Operations Division Fiscal Year 2007-08 Budget. City of Banning insurance will refund this project, since; it was caused by the fire in September of 2006.


REVIEWED BY:


James D. Earhart
Director of Public Utilities

APPROVED BY:


Bonnie Johnson
Finance Director/
Assistant City Manager

APPROVED BY:


Brian Nakamura
City Manager

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: June 10, 2008

TO: City Council

FROM: George Thacker, Assistant Public Utilities Director

SUBJECT: Amending the Existing Agreement with Metcalf & Eddy, Inc. to Provide the Upsizing of the Proposed 24" to 54" Diameter State Water Project Pipeline

RECOMMENDATION: The City Council approves amending the existing Consultant Services Agreement for "Design the Transmission Pipeline to Deliver State Water Project Water to Banning" with Metcalf & Eddy, Inc. to include the upsizing from 24" to 54' diameter pipeline for a "Stand Alone Design Package for SGPWA" in the amount "Not to Exceed" of \$95,215.00.

JUSTIFICATION: The SGPWA has requested the City to upsize the City's approved design of the 24" diameter transmission pipeline to a 54" diameter pipeline to help facilitate with the delivery of the State Water Project water and other imported water to the City and the Cabazon Groundwater Basin Area.

BACKGROUND: The City Council approved a Consultant Services Agreement for "Design the Transmission Pipeline to Deliver State Project Water to Banning" with Metcalf & Eddy, Inc. at the October 23, 2007 Council Meeting in the amount of \$249,046.00. Metcalf and Eddy, Inc., the consultant, has been working on the preliminary engineering items and has discussed with staff a proposed alignment of the transmission pipeline.

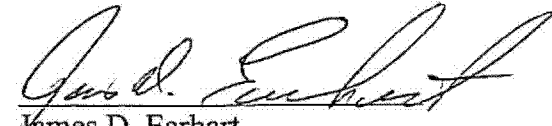
At that time in October, Mr. Jeff Davis, General Manager for the San Gorgonio Pass Water Agency (SGPWA), had discussed with staff the possibility of up-sizing the transmission pipeline to 42" to provide a future water supply for recharging the Cabazon Groundwater Basin to the east of the City at the agency's cost.

A letter dated March 25, 2008, has been received from Jeff Davis with approval from the SGPWA Board to spend up to \$100,000 for engineering the upsize of the transmission pipeline from 24" to 54" in diameter.

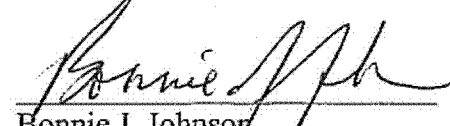
The new *Scope of Work* for the design engineering of the upsizing of the project consists of construction of a proposed 54" water transmission pipeline from the Department of Water Resources (DWR) East Branch Extension (EBX) located at its present terminus at the intersection of Noble and Orchard Streets in Cherry Valley to 800' south of the intersection of Brookside and Highland Springs Avenues within the Butterfield Specific Plan, Pardee Homes.

FISCAL DATA: The funds for this amendment shall be utilized from the FY 07-08 Water Division Operation Budget, Water Mains Account No. 663-6300-471-9510. SGPWA will reimburse the City for all cost associated with the engineering upsizing.

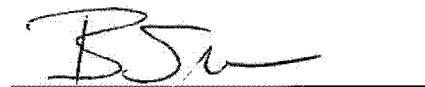
RECOMMENDED BY:


James D. Earhart
Electric Utility Director

REVIEWED BY:


Bonnie J. Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

FIRST AMENDMENT TO CONSULTANT SERVICES AGREEMENT
FOR
DESIGN THE TRANSMISSION PIPELINE TO DELIVER STATE WATER PROJECT
WATER TO BANNING
BETWEEN THE CITY OF BANNING
AND
METCALF & EDDY, INC.

ARTICLE 1. PARTIES AND DATE

1.1 This First Amendment to Consultant Services Agreement for Design the Transmission Pipeline to Deliver State Water Project Water to Banning ("First Amendment") dated as of the 10th day of June, 2008, is entered into by and between the City of Banning ("City") and Metcalf & Eddy, Inc., a California Corporation ("Consultant").

ARTICLE 2. RECITALS

2.1 City and Metcalf & Eddy entered into that certain Consultant Services Agreement for Design the Transmission Pipeline to Deliver State Water Project Water to Banning dated the 26th day of October, 2007 ("Agreement"), whereby Metcalf & Eddy agreed to provide engineering design, environmental documentation, permitting, geotechnical engineering, and project management services for the construction of the State Project Water Pipeline.

2.2 City and Metcalf & Eddy now desire to amend the Agreement to include additional compensation of Not to Exceed \$95,215.00 to the original Contract Amount and revises the Scope of Services. The original Scope of Work and tasks are modified and revised to include the upsizing from 24" to 54" diameter pipeline for a "Stand Alone Design Package for SGPWA Pipeline".

FIRST AMENDMENT TO CONSULTANT SERVICES AGREEMENT
FOR
DESIGN THE TRANSMISSION PIPELINE TO DELIVER STATE WATER PROJECT
WATER TO BANNING
BETWEEN THE CITY OF BANNING
AND
METCALF & EDDY, INC.

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ARTICLE 3. TERMS

3.1 Contract Amount: Original Amount of \$249,046.00 plus \$95,215.00
Amendment No. 1 equals a Total Amount of \$344,261.00 (38.2% Increase).

3.2 Continuing Effect of Agreement. Except as amended by this First Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this First Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this First Amendment to the Consultant Services Agreement.

3.3 Affirmation of Agreement; Warranty Re Absence of Defaults. City and Metcalf & Eddy each ratify and reaffirm each and every one of their respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement. Each party represents and warrants to the other that the Agreement is currently an effective, valid and binding obligation.

Metcalf & Eddy represents and warrants to City that, as of the date of this First Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Metcalf & Eddy that, as of the date of this First Amendment, Metcalf & Eddy is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

3.4 Adequate Consideration. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this First Amendment.

3.5 Counterparts. This First Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

CITY OF BANNING

CONSULANT: Metcalf & Eddy, Inc.

By: _____
Brian Nakamura, City Manager

By: _____
(Authorized Officer)

Title: _____

Print Name

By: _____
(Authorized Officer)

Title: _____

Print Name

APPROVED AS TO FORM:

Burke, Williams & Sorensen, LLP
City Attorney

STAFF REPORT

DATE: June 10, 2008
TO: Honorable Mayor and Members of City Council
FROM: Julie Hayward Biggs, City Attorney
SUBJECT: Repeal of Resolutions 2006-128, 129, 130 and Ordinance 1353

RECOMMENDATION:

That the City Council open the public hearing, take testimony, and repeal Resolutions 2006-128, 129, 130 and Ordinance 1353.

BACKGROUND:

As the City Council is aware, in 2005 Sun Cal Companies submitted an application for a Specific Plan, a General Plan Amendment, a Tentative Tract Map and prepared a corresponding Environmental Impact Report to develop property commonly known as the Black Bench project. On October 11, 2006, the City Council held a public hearing on the Black Bench project and voted to certify the EIR and to approve the Specific Plan, General Plan Amendment and Tentative Tract Map.

The next month, on November 21 & 22, 2006, the following litigation matters were filed against the City and Real Party in Interest SCC/Black Bench LLC:

- Highland Springs Conference And Training Center v. City of Banning
Riverside Co. Superior Court Case No.: RIC 460950
- Center for Biological Diversity v. City of Banning, et al.,
Riverside County Superior Court Case No.: RIC 460967
- Cherry Valley Pass Acres And Neighbors, et al., v. City of Banning, et al.,
Riverside County Superior Court Case No.: RIC 461035
- Banning Bench Community Of Interest Association, Inc., et al., v.
City of Banning, et al., [SCC/Black Bench, LLC as Real Party in Interest]
Riverside County Superior Court Case No.: RIC 461069

ANALYSIS:

These cases challenged the City's certification of the EIR as well as the City's approval of the Specific Plan, General Plan Amendment and Tentative Tract Map for the Black Bench

project. On December 19, 2007, this matter was heard before Judge Thomas Cahraman of the Riverside Superior Court. After considering the evidence and the arguments submitted, Judge Cahraman ruled in favor of the Petitioners and on April 24, 2008, the City received notice of the Judgment and Peremptory Writ of Mandate.

The Judgment and Peremptory Writ of Mandate direct the City to set aside and vacate the approvals issued in connection with the Black Bench project. Specifically, Judge Cahraman directs the City to:

- (1) Set aside and vacate the adoption of Resolution No. 2006-128 certifying the Final Environmental Impact Report (SCH No. 2004111024), adopting a Statement of Overriding Considerations and Mitigation Monitoring Program.
- (2) Set aside and vacate the adoption of Resolution No. 2006-129 approving General Plan Amendment #06-2502 to modify the General Plan Circulation Element
- (3) Set aside and vacate the adoption of Resolution No. 2006-130 approving Lot Split #04-4509/Tentative Tract Map 34001
- (4) Vacate and repeal the adoption of Ordinance No. 1353 approving Specific Plan #04-209

Therefore, in order to comply with the Judgment and Peremptory Writ of Mandate, staff has prepared the attached Resolutions and Ordinance. The Resolutions, if approved by the Council, will become effective immediately. However, the repeal of Ordinance 1353 will require a second reading.


FISCAL IMPACT

None.

RECOMMENDED BY:


Julie Hayward Biggs
City Attorney

APPROVED BY:


Brian Nakamura
City Manager

Exhibits:

1. Resolution No. 2008-69
2. Resolution No. 2008-70
3. Resolution No. 2008-71
4. Ordinance No. 1389

*BLACK BENCH RANCH
REPEAL OF RESOLUTIONS
NO. 2006-128, 129, 130 AND
ORDINANCE NO. 1353*

***RESOLUTION
NO. 2008-69***

EXHIBIT “1”

RESOLUTION NO. 2008-69

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, SETTING SIDE AND VACATING ADOPTION OF RESOLUTION NO. 2006-128 CERTIFYING THE FINAL BLACK BENCH ENVIRONMENTAL IMPACT REPORT (SCH NO. 2004111024), ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND MITIGATION MONITORING PROGRAM

WHEREAS, an application for the Black Bench Ranch Specific Plan, General Plan Amendment and Tentative Tract Map setting forth the development parameters on 1,488 acres was duly filed by:

Applicant / Owner: SunCal Companies

Authorized Agent: Rod Hanway

Project Location: North of Wilson Street, west of Bluff Street, between Sunset Avenue and Highland Springs Avenue

APN Numbers: 401-230-001 thru 011, 401-240-007 & 008, 401-250-005 & 006, 401-260-005 & 006, 531-200-001 thru 010, 531-210-004, 531-210-008 thru 012, 531-230-001 thru 007, 531-230-011 & 012, 531-240-007, 531-340-001 & 004.

WHEREAS, on October 11, 2006, the City Council conducted a duly noticed public hearing to consider the project, the Final Environmental Impact Report, a Statement of Overriding Considerations and a Mitigation Monitoring Program; and

WHEREAS, at the City Council meeting of October 11, 2006, the City Council adopted Resolution No. 2006-128 certifying the Final Environmental Impact Report (SCH No. 2004111024), adopting a Statement of Overriding Considerations and Mitigation Monitoring Program; and

WHEREAS, Petitioners the Center for Biological Diversity, Highland Springs Conference and Training Center, Banning Bench Community of Interest Association and Cherry Valley Pass Acres and Neighbors filed a litigation action against the City and Real Party in Interest SCC/Black Bench, LLC challenging, among other things, the City's adoption of the Final Environmental Impact Report, Statement of Overriding Considerations and Mitigation Monitoring Program; and

WHEREAS, on April 24, 2008 the City received notice of the Judgment and Peremptory Writ of Mandate issued by the Riverside Superior Court directing the City to vacate and set aside Resolution No. 2006-128 certifying the Final Environmental Impact Report, adopting a Statement of Overriding Considerations and Mitigation Monitoring Program; and

WHEREAS, the Judgment and Peremptory Writ of Mandate further direct the City to file a return to the Peremptory Writ of Mandate no later than 60 days from issuance of the Judgment and Writ; and

WHEREAS, in order to comply with the Judgment and Peremptory Writ of Mandate issued by the Riverside Superior Court, the City Council therefore desires to vacate and set aside the adoption of Resolution No. 2006-128 certifying the Final Environmental Impact Report, adopting a Statement of Overriding Considerations and Mitigation Monitoring Program; and

WHEREAS, on May 30, 2008, the City gave public notice by advertising in the Press Enterprise newspaper and property owners within 1200 feet of the site were mailed public hearing notice of the holding of a public hearing for consideration of this Resolution No. 2008-69; and

WHEREAS, at the public hearing on June 10, 2008, the City Council considered and heard comments on the adoption of this Resolution No. 2008-69.

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

SECTION 1. FINDINGS.

1. On November 21st and 22nd, 2006, the following litigation matters were filed against the City of Banning and Real Party in Interest SCC/Black Bench LLC:

Highland Springs Conference and Training Center v. City of Banning; Case No. RIC 460950;

Center for Biological Diversity v. City of Banning; Case No. RIC 460967

Cherry Valley Pass Acres and Neighbors and Cherry Valley Environmental Planning Group v. City of Banning; Case No. RIC 461035

Banning Bench Community of Interest Association, Inc. v. City of Banning; Case No. RIC 461069

2. On April 24, 2008 the City received notice of the Judgment and Peremptory Writ of Mandate issued by the Riverside Superior Court (attached hereto as Exhibit "A") in the above referenced cases directing the City to vacate and set aside Resolution No. 2006-128 certifying the Final Environmental Impact Report, adopting a Statement of Overriding Considerations and Mitigation Monitoring Program.

SECTION 2. CITY COUNCIL ACTION.

The City Council hereby takes the following actions:

1. **Resolution No. 2006-128:** The City Council vacates and sets aside the adoption of Resolution No. 2006-128, which is attached hereto as Exhibit "B".

2. **Certification of EIR:** The City Council vacates and sets aside the certification of Final Environmental Impact Report (SCH No. 2004111024).
3. **Statement of Overriding Considerations:** The City Council vacates and sets aside the Statement of Overriding Considerations adopted in connection with Final Environmental Impact Report (SCH No. 2004111024).
4. **Mitigation Monitoring Program:** The City Council vacates and sets aside the Mitigation Monitoring Program adopted in connection with Final Environmental Impact Report (SCH No. 2004111024).

PASSED, APPROVED, AND ADOPTED this 10th day of June, 2008.

Brenda Salas, Mayor

**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. 2008-69, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of June 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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EXHIBIT "A"

Judgment and Peremptory Writ of Mandate

EDWARD J. CASEY (State Bar No. 119571)
SHIRAZ D. TANGRI (State Bar No. 203037)
TAMMY L. JONES (State Bar No. 232693)
WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071
Telephone: (213) 576-1000
Facsimile: (213) 576-1100

Attorneys for SCC/BLACK BENCH, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

HIGHLAND SPRINGS CONFERENCE AND
TRAINING CENTER,

Petitioner,

v.

CITY OF BANNING,

Respondent.

SCC/BLACK BENCH, LLC,
and DOES 1 through 10,

Real Parties in Interest.

Case No. RIC 460950 (MF)

Judge: Hon. Thomas Cahraman
Dept.: 42 (Riverside Hall of Justice)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 21, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

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Exhibit 1

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE - RIVERSIDE BRANCH

Highland Springs Conference and Training
Center

Petitioner,

v.

CITY OF BANNING, a municipal corporation;

Respondent.

No. RIC 460950 MF

California Environmental Quality Act

~~PROPOSED~~ JUDGMENT

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 21, 2006

SCC/BLACK BENCH, LLC; and DOES 1 to
100; inclusive,
Real Parties in Interest

1 This matter came on regularly for hearing on December 19, 2007, in Department 42
2 of this Court. Jan Chatten-Brown and Arthur Pugsley appeared on behalf of Petitioner Highland
3 Springs Conference and Training Center. Respondents City of Banning ("City") appeared
4 through attorneys Geralyn L. Skapik and Amy E. Morgan and Real Party in Interest SCC/Black
5 Bench, LLC ("Real Party") appeared through attorneys Edward J. Casey, Shiraz D. Tangri, and
6 Tammy L. Jones. The Court having reviewed the record of respondent's proceedings in this
7 matter, the briefs submitted by counsel, and the arguments of counsel; the matter having been
8 submitted for decision; and the Court having issued an order that judgment and a peremptory writ
9 of mandate issue in this proceeding,

10 IT IS ORDERED that:

- 11 1. Judgment be entered in favor of Petitioner Highland Springs Conference and
12 Training Center in this proceeding.
 - 13 2. A peremptory writ of mandate directed to Respondent City issue under seal of
14 this Court, ordering Respondent City to:
 - 15 a. Set aside and vacate its certification under the California Environmental
16 Quality Act of the Final Environmental Impact Report for the Black Bench
17 Specific Plan.
 - 18 b. Set aside and vacate its findings under the California Environmental Quality
19 Act in connection with its approval of the Black Bench Specific Plan.
 - 20 c. Set aside and vacate its approvals of the Black Bench Project, including the
21 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129,
22 Resolution 2006-130, and Ordinance 1353.
 - 23 d. Set aside and vacate its approval of a Statement of Overriding Considerations
24 and Mitigation Monitoring Program.
- 25
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1 3. ~~The City and the Real Party are enjoined from proceeding with grading,~~
2 ~~construction, or any other physical implementation of the Black Bench Project, unless and until~~
3 ~~such time as the City has certified and adopted an environmental impact report that complies~~ (T.C.)
4 ~~with the California Environmental Quality Act. The City and the Real Party are enjoined from~~
5 ~~proceeding with grading, construction, or any other physical implementation of the Black Bench~~
6 ~~Project that could result in an adverse change or alteration to the physical environment, unless~~
7 ~~and until such time as the City has certified and adopted an environmental impact report that~~
8 ~~complies with CEQA.~~

9 4. This Court shall retain jurisdiction over the proceedings pursuant to Public
10 Resources Code §21168.9(b) and (c). Nevertheless, the Court intends this to be a final,
11 appealable judgment.

12 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
13 Rules 870 and 870.2.

14 6. Petitioner Highland Springs Conference and Training Center, as prevailing
15 party, is entitled to costs in the amount of \$ _____, pursuant to Code of Civil Procedure
16 Section 1033.5 *as established by appropriate post-judgment procedures.* (T.C.)

17 7. Petitioner Highland Springs Conference and Training Center, as prevailing
18 party, is entitled to apply for attorney's fees and costs through appropriate noticed motions after
19 entry of this Judgment. This Court retains jurisdiction to hear such motions and determine the
20 amount of such fees, if any, pursuant to them. ~~If such a motion is granted, this judgment will be~~
21 ~~amended to award the amount of \$ _____, in attorneys' fees pursuant to Code of Civil~~
22 ~~Procedure Section 1021.5.~~ (T.C.)

23 8. Under Public Resources Code §21168.9(c), the Court does not direct
24 respondent to exercise its lawful discretion, in any particular way. Nothing in the judgment or
25 peremptory writ should be construed as requiring respondent or real parties to go forward with
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1 the project, or to reapprove the project, or to take any particular action other than as specifically
2 set forth herein.

3 9. Respondent shall file a preliminary return to the peremptory writ no later than
4 60 days after the date of the issuance of the peremptory writ which shall state that an appeal from
5 the judgment has or will be filed or that it has complied with the order to set aside its approval of
6 the project.

7 Dated: April 7, 2008

T. Cahraman

Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

Highland Springs Conference and Training Center

Petitioner,

v.

CITY OF BANNING,

Respondent.

SCC/BLACK BENCH, LLC, and DOES 1 to 100;
inclusive,

Real Parties in Interest.

Case No. RIC 460950

California Environmental Quality Act

~~PROPOSED~~ PEREMPTORY WRIT OF
MANDATE

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 21, 2006

Judgment having been entered in this proceeding, ordering that a peremptory writ of mandate be issued from this Court,

IT IS SO ORDERED that, immediately on service of this writ, Respondent City of Banning and SCC/Black Bench, LLC:

1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying under the California Environmental Quality Act the Final Environmental Impact Report for the Black Bench Specific Plan.

- 1 -

PEREMPTORY WRIT OF MANDATE [PROPOSED] - CASE NO. RIC 460950

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1 2. Set aside and vacate its findings under the California Environmental Quality
2 Act in connection with its approval of the Black Bench Specific Plan.

3 3. Set aside and vacate its approvals of the Black Bench Project, including the
4 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130,
5 and Ordinance 1353.

6 4. Set aside and vacate its approval of a Statement of Overriding Considerations
7 and Mitigation Monitoring Program.

8 5. Suspend all grading, construction, or any other physical implementation of the
9 Black Bench Project, unless and until such time as the City has certified and adopted an
10 environmental impact report that complies with the California Environmental Quality Act.

11 Under Public Resources Code section 21168.9(c), this Court does not direct
12 Respondent to exercise its lawful discretion in any particular way.

13 Under Public Resources Code section 21168.9(b), this Court will retain
14 jurisdiction over Respondent's proceedings by way of a return to this peremptory writ of mandate
15 until the Court has determined that respondent has complied with the provisions of CEQA.

16 Respondent shall file a preliminary return to this writ no later than sixty (60) days
17 from the date this writ is issued setting forth what respondents have done to comply with the writ
18 set forth herein.

19 LET THE WRIT OF MANDATE ISSUE.

20 Dated: April 7, 2008

21 T. Cahraman
22 Hon. Thomas H. Cahraman
23 JUDGE OF THE SUPERIOR COURT
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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as **NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ **BY MAIL:** I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

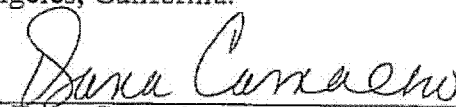
☐ **BY FEDERAL EXPRESS** ☐ **UPS NEXT DAY AIR** ☐ **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **Overnight Delivery** [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **OVERNIGHT DELIVERY** [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ **BY FACSIMILE:** I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

1 Highland Springs Conference and Training Center v. City of Banning
2 Case No. RIC 460950
3

4 SERVICE LIST
5

6
7 Jan Chatten-Brown
8 Douglas P. Carstens
9 Amy Minter
10 **CHATTEN-BROWN & CARSTENS**
11 2601 Ocean Park Boulevard
12 Suite 205
Santa Monica, CA 90405
Tel: (310) 314-8040
Fax: (310) 314-8050

Attorney for Petitioner
**HIGHLAND SPRINGS CONFERENCE
AND TRAINING CENTER**

13 Julie H. Biggs, City Attorney
14 **CITY OF BANNING**
15 99 E. Ramsey St.
16 Banning, CA 92220
17 Tel: (951) 922-3106
18 Fax: (951) 922-3161

Attorneys for Respondent
CITY OF BANNING

19 Stephen R. Onstot
20 Amy E. Morgan
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1 EDWARD J. CASEY (State Bar No. 119571)
2 SHIRAZ D. TANGRI (State Bar No. 203037)
3 TAMMY L. JONES (State Bar No. 232693)
4 WESTON, BENSHOOF, ROCHEFORT,
5 RUBALCAVA & MacCUISH LLP
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9 Facsimile: (213) 576-1100

10 Attorneys for SCC/BLACK BENCH, LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC., a
Californian Non-Profit Corporation,

Petitioner and Plaintiff,

v.

CITY OF BANNING and CITY COUNCIL
OF THE CITY OF BANNING,

Respondents and Defendants.

SCC/BLACK BENCH, LLC, a Delaware
Limited Liability Company, and DOES 1
through 25, Inclusive,

Real Parties in Interest.

Case No. RIC 461069
460950 MF

Judge: Hon. Stephen D. Cunnison
Dept.: 1 (Riverside Branch)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 22, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

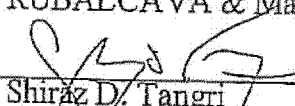

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

Exhibit 1

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

KR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

460950 MF

BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC.,

Petitioner and Plaintiff,

v.

CITY OF BANNING, CITY COUNCIL OF
THE CITY OF BANNING,

Respondents and Defendants.

SCC/BLACK BENCH, LLC, *et al.*,

Real Parties in Interest.

Case No. RIC 461069

California Environmental Quality Act case

~~PROPOSED~~ JUDGMENT

Judge: Honorable Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 22, 2006

This matter came on regularly for hearing on December 19, 2007, in Department 42 of this Court. John G. McClendon appeared on behalf of Petitioner and Plaintiff Banning Bench Community of Interest Association, Inc. ("BBCIA"). Respondents and Defendants City of Banning and City Council of the City of Banning (collectively, the "City") appeared through attorneys GERALYN L. SKAPIK and AMY E. MORGAN, and Real Party in Interest SCC/Black Bench, LLC ("Real Party") appeared through attorneys EDWARD J. CASEY, SHIRAZ D. TANGRI, and TAMMY L. JONES. At the close of that hearing, the Court took the matter under submission and, on January 29, 2008, issued its Minute Order/Judgment and a Ruling on Submitted Matter ("Minute Order").

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1 On March 19, 2008, the parties executed a *Joint Stipulation Regarding The Third*
2 *Cause Of Action To Banning Bench Community Of Interest Association's Petition For Writ*
3 *Of Mandate; Complaint For Declaratory Relief and [Proposed] Order* ("Stipulation")
4 acknowledging that the Court's Minute Order resolved the need for further briefing and/or
5 hearing with regard to BBCIA's Third Cause of Action for Declaratory Relief and was now
6 moot. Pursuant to the Stipulation, the Court ordered the Third Cause of Action for
7 Declaratory Relief dismissed with prejudice for mootness.

8 The Court having reviewed the record of the City's proceedings in this matter; the briefs
9 submitted by counsel and the arguments of counsel; the matter having been submitted for decision;
10 the Court having issued the Minute Order ordering that judgment and a peremptory writ of mandate
11 issue in this proceeding and having signed the Stipulation,

12 IT IS ORDERED that BBCIA's *Petition for Writ of Mandate; Complaint for Declar-*
13 *atory Relief* is DENIED as to its Second Cause of Action and GRANTED as to its First
14 Cause of Action for relief under the California Environmental Quality Act (Public Resources
15 Code § 21000 *et seq.*: "CEQA"); THEREFORE, IT IS FURTHER ORDERED that:

- 16 1. Judgment be entered in favor of BBCIA in this proceeding.
- 17 2. A peremptory writ of mandate directed to the City issue under seal of this Court,
18 ordering the City to:
 - 19 a. Set aside and vacate its certification under CEQA of the Final
20 Environmental Impact Report ("EIR") for the Black Bench Specific
21 Plan.
 - 22 b. Set aside and vacate its findings under CEQA in connection with its
23 approval of the Black Bench Specific Plan.
 - 24 c. Set aside and vacate its approvals of the Black Bench Project, including
25 the Black Bench Specific Plan, and its adoption of Resolution No. 2006-
26 129, Resolution 2006-130, and Ordinance 1353.
 - 27 d. Set aside and vacate its approval of a Statement of Overriding
28 Considerations and Mitigation Monitoring Program.

1 3. The City and the Real Party are enjoined from proceeding with grading,
2 construction, or any other physical implementation of the Black Bench Project that could
3 result in an adverse change or alteration to the physical environment, unless and until such
4 time as the City has certified and adopted an environmental impact report that complies with
5 CEQA.

6 4. The Court shall retain jurisdiction over the proceedings pursuant to Public
7 Resources Code section 21168.9(b) and (c). Nevertheless, the Court intends this to be a
8 final, appealable judgment.

9 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
10 Rules 870 and 870.2.

11 6. Petitioner BBCIA, as prevailing party, is entitled to costs ~~in the amount of~~
12 ~~as established by the appropriate~~
~~pursuant to Code of Civil Procedure section 1033.5~~
~~post-judgment procedures.~~

13 7. Petitioner BBCIA, as prevailing party, is entitled to apply for attorneys' fees and
14 costs through appropriate noticed motions after entry of this Judgment. This Court retains
15 jurisdiction to hear such motions and determine the amount of such fees, if any, pursuant to
16 them. ~~If such a motion is granted, this judgment will be amended to award the amount of~~
17 ~~in attorneys' fees pursuant to Code of Civil Procedure section 1021.5.~~

18 8. Under Public Resources Code section 21168.9(c), the Court does not direct the
19 City to exercise its lawful discretion, in any particular way. Nothing in the judgment or
20 peremptory writ should be construed as requiring respondent or real parties to go forward
21 with the project, or to reapprove the project, or to take any particular action other than as
22 specifically set forth herein.

23 The City shall file a preliminary return to the peremptory writ no later than 60 days
24 after the date of the issuance of the peremptory writ which shall state that an appeal from the
25 judgment has or will be filed or that it has complied with the order to set aside its approval of
26 the EIR and the Black Bench Project.

27 DATED: April 7, 2008

28 T. Calhraman
Honorable Thomas H. Calhraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

[Signature]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

460950 MF

BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC.,

Petitioner and Plaintiff,

v.

CITY OF BANNING, CITY COUNCIL OF
THE CITY OF BANNING,

Respondents and Defendants.

Case No. RIC 461069

California Environmental Quality Act case

~~PROPOSED~~ PEREMPTORY WRIT
OF MANDATE

Judge: Honorable Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 22, 2006

SCC/BLACK BENCH, LLC, *et al.*,

Real Parties in Interest.

Judgment having been entered in this proceeding in favor of Petitioner and Plaintiff Banning Bench Community of Interest Association ordering that a peremptory writ of mandate issue,

IT IS SO ORDERED that, immediately on service of this writ, Respondents City of Banning and City Council of the City of Banning (collectively, "Respondent") shall:

1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying under the California Environmental Quality Act ("CEQA") the Final Environmental Impact Report for the Black Bench Specific Plan.

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1 2. Set aside and vacate its findings under CEQA in connection with its approval of
2 the Black Bench Specific Plan.

3 3. Set aside and vacate its approvals of the Black Bench Project, including the Black
4 Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130, and
5 Ordinance 1353.

6 4. Set aside and vacate its approval of a Statement of Overriding Considerations and
7 Mitigation Monitoring Program.

8 5. Suspend all grading, construction, or any other physical implementation of the
9 Black Bench Project, unless and until such time as the City has certified and adopted an
10 environmental impact report that complies with CEQA.

11 Under Public Resources Code section 21168.9(c), this Court does not direct
12 Respondent to exercise its lawful discretion in any particular way.

13 Under Public Resources Code section 21168.9(b), this Court will retain jurisdiction
14 over Respondent's proceedings by way of a return to this peremptory writ of mandate until
15 the Court has determined that Respondent has complied with the provisions of CEQA.

16 Respondent shall file a preliminary return to this writ no later than sixty (60) days
17 from the date this writ is issued setting forth what Respondents has done to comply with the
18 writ set forth herein.

19 LET THE WRIT OF MANDATE ISSUE.

20
21 DATED:

April 7, 2008

T. Cahraman
Honorable Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as **NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ **BY MAIL:** I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

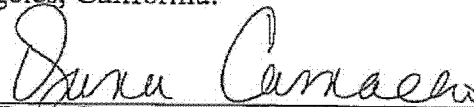
☐ **BY FEDERAL EXPRESS** ☐ **UPS NEXT DAY AIR** ☐ **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **Overnight Delivery** [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **OVERNIGHT DELIVERY** [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ **BY FACSIMILE:** I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

164

Banning Bench Community of Interest Association, Inc. v. City of Banning, et al.
Case No. RIC 461069

SERVICE LIST

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**BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC.**

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Attorneys for Respondents and Defendants
**CITY OF BANNING and
CITY COUNCIL OF THE CITY
OF BANNING**

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SHIRAZ D. TANGRI (State Bar No. 203037)
TAMMY L. JONES (State Bar No. 232693)
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Attorneys for SCC/BLACK BENCH, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

CENTER FOR BIOLOGICAL DIVERSITY,

Petitioner,

v.

CITY OF BANNING, CITY COUNCIL OF
THE CITY OF BANNING,
and Does 1-20,

Respondents.

SCC/BLACK BENCH, LLC,
and DOES 21 through 50, Inclusive,

Real Parties in Interest.

Case No. RIC 460967
460950 MF

Judge: Hon. Gloria Connor Trask
Dept.: 4 (Riverside Branch)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 21, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

1666

Exhibit 1

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APR 08 2008

Case No. RIC 460967

1 This matter came on regularly for hearing on December 19, 2007, in Department 42 of
2 this Court. Matthew D. Vespa appeared on behalf of Petitioner CENTER FOR BIOLOGICAL
3 DIVERSITY (the "Center"). Respondents CITY OF BANNING and the CITY COUNCIL OF
4 THE CITY OF BANNING (the "City") appeared through attorneys Geralyn L. Skapik and
5 Amy E. Morgan, and Real Party in Interest SCC/BLACK BENCH, LLC ("Real Party")
6 appeared through attorneys Edward J. Casey, Shiraz D. Tangri, and Tammy L. Jones. The
7 Court having reviewed the record of the City's proceedings in this matter, the briefs submitted
8 by counsel, and the arguments of counsel; the matter having been submitted for decision; and
9 the Court having issued an order that judgment and a peremptory writ of mandate issue in this
10 proceeding,

11 IT IS ORDERED that:

12 1. Judgment be entered in favor of the Center in this proceeding.

13 2. A peremptory writ of mandate directed to the City issue under seal of this Court,
14 ordering the City to:

- 15 a. Set aside and vacate its adoption of Resolution No. 2006-128 certifying
16 the Final Environmental Impact Report for the Black Bench Specific
17 Plan pursuant to the California Environmental Quality Act ("CEQA").
18 b. Set aside and vacate its findings under CEQA in connection with its
19 approval of the Black Bench Specific Plan.
20 c. Set aside and vacate its approvals of the Black Bench Project, including
21 the Black Bench Specific Plan, and its adoption of Resolution No. 2006-
22 129, Resolution 2006-130, and Ordinance 1353.
23 d. Set aside and vacate its approval of a Statement of Overriding
24 Considerations and Mitigation Monitoring Program in connection with
25 the Black Bench Project.

26 3. The City and the Real Party are enjoined from proceeding with grading,
27 construction, or any other physical implementation of the Black Bench Project that could result

1 in an adverse change or alteration to the physical environment, unless and until such time as
2 the City has certified and adopted an environmental impact report that complies with CEQA.

3 4. The Court shall retain jurisdiction over the proceedings pursuant to Public
4 Resources Code §21168.9(b) and (c). Nevertheless, the Court intends this to be a final,
5 appealable judgment.

6 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
7 Rules 870 and 870.2.

8 6. The Center, as prevailing party, is entitled to costs ~~in the amount of \$~~
9 ~~pursuant to Code of Civil Procedure Section 1033.5~~ *as established by*
10 *appropriate post-judgment*
11 *procedures.*

12 7. The Center, as prevailing party, is entitled to apply for attorney's fees and costs
13 through appropriate noticed motions after entry of this Judgment. This Court retains
14 jurisdiction to hear such motions and determine the amount of such fees, if any, pursuant to
15 them. ~~If such a motion is granted, this judgment will be amended to award the amount of \$~~
16 ~~in attorneys' fees pursuant to Code of Civil Procedure Section 1021.5.~~

17 8. Under Public Resources Code §21168.9(c), the Court does not direct the City to
18 exercise its lawful discretion, in any particular way. Nothing in the judgment or peremptory
19 writ should be construed as requiring the City or Real Party to go forward with the Black
20 Bench Project, or to reapprove the Black Bench Project, or to take any particular action other
21 than as specifically set forth herein.

22 The City shall file a return to the peremptory writ no later than 60 days after the date of
23 the issuance of the peremptory writ which shall state that it has complied with writ or that an
24 appeal from the judgment has or will be filed.

25 Dated: April 7, 2008

26 T. Cahraman

27 Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

[Signature]

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Attorneys for Petitioner
CENTER FOR BIOLOGICAL DIVERSITY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE

CENTER FOR BIOLOGICAL
DIVERSITY,

Petitioner,

vs.

CITY OF BANNING,
CITY COUNCIL OF THE CITY OF
BANNING,
and DOES 1-20,

Respondents.

SCC/BLACK BENCH, LLC
and DOES 21-50,

Real Parties in Interest.

Case No. ^{460950 MF} RIC 460967
Case Filed Under the California Environmental
Quality Act
~~PROPOSED~~ PEREMPTORY WRIT OF
MANDATE
Original Date of Filing: November 21, 2006
Judge: Hon. Thomas H. Cahraman
Department: 42

[Proposed] Peremptory Writ of Mandate

Case No. RIC 460967

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1 Judgment having been entered in this proceeding in favor of Petitioner CENTER FOR
2 BIOLOGICAL DIVERSITY ordering that a peremptory writ of mandate issue,

3 IT IS THEREFORE ORDERED that, immediately on service of this writ, Respondent
4 CITY OF BANNING (the "City") shall do the following:

5 1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying the
6 Final Environmental Impact Report for the Black Bench Specific Plan pursuant to the
7 California Environmental Quality Act ("CEQA").

8 2. Set aside and vacate its findings under CEQA in connection with its approval of
9 the Black Bench Specific Plan.

10 3. Set aside and vacate its approvals of the Black Bench Project, including the
11 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130,
12 and Ordinance 1353.

13 4. Set aside and vacate its approval of a Statement of Overriding Considerations
14 and Mitigation Monitoring Program in connection with the Black Bench Project.

15
16 Pursuant to Public Resources Code section 21168.9(c), this Court does not direct
17 Respondent to exercise its lawful discretion in any particular way.

18 Pursuant to Public Resources Code section 21168.9(b), this Court will retain
19 jurisdiction over this matter by way of a return to this peremptory writ of mandate until the
20 Court has determined that the City has complied with the provisions of CEQA.

21 The City shall file a return to this writ no later than sixty (60) days from the date this writ
22 is issued setting forth what it has done to comply with the writ set forth herein.

23 LET THE WRIT OF MANDATE ISSUE.

24
25 Dated: April 7, 2008



26 Hon. Thomas H. Cahraman
27 JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as **NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

☐ BY FEDERAL EXPRESS ☐ UPS NEXT DAY AIR ☐ OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by ☐ FEDERAL EXPRESS ☐ UPS ☐ Overnight Delivery [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ FEDERAL EXPRESS ☐ UPS ☐ OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

Center for Biological Diversity v. City of Banning, et al.

Case No. RIC 460967

SERVICE LIST

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DIVERSITY**

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CITY COUNCIL OF THE CITY
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Facsimile: (213) 576-1100

Attorneys for SCC/BLACK BENCH, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

CHERRY VALLEY PASS ACRES AND
NEIGHBORS, a California Non-Profit
Corporation, and CHERRY VALLEY
ENVIRONMENTAL PLANNING GROUP, a
California Non-Profit Corporation,

Petitioners,

v.

CITY OF BANNING, a Municipal Corporation,

Respondent.

SCC/BLACK BENCH, LLC,
and DOES 1 through 100, Inclusive,

Real Parties in Interest.

Case No. RIC 461035

460950 MF

Judge: Commissioner Joan F. Burgess
Dept.: 6 (Riverside Branch)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 22, 2006

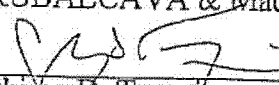
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUIISH LLP


Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

176

Exhibit 1

177

1 ROGERS JOSEPH O'DONNELL
2 ROBERT C. GOODMAN (State Bar No. 111554)
3 ANN M. BLESSING (State Bar No. 172573)
4 311 California Street
San Francisco, California 94104
Telephone: 415.956.2828
Facsimile: 415.956.6457

5 Attorneys for Petitioners Cherry Valley
6 Pass Acres and Neighbors and Cherry Valley
Environmental Planning Group

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

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9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
10 COUNTY OF RIVERSIDE - RIVERSIDE BRANCH

11 CHERRY VALLEY PASS ACRES AND
12 NEIGHBORS, a California non-profit
13 corporation; and CHERRY VALLEY
14 ENVIRONMENTAL PLANNING GROUP, a
California non-profit corporation,

15 Petitioners,

16 v.

17 CITY OF BANNING, a municipal corporation;

18 Respondent.

19
20 SCC/BLACK BENCH, LLC; and ROES 1 to
21 100; inclusive,
22 Real Parties in Interest
23
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460950 MF
No. RIC 461035

Case Filed Under the Environmental Quality
Act

~~PROPOSED~~ JUDGMENT

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 22, 2006

25 This matter came on regularly for hearing on December 19, 2007, in Department
26 42 of this Court. Robert C. Goodman and D. Kevin Shipp appeared on behalf of Petitioners

- 1 -

[PROPOSED] JUDGMENT - CASE NO. RIC 461035

266305.2

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1 Cherry Valley Pass Acres and Neighbors and Cherry Valley Environmental Planning Group,
2 (collectively referred to hereinafter as "CVPAN"). Respondents City of Banning ("City")
3 appeared through attorneys GERALYN L. SKAPIK and AMY E. MORGAN and Real Party in Interest
4 SCC/Black Bench, LLC ("Real Party") appeared through attorneys EDWARD J. CASEY, SHIRAZ D.
5 TANGRI, and TAMMY L. JONES. The Court having reviewed the record of respondent's proceedings
6 in this matter, the briefs submitted by counsel, and the arguments of counsel; the matter having
7 been submitted for decision; and the Court having issued an order that judgment and a
8 peremptory writ of mandate issue in this proceeding,

9 IT IS ORDERED that:

10 1. Judgment be entered in favor of Petitioners Cherry Valley Pass Acres and
11 Neighbors and Cherry Valley Environmental Planning Group in this proceeding.

12 2. A peremptory writ of mandate directed to respondent issue under seal of this
13 Court, ordering respondent to:

14 a. Set aside and vacate its adoption of Resolution No. 2006-128 certifying the
15 Final Environmental Impact Report for the Black Bench Specific Plan
16 pursuant to the California Environmental Quality Act ("CEQA");

17 b. Set aside and vacate its findings under the CEQA in connection with its
18 approval of the Black Bench Specific Plan;

19 c. Set aside and vacate its approvals of the Black Bench Project, including the
20 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129,
21 Resolution 2006-130, and Ordinance 1353; and

22 d. Set aside and vacate its approval of a Statement of Overriding Considerations
23 and Mitigation Monitoring Program in connection with the Black Bench
24 Project.

25 3. The City and the Real Party are enjoined from proceeding with grading,
26 construction, or any other physical implementation of the Black Bench Project that could result

1 in an adverse change or alteration to the physical environment, unless and until such time as the
2 City has certified and adopted an environmental impact report that complies with CEQA.

3 4. The court shall retain jurisdiction over the proceedings pursuant to Public
4 Resources Code §21168.9(b) and (c). Nevertheless, the Court intends this to be a final,
5 appealable judgment.

6 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
7 Rules 870 and 870.2.


8 6. Petitioner CVPAN, as prevailing party, is entitled to costs ~~in the amount of~~
9 ~~as established by appropriate post-judgment~~
~~pursuant to Code of Civil Procedure Section 1033.5~~ procedures.

10 7. Petitioner CVPAN, as prevailing party, is entitled to apply for attorney's fees
11 and costs through appropriate noticed motions after entry of this Judgment. This Court retains
12 jurisdiction to hear such motions and determine the amount of such fees, if any, pursuant to
13 them. ~~If such a motion is granted, this judgment will be amended to award the amount of \$~~
14 ~~_____ in attorneys' fees pursuant to Code of Civil Procedure Section 1021.5.~~

15 8. Under Public Resources Code §21168.9(c), the Court does not direct
16 respondent to exercise its lawful discretion, in any particular way. Nothing in the judgment or
17 peremptory writ should be construed as requiring respondent or real parties to go forward with
18 the project, or to reapprove the project, or to take any particular action other than as specifically
19 set forth herein.

20 9. Respondent shall file a preliminary return to the peremptory writ no later than
21 60 days after the date of the issuance of the peremptory writ which shall state that an appeal from
22 the judgment has or will be filed or that it has complied with the order to set aside its approval of
23 the project.

24 Dated: April 7, 2008



Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

180

Exhibit 2

181

1 ROGERS JOSEPH O'DONNELL
2 ROBERT C. GOODMAN (State Bar No. 111554)
3 ANN M. BLESSING (State Bar No. 172573)
4 311 California Street
5 San Francisco, California 94104
6 Telephone: 415.956.2828
7 Facsimile: 415.956.6457

8 Attorneys for Petitioners Cherry Valley
9 Pass Acres and Neighbors and Cherry Valley
10 Environmental Planning Group

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

CHERRY VALLEY PASS ACRES AND
NEIGHBORS, *et al.*,

Petitioners,

v.

CITY OF BANNING,

Respondent.

460950 MF
Case No. RIC 461035

Case Filed Under the Environmental Quality
Act

~~PROPOSED~~ PEREMPTORY WRIT OF
MANDATE

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

19 SCC/BLACK BENCH, LLC; and ROES 1 to 100;
20 inclusive,
21 Real Parties in Interest

Action Filed: November 22, 2006

22 Judgment having been entered in this proceeding in favor of Petitioners Cherry
23 Valley Pass Acres and Neighbors and Cherry Valley Environmental Planning Group, ordering
24 that a peremptory writ of mandate be issued from this Court,

25 IT IS SO ORDERED that, immediately on service of this writ, Respondent
26 City of Banning (the "City") shall:

- 1 -

[PROPOSED] PEREMPTORY WRIT OF MANDATE - CASE NO. RIC 461035

266450.3

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1 1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying under
2 the California Environmental Quality Act ("CEQA") the Final Environmental Impact Report for
3 the Black Bench Specific Plan.

4 2. Set aside and vacate its findings under the CEQA in connection with its
5 approval of the Black Bench Specific Plan.

6 3. Set aside and vacate its approvals of the Black Bench Project, including the
7 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130,
8 and Ordinance 1353.

9 4. Set aside and vacate its approval of a Statement of Overriding Considerations
10 and Mitigation Monitoring Program in connection with the Black Bench Project.

11 Under Public Resources Code section 21168.9(c), this Court does not direct
12 Respondent to exercise its lawful discretion in any particular way.

13 Under Public Resources Code section 21168.9(b), this Court will retain
14 jurisdiction over Respondent's proceedings by way of a return to this peremptory writ of mandate
15 until the Court has determined that respondent has complied with the provisions of CEQA.

16 The City shall file a preliminary return to this writ no later than sixty (60) days
17 from the date this writ is issued setting forth what respondents have done to comply with the writ
18 set forth herein.

19 LET THE WRIT OF MANDATE ISSUE.

20
21 Dated: April 7, 2008

T. Cahran
Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as **NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ **BY MAIL:** I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

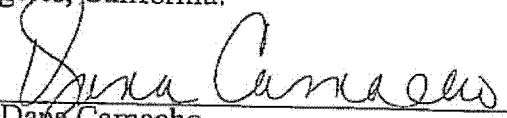
☐ **BY FEDERAL EXPRESS** ☐ **UPS NEXT DAY AIR** ☐ **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **Overnight Delivery** [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **OVERNIGHT DELIVERY** [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ **BY FACSIMILE:** I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

184

Cherry Valley Pass Acres And Neighbors, et al., v. City of Banning
Case No. RIC 461035

SERVICE LIST

Robert C. Goodman

Ann M. Blessing

LAW OFFICES OF ROBERT C. GOODMAN

311 California Street

San Francisco, CA 94104

Tel: (415) 956-2828

Fax: (415) 956-6457

Attorney for Petitioners

**CHERRY VALLEY PASS ACRES
AND NEIGHBORS, and CHERRY
VALLEY ENVIRONMENTAL
PLANNING GROUP,**

Julie H. Biggs, City Attorney

CITY OF BANNING

99 E. Ramsey St.

Banning, CA 92220

Tel: (951) 922-3106

Fax: (951) 922-3161

Attorneys for Respondent

CITY OF BANNING

Stephen R. Onstot

Amy E. Morgan

BURKE, WILLIAMS & SORENSON, LLP

2800 Market Street, Suite 300

Riverside, CA 92501

Tel: (951) 788-0100

Fax: (951) 788-5785

EXHIBIT "B"

Resolution No. 2006-128

RESOLUTION NO. 2006-128

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF BANNING, CALIFORNIA, CERTIFYING THE FINAL
BLACK BENCH RANCH ENVIRONMENTAL IMPACT
REPORT (SCH NO. 2004111024), ADOPTING A
STATEMENT OF OVERRIDING CONSIDERATIONS AND
MITIGATION MONITORING PROGRAM**

WHEREAS, an application for the Black Bench Ranch Specific Plan, General Plan Amendment and Tentative Tract Map, setting forth the development parameters on 1,488 acres, has been duly filed by:

Applicant / Owner:	SunCal Companies
Authorized Agent:	Rod Hanway
Project Location:	North of Wilson Street, west of Bluff Street, between Sunset Avenue and Highland Springs Avenue.
APN Numbers:	401-230-001 thru 011, 401-240-007 & 008, 401-250-005 & 006, 401-260-005 & 006, 531-200-001 thru 010, 531-210- 004, 531-210-008 thru 012, 531-230-001 thru 007, 531- 230-011 & 012, 531-240-007, 531-340-001 & 004.

WHEREAS, the proposed Black Bench Ranch Specific Plan, General Plan Amendment and Tentative Tract Map are considered "projects" as defined by the California Environmental Quality Act, Public Resources Code § 21000 et seq. ("CEQA"); and,

WHEREAS, the City of Banning has reviewed the Black Bench Ranch Specific Plan and associated applications to allow the development of up to 1,500 residential units, school site, parks and open space uses on 1,488 acres generally located north of Wilson Street, west of Bluff Street, between Sunset Avenue and Highland Springs Avenue, in accordance with the authority granted by the California Government Code and Banning Municipal Code; and

WHEREAS, the Community Development Director determined that there was substantial evidence that the Black Bench Ranch Specific Plan and associated applications may have one or more significant effects on the environment and that preparation of an Environmental Impact Report ("EIR") was therefore warranted under Public Resources Code § 21080(d) and § 21082.2(d); and,

WHEREAS, the City has consulted with, and requested comments from, members of the public and the agencies and persons referenced in CEQA Guidelines § 15083, § 15083.5 and § 15086; and,

WHEREAS, upon completion of the Draft EIR, the City provided notice of completion to OPR on March 21, 2006, as required under CEQA Guidelines § 15085 and provided notice of availability on March 30, 2006, as required under CEQA Guidelines § 15087; and,

WHEREAS, the Draft EIR was circulated to the public, responsible agencies and other interested parties as required by CEQA Guidelines § 15087 for a period of 45 days commencing on March 30, 2006 and closing on May 15, 2006, in accordance with CEQA Guidelines § 15105(a); and,

WHEREAS, before the close of the public comment period the City received written responses; and,

WHEREAS, the Final EIR consists of the following documents: the Draft EIR, Technical Appendices, Written Comments and Responses regarding the Draft, the Mitigation Monitoring and Reporting Program, the Statement of Overriding Considerations; and,

WHEREAS, the Banning Planning Commission conducted a duly noticed public hearing on August 15, 2006, at which it received public testimony concerning the project and the Final EIR and considered the Final EIR; and

WHEREAS, the Banning Planning Commission approved Resolution No. 2006-16 recommending certification of the Final Black Bench Ranch Environmental Impact Report (SCH No. 2004111024), adoption of a Statement of Overriding Consideration and Mitigation Monitoring Program; and

WHEREAS, the City Council conducted a duly noticed public hearing on October 11, 2006, at which it received public testimony concerning the project and the Final EIR and considered the Final EIR; and

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

SECTION 1. FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the Final EIR, all documents incorporated by reference therein, any comments received and responses provided, the Mitigation Monitoring Program, the Statement of Facts and Findings, 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 that:

1. **Preparation of EIR:** An Environmental Impact Report was prepared for the Black Bench Specific Plan after completion of an Initial Study in accordance with Public Resources Code § 21080(d) and § 21082.2 and the EIR was prepared and processed in accordance with the California Environmental Quality Act (Public Resources Code § 21000 et seq.), the CEQA Guidelines (14 California Code of Regulations § 15000 et seq.), and the local CEQA Guidelines and Thresholds of Significance adopted by the City of Banning.
2. **Notice:** The City has complied with CEQA Guidelines § 15085 and § 15087 by providing a Notice of Completion of the Draft EIR to OPR and a Notice of Availability to responsible and trustee agencies and other persons and agencies as required.

3. **Review Period:** The City has complied with CEQA Guidelines §§ 15087 and 15105 by making the Draft EIR available to the public for review for the required period of time.
4. **Response to Comments:** The City has responded to all written comments received during the public review period and included both comments and responses as part of the Final EIR. In response to these comments, the City has made minor revisions to the Final EIR. These revisions are identified in the responses and do not constitute significant additional information and do not require recirculation of the EIR.
5. **Avoidance / Reduction Significant Effects:** The Final EIR identifies potentially significant effects on the environment that could result if the project were adopted without changes or alterations in the project and imposition of mitigation measures. Based thereon, the City Council further finds that:
 - a. Changes, alterations, and mitigation measures have been incorporated into, or imposed as conditions of approval on, the project.
 - b. These changes, alterations, and mitigation measures will avoid the significant environmental effects identified in the Final EIR or lessen their impact below the threshold of significance.
 - c. These changes, alterations, and mitigation measures are fully enforceable because they have either resulted in an actual change to the project as proposed or they have been imposed as conditions of approval on the project.
 - d. The City has prepared a Mitigation Monitoring Program to track compliance with these changes, alterations, and mitigation measures.
6. **Independent Judgment:** The Final EIR reflects the independent judgment and analysis of the City.

SECTION 2. MULTIPLE SPECIES HABITAT CONSERVATION PLAN (MSHCP)

1. The project is found to be consistent with the MSHCP. A portion of the project is located within the MSHCP criteria Cell #227 and has gone through the HANS process with the Riverside Conservation Authority. No development or disturbance of land will occur within the Cell and mitigation will also be made through the payment of the MSHCP mitigation fees.

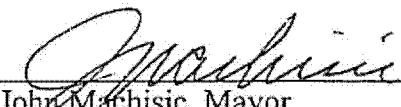
SECTION 3. CITY COUNCIL ACTION.

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


1. **Statement of Overriding Consideration:** The City Council adopt a Statement of Overriding Considerations for the unmitigated impacts associated with traffic and circulation and air quality. (Exhibit "A", under separate cover).

2. **Certify EIR:** The City Council approves and certifies the Final Environmental Impact Report No. (SCH NO. 2004111024) for the Black Bench Ranch Specific Plan and related applications. (Exhibit "B", Under Separate Cover).
3. **Adopt MMP:** The City Council approves and adopts the Mitigation Monitoring Program (Exhibit "A", under separate cover) for the Final EIR.
4. **Notice of Determination:** In compliance with Public Resources Code § 21152 and CEQA Guidelines § 15094, the City Council direct the Community Development Director to prepare a Notice of Determination concerning certification of the Final EIR, and within five (5) days of project approval, file the Notice with the Riverside County Clerk for posting.
5. **Location:** The Final Environmental Impact Report (SCH NO. 2004111024) and all documents incorporated therein and forming the record of decision therefore, be filed with the Banning Planning Department at the Banning City Hall, 99 East Ramsey Street, Banning, California, 92220 and be made available for public review upon request.

PASSED, APPROVED AND ADOPTED this 11th day of October, 2006.


John Machisic, Mayor

APPROVED AS TO FORM AND
LEGAL CONTENT:


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

ATTEST:


Marie A. Calderon, City Clerk

CERTIFICATION:

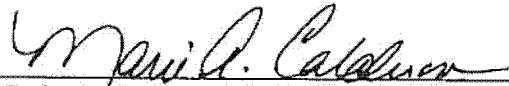
I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2006-128, was duly adopted by the City Council of the City of Banning, California, at a special meeting thereof held on the 11th day of October 2006, by the following vote, to wit:

AYES: Councilmembers Salas, Welch, Mayor Machisic

NOES: Councilmembers Hanna, Palmer

ABSENT: None

ABSTAIN: None



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

*BLACK BENCH RANCH
REPEAL OF RESOLUTIONS
NO. 2006-128, 129, 130 AND
ORDINANCE NO. 1353*

***RESOLUTION
NO. 2008-70***

EXHIBIT “2”

RESOLUTION NO. 2008-70

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF BANNING, CALIFORNIA, SETTING SIDE AND
VACATING ADOPTION OF RESOLUTION NO. 2006-129
APPROVING GENERAL PLAN AMENDMENT #06-2502
TO MODIFY CERTAIN CHANGES TO THE GENREAL
PLAN CIRCULATION ELEMENT IN CONNECTION
WITH THE BLACK BENCH PROJECT**

WHEREAS, an application for the Black Bench Specific Plan, General Plan Amendment and Tentative Tract Map setting forth development parameters on 1,488 acres was duly filed by:

Applicant / Owner: SunCal Companies

Authorized Agent: Rod Hanway

Project Location: North of Wilson Street, west of Bluff Street, between Sunset Avenue and Highland Springs Avenue

APN Numbers: 401-230-001 thru 011, 401-240-007 & 008, 401-250-005 & 006, 401-260-005 & 006, 531-200-001 thru 010, 531-210-004, 531-210-008 thru 012, 531-230-001 thru 007, 531-230-011 & 012, 531-240-007, 531-340-001 & 004.

WHEREAS, on October 11, 2006, the City conducted a duly noticed public hearing to consider the project which included consideration of General Plan Amendment No. 06-2502 to modify the General Plan Circulation Element; and

WHEREAS, at the City Council meeting of October 11, 2006, the City Council adopted Resolution No. 2006-129 approving General Plan Amendment No. 06-2502 to modify the General Plan Circulation Element; and

WHEREAS, Petitioners the Center for Biological Diversity, Highland Springs Conference and Training Center, Banning Bench Community of Interest Association, and Cherry Valley Pass Acres and Neighbors filed a litigation action against the City and Real Party in Interest SCC/Black Bench, LLC, challenging, among other things, the City's adoption of General Plan Amendment No. 06-2502 to modify the General Plan Circulation Element; and

WHEREAS, on April 24, 2008, the City received notice of the Judgment and Peremptory Writ of Mandate issued by the Riverside Superior Court directing the City to vacate and set aside Resolution No. 2006-129 approving a General Plan Amendment No. 06-2502 to modify the General Plan Circulation Element; and

WHEREAS, the Judgment and Peremptory Writ of Mandate further direct the City to file a return to the Peremptory Writ of Mandate no later than 60 days from issuance of the Judgment and Writ; and

WHEREAS, in order to comply with the Judgment and Peremptory Writ of Mandate issued by the Riverside Superior Court, the City Council therefore desires to vacate and set aside the adoption of Resolution No. 2006-129 approving General Plan Amendment No. 06-2502 to modify the General Plan Circulation Element; and

WHEREAS, on May 30, 2008, the City gave public notice by advertising in the Press Enterprise newspaper and property owners within 1200 feet of the site were mailed public hearing notice of the holding of a public hearing for consideration of this Resolution No. 2008-70; and

WHEREAS, at the public hearing on June 10, 2008, the City Council considered and heard comments on the adoption of this Resolution No. 2008-70.

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

SECTION 1. FINDINGS.

1. On November 21st and 22nd, 2006, the following litigation matters were filed against the City of Banning and Real Party in Interest SCC/Black Bench LLC:

Highland Springs Conference and Training Center v. City of Banning; Case No. RIC 460950;

Center for Biological Diversity v. City of Banning; Case No. RIC 460967

Cherry Valley Pass Acres and Neighbors and Cherry Valley Environmental Planning Group v. City of Banning; Case No. RIC 461035

Banning Bench Community of Interest Association, Inc. v. City of Banning; Case No. RIC 461069

2. On April 24, 2008, the City received notice of the Judgment and Peremptory Writ of Mandate issued by the Riverside Superior Court (attached hereto as Exhibit "A") in the above referenced actions directing the City to vacate and set aside Resolution No. 2006-129 approving General Plan Amendment No. 06-2502 to modify the General Plan Circulation Element.

SECTION 2. CITY COUNCIL ACTION

The City Council hereby takes the following actions:

1. **Resolution No. 2006-129:** The City Council vacates and sets aside the adoption of Resolution No. 2006-129, which is attached hereto as Exhibit "B".
2. **General Plan Amendment:** The City Council vacates and sets aside adoption of General Plan Amendment No. 06-2502 to modify the General Plan Circulation Element.

PASSED, APPROVED, AND ADOPTED this 10th day of June, 2008.

Brenda Salas, Mayor

**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. 2008-70, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of June 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

195

EXHIBIT "A"

Judgment and Peremptory Writ of Mandate

EDWARD J. CASEY (State Bar No. 119571)
SHIRAZ D. TANGRI (State Bar No. 203037)
TAMMY L. JONES (State Bar No. 232693)
WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071
Telephone: (213) 576-1000
Facsimile: (213) 576-1100

Attorneys for SCC/BLACK BENCH, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

HIGHLAND SPRINGS CONFERENCE AND
TRAINING CENTER,

Petitioner,

v.

CITY OF BANNING,

Respondent.

SCC/BLACK BENCH, LLC,
and DOES 1 through 10,

Real Parties in Interest.

Case No. RIC 460950 (MF)

Judge: Hon. Thomas Cahraman
Dept.: 42 (Riverside Hall of Justice)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 21, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

197

Exhibit 1

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

KP

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE - RIVERSIDE BRANCH

Highland Springs Conference and Training
Center

Petitioner,

v.

CITY OF BANNING, a municipal corporation;

Respondent.

No. RIC 460950 MF

California Environmental Quality Act

~~PROPOSED~~ JUDGMENT

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 21, 2006

SCC/BLACK BENCH, LLC; and DOES 1 to
100; inclusive,
Real Parties in Interest

- 1 -

JUDGMENT [PROPOSED] - CASE NO. RIC 460950

266305.1

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1 This matter came on regularly for hearing on December 19, 2007, in Department 42
2 of this Court. Jan Chatten-Brown and Arthur Pugsley appeared on behalf of Petitioner Highland
3 Springs Conference and Training Center. Respondents City of Banning ("City") appeared
4 through attorneys Geralyn L. Skapik and Amy E. Morgan and Real Party in Interest SCC/Black
5 Bench, LLC ("Real Party") appeared through attorneys Edward J. Casey, Shiraz D. Tangri, and
6 Tammy L. Jones. The Court having reviewed the record of respondent's proceedings in this
7 matter, the briefs submitted by counsel, and the arguments of counsel; the matter having been
8 submitted for decision; and the Court having issued an order that judgment and a peremptory writ
9 of mandate issue in this proceeding,

10 IT IS ORDERED that:

11 1. Judgment be entered in favor of Petitioner Highland Springs Conference and
12 Training Center in this proceeding.

13 2. A peremptory writ of mandate directed to Respondent City issue under seal of
14 this Court, ordering Respondent City to:

- 15 a. Set aside and vacate its certification under the California Environmental
16 Quality Act of the Final Environmental Impact Report for the Black Bench
17 Specific Plan.
- 18 b. Set aside and vacate its findings under the California Environmental Quality
19 Act in connection with its approval of the Black Bench Specific Plan.
- 20 c. Set aside and vacate its approvals of the Black Bench Project, including the
21 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129,
22 Resolution 2006-130, and Ordinance 1353.
- 23 d. Set aside and vacate its approval of a Statement of Overriding Considerations
24 and Mitigation Monitoring Program.
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1 3. ~~The City and the Real Party are enjoined from proceeding with grading,~~
2 ~~construction, or any other physical implementation of the Black Bench Project, unless and until~~
3 ~~such time as the City has certified and adopted an environmental impact report that complies~~ (T.C.)
4 ~~with the California Environmental Quality Act. The City and the Real Party are enjoined from~~
5 ~~proceeding with grading, construction, or any other physical implementation of the Black Bench~~
6 ~~Project that could result in an adverse change or alteration to the physical environment, unless~~
7 ~~and until such time as the City has certified and adopted an environmental impact report that~~
8 ~~complies with CEQA.~~

9 4. This Court shall retain jurisdiction over the proceedings pursuant to Public
10 Resources Code §21168.9(b) and (c). Nevertheless, the Court intends this to be a final,
11 appealable judgment.

12 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
13 Rules 870 and 870.2.

14 6. Petitioner Highland Springs Conference and Training Center, as prevailing
15 party, is entitled to costs in the amount of \$ _____, pursuant to Code of Civil Procedure

16 Section 1033.5 *as established by appropriate post-judgment procedures.* (T.C.)

17 7. Petitioner Highland Springs Conference and Training Center, as prevailing
18 party, is entitled to apply for attorney's fees and costs through appropriate noticed motions after
19 entry of this Judgment. This Court retains jurisdiction to hear such motions and determine the
20 amount of such fees, if any, pursuant to them. ~~If such a motion is granted, this judgment will be~~
21 ~~amended to award the amount of \$ _____, in attorneys' fees pursuant to Code of Civil~~
22 ~~Procedure Section 1021.5.~~ (T.C.)

23 8. Under Public Resources Code §21168.9(c), the Court does not direct
24 respondent to exercise its lawful discretion, in any particular way. Nothing in the judgment or
25 peremptory writ should be construed as requiring respondent or real parties to go forward with
26

1 the project, or to reapprove the project, or to take any particular action other than as specifically
2 set forth herein.

3 9. Respondent shall file a preliminary return to the peremptory writ no later than
4 60 days after the date of the issuance of the peremptory writ which shall state that an appeal from
5 the judgment has or will be filed or that it has complied with the order to set aside its approval of
6 the project.

7 Dated: April 7, 2008

T. Cahraman

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9 Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT
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Exhibit 2

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

LR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

Highland Springs Conference and Training Center

Petitioner,

v.

CITY OF BANNING,

Respondent.

SCC/BLACK BENCH, LLC, and DOES 1 to 100;
inclusive,

Real Parties in Interest.

Case No. RIC 460950

California Environmental Quality Act

~~PROPOSED~~ PEREMPTORY WRIT OF
MANDATE

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 21, 2006

Judgment having been entered in this proceeding, ordering that a peremptory
writ of mandate be issued from this Court,

IT IS SO ORDERED that, immediately on service of this writ, Respondent
City of Banning and SCC/Black Bench, LLC:

1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying under
the California Environmental Quality Act the Final Environmental Impact Report for the Black
Bench Specific Plan.

- 1 -

PEREMPTORY WRIT OF MANDATE [PROPOSED] - CASE NO. RIC 460950

266450.1

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1 2. Set aside and vacate its findings under the California Environmental Quality
2 Act in connection with its approval of the Black Bench Specific Plan.

3 3. Set aside and vacate its approvals of the Black Bench Project, including the
4 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130,
5 and Ordinance 1353.

6 4. Set aside and vacate its approval of a Statement of Overriding Considerations
7 and Mitigation Monitoring Program.

8 5. Suspend all grading, construction, or any other physical implementation of the
9 Black Bench Project, unless and until such time as the City has certified and adopted an
10 environmental impact report that complies with the California Environmental Quality Act.


11 Under Public Resources Code section 21168.9(c), this Court does not direct
12 Respondent to exercise its lawful discretion in any particular way.

13 Under Public Resources Code section 21168.9(b), this Court will retain
14 jurisdiction over Respondent's proceedings by way of a return to this peremptory writ of mandate
15 until the Court has determined that respondent has complied with the provisions of CEQA.

16 Respondent shall file a preliminary return to this writ no later than sixty (60) days
17 from the date this writ is issued setting forth what respondents have done to comply with the writ
18 set forth herein.

19 LET THE WRIT OF MANDATE ISSUE.

20
21 Dated: April 7, 2008

22 
23 Hon. Thomas H. Cahraman
24 JUDGE OF THE SUPERIOR COURT
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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as **NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ **BY MAIL:** I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

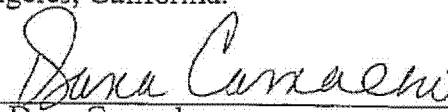
☐ **BY FEDERAL EXPRESS** ☐ **UPS NEXT DAY AIR** ☐ **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **Overnight Delivery** [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **OVERNIGHT DELIVERY** [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ **BY FACSIMILE:** I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

1 Highland Springs Conference and Training Center v. City of Banning
2 Case No. RIC 460950

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC., a
Californian Non-Profit Corporation,

Petitioner and Plaintiff,

v.

CITY OF BANNING and CITY COUNCIL
OF THE CITY OF BANNING,

Respondents and Defendants.

SCC/BLACK BENCH, LLC, a Delaware
Limited Liability Company, and DOES 1
through 25, Inclusive,

Real Parties in Interest.

Case No. RIC 461069
460950 MF

Judge: Hon. Stephen D. Cunnison
Dept.: 1 (Riverside Branch)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 22, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

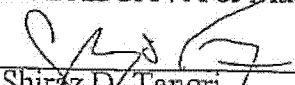

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

Exhibit 1

209

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

KR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

460950 MF

BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC.,

Petitioner and Plaintiff,

v.

CITY OF BANNING, CITY COUNCIL OF
THE CITY OF BANNING,

Respondents and Defendants.

SCC/BLACK BENCH, LLC, *et al.*,

Real Parties in Interest.

Case No. RIC 461069

California Environmental Quality Act case

~~PROPOSED~~ JUDGMENT

Judge: Honorable Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 22, 2006

This matter came on regularly for hearing on December 19, 2007, in Department 42 of this Court. John G. McClendon appeared on behalf of Petitioner and Plaintiff Banning Bench Community of Interest Association, Inc. ("BBCIA"). Respondents and Defendants City of Banning and City Council of the City of Banning (collectively, the "City") appeared through attorneys GERALYN L. SKAPIK and AMY E. MORGAN, and Real Party in Interest SCC/Black Bench, LLC ("Real Party") appeared through attorneys EDWARD J. CASEY, SHIRAZ D. TANGRI, and TAMMY L. JONES. At the close of that hearing, the Court took the matter under submission and, on January 29, 2008, issued its Minute Order/Judgment and a Ruling on Submitted Matter ("Minute Order").

210

1 On March 19, 2008, the parties executed a *Joint Stipulation Regarding The Third*
2 *Cause Of Action To Banning Bench Community Of Interest Association's Petition For Writ*
3 *Of Mandate; Complaint For Declaratory Relief and [Proposed] Order* ("Stipulation")
4 acknowledging that the Court's Minute Order resolved the need for further briefing and/or
5 hearing with regard to BBCIA's Third Cause of Action for Declaratory Relief and was now
6 moot. Pursuant to the Stipulation, the Court ordered the Third Cause of Action for
7 Declaratory Relief dismissed with prejudice for mootness.

8 The Court having reviewed the record of the City's proceedings in this matter; the briefs
9 submitted by counsel and the arguments of counsel; the matter having been submitted for decision;
10 the Court having issued the Minute Order ordering that judgment and a peremptory writ of mandate
11 issue in this proceeding and having signed the Stipulation,

12 IT IS ORDERED that BBCIA's *Petition for Writ of Mandate; Complaint for Declar-*
13 *atory Relief* is DENIED as to its Second Cause of Action and GRANTED as to its First
14 Cause of Action for relief under the California Environmental Quality Act (Public Resources
15 Code § 21000 *et seq.*: "CEQA"); THEREFORE, IT IS FURTHER ORDERED that:

- 16 1. Judgment be entered in favor of BBCIA in this proceeding.
- 17 2. A peremptory writ of mandate directed to the City issue under seal of this Court,
18 ordering the City to:
 - 19 a. Set aside and vacate its certification under CEQA of the Final
20 Environmental Impact Report ("EIR") for the Black Bench Specific
21 Plan.
 - 22 b. Set aside and vacate its findings under CEQA in connection with its
23 approval of the Black Bench Specific Plan.
 - 24 c. Set aside and vacate its approvals of the Black Bench Project, including
25 the Black Bench Specific Plan, and its adoption of Resolution No. 2006-
26 129, Resolution 2006-130, and Ordinance 1353.
 - 27 d. Set aside and vacate its approval of a Statement of Overriding
28 Considerations and Mitigation Monitoring Program.

1 3. The City and the Real Party are enjoined from proceeding with grading,
2 construction, or any other physical implementation of the Black Bench Project that could
3 result in an adverse change or alteration to the physical environment, unless and until such
4 time as the City has certified and adopted an environmental impact report that complies with
5 CEQA.

6 4. The Court shall retain jurisdiction over the proceedings pursuant to Public
7 Resources Code section 21168.9(b) and (c). Nevertheless, the Court intends this to be a
8 final, appealable judgment.

9 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
10 Rules 870 and 870.2.

11 6. Petitioner BBCIA, as prevailing party, is entitled to costs ~~in the amount of~~
12 ~~as established by the appropriate~~
~~pursuant to Code of Civil Procedure section 1033.5~~
~~post-judgment procedures.~~

13 7. Petitioner BBCIA, as prevailing party, is entitled to apply for attorneys' fees and
14 costs through appropriate noticed motions after entry of this Judgment. This Court retains
15 jurisdiction to hear such motions and determine the amount of such fees, if any, pursuant to
16 them. ~~If such a motion is granted, this judgment will be amended to award the amount of~~
17 ~~\$_____ in attorneys' fees pursuant to Code of Civil Procedure section 1021.5.~~

18 8. Under Public Resources Code section 21168.9(c), the Court does not direct the
19 City to exercise its lawful discretion, in any particular way. Nothing in the judgment or
20 peremptory writ should be construed as requiring respondent or real parties to go forward
21 with the project, or to reapprove the project, or to take any particular action other than as
22 specifically set forth herein.

23 The City shall file a preliminary return to the peremptory writ no later than 60 days
24 after the date of the issuance of the peremptory writ which shall state that an appeal from the
25 judgment has or will be filed or that it has complied with the order to set aside its approval of
26 the EIR and the Black Bench Project.

27 DATED: April 7, 2008

28 T. Cahraman
Honorable Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

212

Exhibit 2

213

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

[Signature]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

460450 MF

BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC.,

Petitioner and Plaintiff,

v.

CITY OF BANNING, CITY COUNCIL OF
THE CITY OF BANNING,

Respondents and Defendants.

Case No. RIC 461069

California Environmental Quality Act case

~~PROPOSED~~ PEREMPTORY WRIT
OF MANDATE

Judge: Honorable Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 22, 2006

SCC/BLACK BENCH, LLC, *et al.*,

Real Parties in Interest.

Judgment having been entered in this proceeding in favor of Petitioner and Plaintiff Banning Bench Community of Interest Association ordering that a peremptory writ of mandate issue,

IT IS SO ORDERED that, immediately on service of this writ, Respondents City of Banning and City Council of the City of Banning (collectively, "Respondent") shall:

1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying under the California Environmental Quality Act ("CEQA") the Final Environmental Impact Report for the Black Bench Specific Plan.

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1 2. Set aside and vacate its findings under CEQA in connection with its approval of
2 the Black Bench Specific Plan.

3 3. Set aside and vacate its approvals of the Black Bench Project, including the Black
4 Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130, and
5 Ordinance 1353.

6 4. Set aside and vacate its approval of a Statement of Overriding Considerations and
7 Mitigation Monitoring Program.

8 5. Suspend all grading, construction, or any other physical implementation of the
9 Black Bench Project, unless and until such time as the City has certified and adopted an
10 environmental impact report that complies with CEQA.

11 Under Public Resources Code section 21168.9(c), this Court does not direct
12 Respondent to exercise its lawful discretion in any particular way.

13 Under Public Resources Code section 21168.9(b), this Court will retain jurisdiction
14 over Respondent's proceedings by way of a return to this peremptory writ of mandate until
15 the Court has determined that Respondent has complied with the provisions of CEQA.

16 Respondent shall file a preliminary return to this writ no later than sixty (60) days
17 from the date this writ is issued setting forth what Respondents has done to comply with the
18 writ set forth herein.

19 LET THE WRIT OF MANDATE ISSUE.

20
21 DATED:

April 7, 2008

T. Cahraman
Honorable Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as **NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ **BY MAIL:** I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

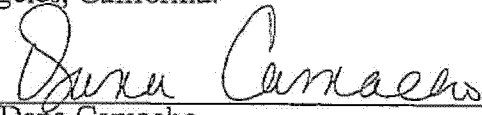
☐ **BY FEDERAL EXPRESS** ☐ **UPS NEXT DAY AIR** ☐ **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **Overnight Delivery** [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **OVERNIGHT DELIVERY** [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ **BY FACSIMILE:** I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

216

Banning Bench Community of Interest Association, Inc. v. City of Banning, et al.
Case No. RIC 461069

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CITY COUNCIL OF THE CITY
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Attorneys for SCC/BLACK BENCH, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

CENTER FOR BIOLOGICAL DIVERSITY,

Petitioner,

v.

CITY OF BANNING, CITY COUNCIL OF
THE CITY OF BANNING,
and Does 1-20,

Respondents.

SCC/BLACK BENCH, LLC,
and DOES 21 through 50, Inclusive,

Real Parties in Interest.

Case No. RIC 460967
460950 MF

Judge: Hon. Gloria Connor Trask
Dept.: 4 (Riverside Branch)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 21, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

Exhibit 1

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APR 08 2008

Case No. RIC 460967

1 This matter came on regularly for hearing on December 19, 2007, in Department 42 of
2 this Court. Matthew D. Vespa appeared on behalf of Petitioner CENTER FOR BIOLOGICAL
3 DIVERSITY (the "Center"). Respondents CITY OF BANNING and the CITY COUNCIL OF
4 THE CITY OF BANNING (the "City") appeared through attorneys Geralyn L. Skapik and
5 Amy E. Morgan, and Real Party in Interest SCC/BLACK BENCH, LLC ("Real Party")
6 appeared through attorneys Edward J. Casey, Shiraz D. Tangri, and Tammy L. Jones. The
7 Court having reviewed the record of the City's proceedings in this matter, the briefs submitted
8 by counsel, and the arguments of counsel; the matter having been submitted for decision; and
9 the Court having issued an order that judgment and a peremptory writ of mandate issue in this
10 proceeding,

11 IT IS ORDERED that:

- 12 1. Judgment be entered in favor of the Center in this proceeding.
- 13 2. A peremptory writ of mandate directed to the City issue under seal of this Court,
14 ordering the City to:
 - 15 a. Set aside and vacate its adoption of Resolution No. 2006-128 certifying
16 the Final Environmental Impact Report for the Black Bench Specific
17 Plan pursuant to the California Environmental Quality Act ("CEQA").
 - 18 b. Set aside and vacate its findings under CEQA in connection with its
19 approval of the Black Bench Specific Plan.
 - 20 c. Set aside and vacate its approvals of the Black Bench Project, including
21 the Black Bench Specific Plan, and its adoption of Resolution No. 2006-
22 129, Resolution 2006-130, and Ordinance 1353.
 - 23 d. Set aside and vacate its approval of a Statement of Overriding
24 Considerations and Mitigation Monitoring Program in connection with
25 the Black Bench Project.
- 26 3. The City and the Real Party are enjoined from proceeding with grading,
27 construction, or any other physical implementation of the Black Bench Project that could result

1 in an adverse change or alteration to the physical environment, unless and until such time as
2 the City has certified and adopted an environmental impact report that complies with CEQA.

3 4. The Court shall retain jurisdiction over the proceedings pursuant to Public
4 Resources Code §21168.9(b) and (c). Nevertheless, the Court intends this to be a final,
5 appealable judgment.

6 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
7 Rules 870 and 870.2.

8 6. The Center, as prevailing party, is entitled to costs ~~in the amount of \$~~
9 ~~pursuant to Code of Civil Procedure Section 1033.5~~ *as established by*
10 *appropriate post-judgment*
11 *procedures.*

12 7. The Center, as prevailing party, is entitled to apply for attorney's fees and costs
13 through appropriate noticed motions after entry of this Judgment. This Court retains
14 jurisdiction to hear such motions and determine the amount of such fees, if any, pursuant to
15 them. ~~If such a motion is granted, this judgment will be amended to award the amount of \$~~
16 ~~in attorneys' fees pursuant to Code of Civil Procedure Section 1021.5.~~

17 8. Under Public Resources Code §21168.9(c), the Court does not direct the City to
18 exercise its lawful discretion, in any particular way. Nothing in the judgment or peremptory
19 writ should be construed as requiring the City or Real Party to go forward with the Black
20 Bench Project, or to reapprove the Black Bench Project, or to take any particular action other
21 than as specifically set forth herein.

22 The City shall file a return to the peremptory writ no later than 60 days after the date of
23 the issuance of the peremptory writ which shall state that it has complied with writ or that an
24 appeal from the judgment has or will be filed.

25 Dated: April 7, 2008

T. Cahraman

Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

HR

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Attorneys for Petitioner
CENTER FOR BIOLOGICAL DIVERSITY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

CENTER FOR BIOLOGICAL
DIVERSITY,

Petitioner,

vs.

CITY OF BANNING,
CITY COUNCIL OF THE CITY OF
BANNING,
and DOES 1-20,

Respondents.

SCC/BLACK BENCH, LLC
and DOES 21-50,

Real Parties in Interest.

Case No. RIC 460967

Case Filed Under the California Environmental
Quality Act

~~PROPOSED~~ PEREMPTORY WRIT OF
MANDATE

Original Date of Filing: November 21, 2006

Judge: Hon. Thomas H. Cahraman
Department: 42

[Proposed] Peremptory Writ of Mandate

Case No. RIC 460967

1 Judgment having been entered in this proceeding in favor of Petitioner CENTER FOR
2 BIOLOGICAL DIVERSITY ordering that a peremptory writ of mandate issue,

3 IT IS THEREFORE ORDERED that, immediately on service of this writ, Respondent
4 CITY OF BANNING (the "City") shall do the following:

5 1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying the
6 Final Environmental Impact Report for the Black Bench Specific Plan pursuant to the
7 California Environmental Quality Act ("CEQA").

8 2. Set aside and vacate its findings under CEQA in connection with its approval of
9 the Black Bench Specific Plan.

10 3. Set aside and vacate its approvals of the Black Bench Project, including the
11 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130,
12 and Ordinance 1353.

13 4. Set aside and vacate its approval of a Statement of Overriding Considerations
14 and Mitigation Monitoring Program in connection with the Black Bench Project.

15
16 Pursuant to Public Resources Code section 21168.9(c), this Court does not direct
17 Respondent to exercise its lawful discretion in any particular way.

18 Pursuant to Public Resources Code section 21168.9(b), this Court will retain
19 jurisdiction over this matter by way of a return to this peremptory writ of mandate until the
20 Court has determined that the City has complied with the provisions of CEQA.

21 The City shall file a return to this writ no later than sixty (60) days from the date this writ
22 is issued setting forth what it has done to comply with the writ set forth herein.

23 LET THE WRIT OF MANDATE ISSUE.

24
25 Dated: April 7, 2008

T. Cahran

26 Hon. Thomas H. Cahran
27 JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as **NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ **BY MAIL:** I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

☐ **BY FEDERAL EXPRESS** ☐ **UPS NEXT DAY AIR** ☐ **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **Overnight Delivery** [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **OVERNIGHT DELIVERY** [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ **BY FACSIMILE:** I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

Center for Biological Diversity v. City of Banning, et al.
Case No. RIC 460967

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CITY COUNCIL OF THE CITY
OF BANNING**

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Facsimile: (213) 576-1100

Attorneys for SCC/BLACK BENCH, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

CHERRY VALLEY PASS ACRES AND
NEIGHBORS, a California Non-Profit
Corporation, and CHERRY VALLEY
ENVIRONMENTAL PLANNING GROUP, a
California Non-Profit Corporation,

Petitioners,

v.

CITY OF BANNING, a Municipal Corporation,

Respondent.

SCC/BLACK BENCH, LLC,
and DOES 1 through 100, Inclusive,

Real Parties in Interest.

Case No. RIC 461035

460950 MF

Judge: Commissioner Joan F. Burgess
Dept.: 6 (Riverside Branch)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 22, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

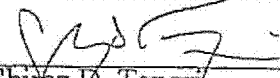

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

Exhibit 1

1 ROGERS JOSEPH O'DONNELL
2 ROBERT C. GOODMAN (State Bar No. 111554)
3 ANN M. BLESSING (State Bar No. 172573)
4 311 California Street
5 San Francisco, California 94104
6 Telephone: 415.956.2828
7 Facsimile: 415.956.6457

8 Attorneys for Petitioners Cherry Valley
9 Pass Acres and Neighbors and Cherry Valley
10 Environmental Planning Group

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE - RIVERSIDE BRANCH

11 CHERRY VALLEY PASS ACRES AND
12 NEIGHBORS, a California non-profit
13 corporation; and CHERRY VALLEY
14 ENVIRONMENTAL PLANNING GROUP, a
15 California non-profit corporation,

16 Petitioners,

17 v.

18 CITY OF BANNING, a municipal corporation;

19 Respondent.

20 SCC/BLACK BENCH, LLC; and ROES 1 to
21 100; inclusive,
22 Real Parties in Interest
23
24

460950 MF
No. RIC 461035

Case Filed Under the Environmental Quality
Act

~~PROPOSED~~ JUDGMENT

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 22, 2006

25 This matter came on regularly for hearing on December 19, 2007, in Department
26 42 of this Court. Robert C. Goodman and D. Kevin Shipp appeared on behalf of Petitioners

- 1 -

[PROPOSED] JUDGMENT - CASE NO. RIC 461035

266305.2

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

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1 Cherry Valley Pass Acres and Neighbors and Cherry Valley Environmental Planning Group,
2 (collectively referred to hereinafter as "CVPAN"). Respondents City of Banning ("City")
3 appeared through attorneys Geralyn L. Skapik and Amy E. Morgan and Real Party in Interest
4 SCC/Black Bench, LLC ("Real Party") appeared through attorneys Edward J. Casey, Shiraz D.
5 Tangri, and Tammy L. Jones. The Court having reviewed the record of respondent's proceedings
6 in this matter, the briefs submitted by counsel, and the arguments of counsel; the matter having
7 been submitted for decision; and the Court having issued an order that judgment and a
8 peremptory writ of mandate issue in this proceeding,

9 IT IS ORDERED that:

10 1. Judgment be entered in favor of Petitioners Cherry Valley Pass Acres and
11 Neighbors and Cherry Valley Environmental Planning Group in this proceeding.

12 2. A peremptory writ of mandate directed to respondent issue under seal of this
13 Court, ordering respondent to:

14 a. Set aside and vacate its adoption of Resolution No. 2006-128 certifying the
15 Final Environmental Impact Report for the Black Bench Specific Plan
16 pursuant to the California Environmental Quality Act ("CEQA");

17 b. Set aside and vacate its findings under the CEQA in connection with its
18 approval of the Black Bench Specific Plan;

19 c. Set aside and vacate its approvals of the Black Bench Project, including the
20 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129,
21 Resolution 2006-130, and Ordinance 1353; and

22 d. Set aside and vacate its approval of a Statement of Overriding Considerations
23 and Mitigation Monitoring Program in connection with the Black Bench
24 Project.

25 3. The City and the Real Party are enjoined from proceeding with grading,
26 construction, or any other physical implementation of the Black Bench Project that could result

1 in an adverse change or alteration to the physical environment, unless and until such time as the
2 City has certified and adopted an environmental impact report that complies with CEQA.

3 4. The court shall retain jurisdiction over the proceedings pursuant to Public
4 Resources Code §21168.9(b) and (c). Nevertheless, the Court intends this to be a final,
5 appealable judgment.

6 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
7 Rules 870 and 870.2.

8 6. Petitioner CVPAN, as prevailing party, is entitled to costs ~~in the amount of~~
9 ~~\$2,222.50 pursuant to Code of Civil Procedure Section 1033.5~~ *as established by appropriate post-judgment*
procedures.

10 7. Petitioner CVPAN, as prevailing party, is entitled to apply for attorney's fees
11 and costs through appropriate noticed motions after entry of this Judgment. This Court retains
12 jurisdiction to hear such motions and determine the amount of such fees, if any, pursuant to
13 them. ~~If such a motion is granted, this judgment will be amended to award the amount of \$~~
14 ~~2,222.50 in attorneys' fees pursuant to Code of Civil Procedure Section 1021.5.~~

15 8. Under Public Resources Code §21168.9(c), the Court does not direct
16 respondent to exercise its lawful discretion, in any particular way. Nothing in the judgment or
17 peremptory writ should be construed as requiring respondent or real parties to go forward with
18 the project, or to reapprove the project, or to take any particular action other than as specifically
19 set forth herein.

20 9. Respondent shall file a preliminary return to the peremptory writ no later than
21 60 days after the date of the issuance of the peremptory writ which shall state that an appeal from
22 the judgment has or will be filed or that it has complied with the order to set aside its approval of
23 the project.

24 Dated: April 7, 2008

T. Cahraman

Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

233

1 ROGERS JOSEPH O'DONNELL
2 ROBERT C. GOODMAN (State Bar No. 111554)
3 ANN M. BLESSING (State Bar No. 172573)
4 311 California Street
5 San Francisco, California 94104
6 Telephone: 415.956.2828
7 Facsimile: 415.956.6457

8 Attorneys for Petitioners Cherry Valley
9 Pass Acres and Neighbors and Cherry Valley
10 Environmental Planning Group

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF RIVERSIDE

460950 MF

11 CHERRY VALLEY PASS ACRES AND
12 NEIGHBORS, *et al.*,

13 Petitioners,

14 v.

15 CITY OF BANNING,

16 Respondent.

Case No. RIC 461035

Case Filed Under the Environmental Quality
Act

~~PROPOSED~~ PEREMPTORY WRIT OF
MANDATE

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

17
18
19 SCC/BLACK BENCH, LLC; and ROES 1 to 100;
20 inclusive,
Real Parties in Interest

Action Filed: November 22, 2006

21
22 Judgment having been entered in this proceeding in favor of Petitioners Cherry
23 Valley Pass Acres and Neighbors and Cherry Valley Environmental Planning Group, ordering
24 that a peremptory writ of mandate be issued from this Court,

25 IT IS SO ORDERED that, immediately on service of this writ, Respondent
26 City of Banning (the "City") shall:

- 1 -

[PROPOSED] PEREMPTORY WRIT OF MANDATE - CASE NO. RIC 461035

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1 1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying under
2 the California Environmental Quality Act ("CEQA") the Final Environmental Impact Report for
3 the Black Bench Specific Plan.

4 2. Set aside and vacate its findings under the CEQA in connection with its
5 approval of the Black Bench Specific Plan.

6 3. Set aside and vacate its approvals of the Black Bench Project, including the
7 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130,
8 and Ordinance 1353.

9 4. Set aside and vacate its approval of a Statement of Overriding Considerations
10 and Mitigation Monitoring Program in connection with the Black Bench Project.

11 Under Public Resources Code section 21168.9(c), this Court does not direct
12 Respondent to exercise its lawful discretion in any particular way.

13 Under Public Resources Code section 21168.9(b), this Court will retain
14 jurisdiction over Respondent's proceedings by way of a return to this peremptory writ of mandate
15 until the Court has determined that respondent has complied with the provisions of CEQA.

16 The City shall file a preliminary return to this writ no later than sixty (60) days
17 from the date this writ is issued setting forth what respondents have done to comply with the writ
18 set forth herein.

19 LET THE WRIT OF MANDATE ISSUE.

20
21 Dated: April 7, 2008

T. Cahran
Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as **NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

☐ BY FEDERAL EXPRESS ☐ UPS NEXT DAY AIR ☐ OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by ☐ FEDERAL EXPRESS ☐ UPS ☐ Overnight Delivery [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ FEDERAL EXPRESS ☐ UPS ☐ OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

Cherry Valley Pass Acres And Neighbors, et al., v. City of Banning
Case No. RIC 461035

SERVICE LIST

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Ann M. Blessing
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Attorney for Petitioners
**CHERRY VALLEY PASS ACRES
AND NEIGHBORS, and CHERRY
VALLEY ENVIRONMENTAL
PLANNING GROUP,**

Julie H. Biggs, City Attorney
CITY OF BANNING
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CITY OF BANNING

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EXHIBIT "B"

Resolution No. 2006-129

RESOLUTION NO. 2006-129

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF BANNING, CALIFORNIA APPROVING GENERAL
PLAN AMENDMENT #06-2502, TO MODIFY CERTAIN
CHANGES TO THE GENERAL PLAN CIRCULATION
ELEMENT**

WHEREAS, an application for General Plan Amendment #06-2502, to modify the Banning General Plan Circulation Element to:

- 1) Reclassify the segment of the Secondary Highway ("A" Street) within the project site (from Bluff Street to the proposed round-about) to a Collector Highway;
- 2) Modify the alignment of the Secondary Highway between Sunset Avenue or Highland Home Road and the proposed roundabout within the project site; and
- 3) Include proposed Collector Highway in the Black Bench Ranch Specific Plan area (Streets "B", "C", and "D"), has been duly filed by:

Applicant / Owner:	SunCal Companies
Authorized Agent:	Rod Hanway
Project Location:	Generally located north of Wilson Street, west of Bluff Street, between Sunset Avenue and Highland Springs Avenue
APN Numbers:	401-230-001 thru 011, 401-240-007 & 008, 401-250-005 & 006, 401-260-005 & 006, 531-200-001 thru 010, 531-210-004, 531-210-008 thru 012, 531-230-001 thru 007, 531-230-011 & 012, 531-240-007, 531-340-001 & 004.
Lot Area:	1,488 Acres

WHEREAS, the City Council has the authority to review and approve General Plan Amendment No. 06-2502 for a change in the General Plan Circulation Element to: 1) reclassify a segment of the Secondary Highway extending southwest from Bluff Street within the project site to a Collector Highway, and southwest from Bluff Street within the project site to a Collector Highway, and 2) identify proposed Collector Streets in the Black Bench Ranch Specific Plan (Streets "B", "C", and "D"); and

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

WHEREAS, in accordance with Government Code Sections 65353, 65355 and 65090, on the 29th day of September 2006, the City gave public notice by advertising in the Press Enterprise newspaper and property owners within 1200 feet of the site were mailed a public hearing notice of the holding of a public hearing at which the project would be considered; and

WHEREAS, at the public hearing on the 15th day of August 2006, the Planning Commission considered, heard public comments on, and approved Resolution No. 2006-17, recommending to the City Council approval of the General Plan Amendment; and

WHEREAS, in accordance with Government Code Section 65353, on the 11th day of October 2006, 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 time the City Council considered the General Plan Amendment; and

WHEREAS, at this public hearing on the 11th day of October 2006 the City Council considered, heard public comments on, and adopted a Environmental Impact Report (SCH No. 2004111024) for the project by Resolution 2006-128; and

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

SECTION 1. ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the Staff Report dated the 11th day of October 2006, 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 the requirements of the California Environmental Quality Act ("CEQA"), in that an Environmental Impact Report was prepared reflecting its independent judgment and analysis and documenting the potential significant impacts associated with implementation of the proposal. 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). A portion of the project is located within the MSHCP criteria Cell #227 and has gone through the HANS process with the Riverside Conservation Authority. No development or disturbance of land will occur within the Cell and mitigation will also be made through the payment of the MSHCP mitigation fees.

SECTION 2. GENERAL PLAN CONSISTENCY

The City Council finds that approval of this General Plan Amendment is consistent with the goals and policies of the General Plan, insofar as the General Plan encourages the development of master planned communities under Specific Plans, and the proposed designation will allow the development of a master planned community in the same density range as that occurring on other properties in the area.

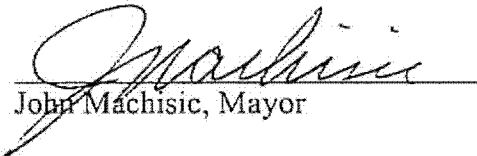
Further, this General Plan Amendment will not cause any internal inconsistencies with any other elements of the General Plan in that the portion of the General Plan Circulation Element for this street system was determined to be "flexible" in order to "allow changes to the street system in the future", as development occurred.

SECTION 3. CITY COUNCIL ACTIONS.


The City Council hereby takes the following action:

1. General Plan Amendment. The City Council approves General Plan Amendment #06-2502.

PASSED, APPROVED AND ADOPTED this 11th day of October, 2006.

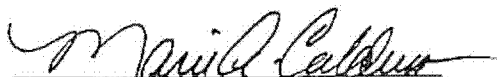

John Machisic, Mayor

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 the foregoing Resolution, No. 2006-129, was duly adopted by the City Council of the City of Banning, California, at a special meeting thereof held on the 11th day of October 2006, by the following vote, to wit:

AYES: Councilmembers Salas, Welch, Mayor Machisic

NOES: Councilmembers Hanna, Palmer

ABSENT: None

ABSTAIN: None



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

*BLACK BENCH RANCH
REPEAL OF RESOLUTIONS
NO. 2006-128, 129, 130 AND
ORDINANCE NO. 1353*

*RESOLUTION
NO. 2008-71*

EXHIBIT “3”

RESOLUTION NO. 2008-71

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, SETTING SIDE AND VACATING ADOPTION OF RESOLUTION NO. 2006-130 APPROVING LOT SPLIT #04-4509/TENTATIVE TRACT MAP 34001 PERTAINING TO THE PROPERTY GENERALLY LOCATED NORTH OF WILSON STREET, WEST OF BLUFF STREET, BETWEEN SUNSET AVENUE AND HIGHLAND SPRINGS AVENUE

WHEREAS, an application for the Black Bench Specific Plan, General Plan Amendment and Tentative Tract Map setting forth development parameters on 1,488 acres was duly filed by:

Applicant / Owner: SunCal Companies

Authorized Agent: Rod Hanway

Project Location: North of Wilson Street, west of Bluff Street, between Sunset Avenue and Highland Springs Avenue

APN Numbers: 401-230-001 thru 011, 401-240-007 & 008, 401-250-005 & 006, 401-260-005 & 006, 531-200-001 thru 010, 531-210-004, 531-210-008 thru 012, 531-230-001 thru 007, 531-230-011 & 012, 531-240-007, 531-340-001 & 004.

WHEREAS, on October 11, 2006, the City conducted a duly noticed public hearing to consider the project which included consideration of Lot Split #04-4509/Tentative Tract Map 34001 pertaining to the property generally located north of Wilson Street, West of Bluff Street, between Sunset avenue and Highland Springs Avenue; and

WHEREAS, at the City Council meeting of October 11, 2006, the City Council adopted Resolution No. 2006-130 approving Lot Split #04-4509/Tentative Tract Map 34001; and

WHEREAS, Petitioners the Center for Biological Diversity, Highland Springs Conference and Training Center, Banning Bench Community of Interest Association, and Cherry Valley Pass Acres and Neighbors filed litigation actions against the City and Real Party in Interest SCC/Black Bench, LLC, challenging, among other things, the City's adoption of Resolution No. 2006-130 approving Lot Split #04-4509/Tentative Tract Map 34001; and

WHEREAS, on April 24, 2008, the City received notice of the Judgment and Peremptory Writ of Mandate issued by the Riverside Superior Court directing the City vacate and set aside Resolution No. 2006-130 approving Lot Split #04-4509/Tentative Tract Map 34001; and

WHEREAS, the Judgment and Peremptory Writ of Mandate further direct the City to file a return to the Peremptory Writ of Mandate no later than 60 days from issuance of the Judgment and Writ; and

WHEREAS, in order to comply with the Judgment and Peremptory Writ of Mandate issued by the Riverside Superior Court, the City Council therefore desires to vacate and set aside adoption of Resolution No. 2006-130 approving Lot Split #04-4509/Tentative Tract Map 34001; and

WHEREAS, on May 30, 2008, the City gave public notice by advertising in the Press Enterprise newspaper and property owners within 1200 feet of the site were mailed public hearing notice of the holding of a public hearing for consideration of this Resolution No. 2008-71; and

WHEREAS, at the public hearing on June 10, 2008, the City Council considered and heard comments on the adoption of this Resolution No. 2008-71.

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

SECTION 1. FINDINGS.

1. On November 21st and 22nd, 2006, the following litigation matters were filed against the City of Banning and Real Party in Interest SCC/Black Bench LLC:

Highland Springs Conference and Training Center v. City of Banning; Case No. RIC 460950;

Center for Biological Diversity v. City of Banning; Case No. RIC 460967

Cherry Valley Pass Acres and Neighbors and Cherry Valley Environmental Planning Group v. City of Banning; Case No. RIC 461035

Banning Bench Community of Interest Association, Inc. v. City of Banning; Case No. RIC 461069

2. On April 24, 2008, the City received notice of the Judgment and Peremptory Writ of Mandate issued by the Riverside Superior Court (attached hereto as Exhibit "A") in the above referenced cases directing the City to vacate and set aside adoption of Resolution No. 2006-130 approving Lot Split #04-4509/Tentative Tract Map 34001.

SECTION 2. CITY COUNCIL ACTION.

The City Council hereby takes the following actions:

1. **Resolution No. 2006-130:** The City Council vacates and sets aside the adoption of Resolution No. 2006-130, which is attached hereto as Exhibit "B".

2. **Lot Split #04-4509/Tentative Tract Map 34001:** The City Council vacates and sets aside adoption of Lot Split #04-4509/Tentative Tract Map 34001.

PASSED, APPROVED, AND ADOPTED this 10th day of June, 2008.

Brenda Salas, Mayor

**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. 2008-71 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of June 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT "A"

Judgment and Peremptory Writ of Mandate

EDWARD J. CASEY (State Bar No. 119571)
SHIRAZ D. TANGRI (State Bar No. 203037)
TAMMY L. JONES (State Bar No. 232693)
WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071
Telephone: (213) 576-1000
Facsimile: (213) 576-1100

Attorneys for SCC/BLACK BENCH, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

HIGHLAND SPRINGS CONFERENCE AND
TRAINING CENTER,

Petitioner,

v.

CITY OF BANNING,

Respondent.

SCC/BLACK BENCH, LLC,
and DOES 1 through 10,

Real Parties in Interest.

Case No. RIC 460950 (MF)

Judge: Hon. Thomas Cahraman
Dept.: 42 (Riverside Hall of Justice)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 21, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

Exhibit 1

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

LR

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE - RIVERSIDE BRANCH

Highland Springs Conference and Training
Center

Petitioner,

v.

CITY OF BANNING, a municipal corporation;

Respondent.

No. RIC 460950 MF

California Environmental Quality Act

~~PROPOSED~~ JUDGMENT

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 21, 2006

SCC/BLACK BENCH, LLC; and DOES 1 to
100; inclusive,
Real Parties in Interest

- 1 -

JUDGMENT [PROPOSED] - CASE NO. RIC 460950

266305.1

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1 This matter came on regularly for hearing on December 19, 2007, in Department 42
2 of this Court. Jan Chatten-Brown and Arthur Pugsley appeared on behalf of Petitioner Highland
3 Springs Conference and Training Center. Respondents City of Banning ("City") appeared
4 through attorneys Geralyn L. Skapik and Amy E. Morgan and Real Party in Interest SCC/Black
5 Bench, LLC ("Real Party") appeared through attorneys Edward J. Casey, Shiraz D. Tangri, and
6 Tammy L. Jones. The Court having reviewed the record of respondent's proceedings in this
7 matter, the briefs submitted by counsel, and the arguments of counsel; the matter having been
8 submitted for decision; and the Court having issued an order that judgment and a peremptory writ
9 of mandate issue in this proceeding,

10 IT IS ORDERED that:

11 1. Judgment be entered in favor of Petitioner Highland Springs Conference and
12 Training Center in this proceeding.

13 2. A peremptory writ of mandate directed to Respondent City issue under seal of
14 this Court, ordering Respondent City to:

- 15 a. Set aside and vacate its certification under the California Environmental
16 Quality Act of the Final Environmental Impact Report for the Black Bench
17 Specific Plan.
- 18 b. Set aside and vacate its findings under the California Environmental Quality
19 Act in connection with its approval of the Black Bench Specific Plan.
- 20 c. Set aside and vacate its approvals of the Black Bench Project, including the
21 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129,
22 Resolution 2006-130, and Ordinance 1353.
- 23 d. Set aside and vacate its approval of a Statement of Overriding Considerations
24 and Mitigation Monitoring Program.
- 25
26

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1 3. ~~The City and the Real Party are enjoined from proceeding with grading,~~
2 ~~construction, or any other physical implementation of the Black Bench Project, unless and until~~
3 ~~such time as the City has certified and adopted an environmental impact report that complies~~
4 ~~with the California Environmental Quality Act.~~ The City and the Real Party are enjoined from
5 proceeding with grading, construction, or any other physical implementation of the Black Bench
6 Project that could result in an adverse change or alteration to the physical environment, unless
7 and until such time as the City has certified and adopted an environmental impact report that
8 complies with CEQA. (T.C.)

9 4. This Court shall retain jurisdiction over the proceedings pursuant to Public
10 Resources Code §21168.9(b) and (c). Nevertheless, the Court intends this to be a final,
11 appealable judgment.

12 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
13 Rules 870 and 870.2.

14 6. Petitioner Highland Springs Conference and Training Center, as prevailing
15 party, is entitled to costs ~~in the amount of \$ _____, pursuant to Code of Civil Procedure~~
16 ~~Section 1033.5~~ *as established by appropriate post-judgment procedures.* (T.C.)

17 7. Petitioner Highland Springs Conference and Training Center, as prevailing
18 party, is entitled to apply for attorney's fees and costs through appropriate noticed motions after
19 entry of this Judgment. This Court retains jurisdiction to hear such motions and determine the
20 amount of such fees, if any, pursuant to them. ~~If such a motion is granted, this judgment will be~~
21 ~~amended to award the amount of \$ _____, in attorneys' fees pursuant to Code of Civil~~
22 ~~Procedure Section 1021.5.~~ (T.C.)

23 8. Under Public Resources Code §21168.9(c), the Court does not direct
24 respondent to exercise its lawful discretion, in any particular way. Nothing in the judgment or
25 peremptory writ should be construed as requiring respondent or real parties to go forward with
26

1 the project, or to reapprove the project, or to take any particular action other than as specifically
2 set forth herein.

3 9. Respondent shall file a preliminary return to the peremptory writ no later than
4 60 days after the date of the issuance of the peremptory writ which shall state that an appeal from
5 the judgment has or will be filed or that it has complied with the order to set aside its approval of
6 the project.

7 Dated: April 7, 2008

T. Cahraman

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9 Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT
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Exhibit 2

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

LR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

Highland Springs Conference and Training Center

Petitioner,

v.

CITY OF BANNING,

Respondent.

SCC/BLACK BENCH, LLC, and DOES 1 to 100;
inclusive,

Real Parties in Interest.

Case No. RIC 460950

California Environmental Quality Act

~~PROPOSED~~ PEREMPTORY WRIT OF
MANDATE

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 21, 2006

Judgment having been entered in this proceeding, ordering that a peremptory
writ of mandate be issued from this Court,

IT IS SO ORDERED that, immediately on service of this writ, Respondent
City of Banning and SCC/Black Bench, LLC:

1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying under
the California Environmental Quality Act the Final Environmental Impact Report for the Black
Bench Specific Plan.

- 1 -

PEREMPTORY WRIT OF MANDATE [PROPOSED] - CASE NO. RIC 460950

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1 2. Set aside and vacate its findings under the California Environmental Quality
2 Act in connection with its approval of the Black Bench Specific Plan.

3 3. Set aside and vacate its approvals of the Black Bench Project, including the
4 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130,
5 and Ordinance 1353.

6 4. Set aside and vacate its approval of a Statement of Overriding Considerations
7 and Mitigation Monitoring Program.

8 5. Suspend all grading, construction, or any other physical implementation of the
9 Black Bench Project, unless and until such time as the City has certified and adopted an
10 environmental impact report that complies with the California Environmental Quality Act.

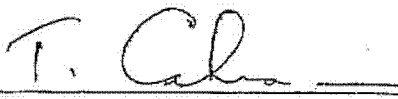
11 Under Public Resources Code section 21168.9(c), this Court does not direct
12 Respondent to exercise its lawful discretion in any particular way.

13 Under Public Resources Code section 21168.9(b), this Court will retain
14 jurisdiction over Respondent's proceedings by way of a return to this peremptory writ of mandate
15 until the Court has determined that respondent has complied with the provisions of CEQA.

16 Respondent shall file a preliminary return to this writ no later than sixty (60) days
17 from the date this writ is issued setting forth what respondents have done to comply with the writ
18 set forth herein.

19 LET THE WRIT OF MANDATE ISSUE.

20
21 Dated: April 7, 2008

22 
23 Hon. Thomas H. Cahraman
24 JUDGE OF THE SUPERIOR COURT
25
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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as **NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ **BY MAIL:** I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.


☐ **BY FEDERAL EXPRESS** ☐ **UPS NEXT DAY AIR** ☐ **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **Overnight Delivery** [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **OVERNIGHT DELIVERY** [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ **BY FACSIMILE:** I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

1 Highland Springs Conference and Training Center v. City of Banning
2 Case No. RIC 460950

3
4 SERVICE LIST

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7 Jan Chatten-Brown
8 Douglas P. Carstens
9 Amy Minter
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Attorney for Petitioner
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14 **CITY OF BANNING**
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19 Stephen R. Onstot
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28

1 EDWARD J. CASEY (State Bar No. 119571)
2 SHIRAZ D. TANGRI (State Bar No. 203037)
3 TAMMY L. JONES (State Bar No. 232693)
4 WESTON, BENSHOOF, ROCHEFORT,
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10 Attorneys for SCC/BLACK BENCH, LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC., a
Californian Non-Profit Corporation,

Petitioner and Plaintiff,

v.

CITY OF BANNING and CITY COUNCIL
OF THE CITY OF BANNING,

Respondents and Defendants.

SCC/BLACK BENCH, LLC, a Delaware
Limited Liability Company, and DOES 1
through 25, Inclusive,

Real Parties in Interest.

Case No. RIC 461069
460950 MF

Judge: Hon. Stephen D. Cunnison
Dept.: 1 (Riverside Branch)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 22, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

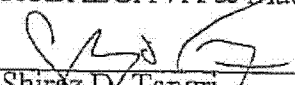

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

Exhibit 1

260

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

460950 MF

BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC.,

Petitioner and Plaintiff,

v.

CITY OF BANNING, CITY COUNCIL OF
THE CITY OF BANNING,

Respondents and Defendants.

SCC/BLACK BENCH, LLC, *et al.*,

Real Parties in Interest.

Case No. RIC 461069

California Environmental Quality Act case

~~PROPOSED~~ JUDGMENT

Judge: Honorable Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 22, 2006

This matter came on regularly for hearing on December 19, 2007, in Department 42 of this Court. John G. McClendon appeared on behalf of Petitioner and Plaintiff Banning Bench Community of Interest Association, Inc. ("BBCIA"). Respondents and Defendants City of Banning and City Council of the City of Banning (collectively, the "City") appeared through attorneys Geralyn L. Skapik and Amy E. Morgan, and Real Party in Interest SCC/Black Bench, LLC ("Real Party") appeared through attorneys Edward J. Casey, Shiraz D. Tangri, and Tammy L. Jones. At the close of that hearing, the Court took the matter under submission and, on January 29, 2008, issued its Minute Order/Judgment and a Ruling on Submitted Matter ("Minute Order").

261

1 On March 19, 2008, the parties executed a *Joint Stipulation Regarding The Third*
2 *Cause Of Action To Banning Bench Community Of Interest Association's Petition For Writ*
3 *Of Mandate; Complaint For Declaratory Relief and [Proposed] Order* ("Stipulation")
4 acknowledging that the Court's Minute Order resolved the need for further briefing and/or
5 hearing with regard to BBCIA's Third Cause of Action for Declaratory Relief and was now
6 moot. Pursuant to the Stipulation, the Court ordered the Third Cause of Action for
7 Declaratory Relief dismissed with prejudice for mootness.

8 The Court having reviewed the record of the City's proceedings in this matter; the briefs
9 submitted by counsel and the arguments of counsel; the matter having been submitted for decision;
10 the Court having issued the Minute Order ordering that judgment and a peremptory writ of mandate
11 issue in this proceeding and having signed the Stipulation,

12 IT IS ORDERED that BBCIA's *Petition for Writ of Mandate; Complaint for Declar-*
13 *atory Relief* is DENIED as to its Second Cause of Action and GRANTED as to its First
14 Cause of Action for relief under the California Environmental Quality Act (Public Resources
15 Code § 21000 *et seq.*: "CEQA"); THEREFORE, IT IS FURTHER ORDERED that:

- 16 1. Judgment be entered in favor of BBCIA in this proceeding.
- 17 2. A peremptory writ of mandate directed to the City issue under seal of this Court,
18 ordering the City to:
 - 19 a. Set aside and vacate its certification under CEQA of the Final
20 Environmental Impact Report ("EIR") for the Black Bench Specific
21 Plan.
 - 22 b. Set aside and vacate its findings under CEQA in connection with its
23 approval of the Black Bench Specific Plan.
 - 24 c. Set aside and vacate its approvals of the Black Bench Project, including
25 the Black Bench Specific Plan, and its adoption of Resolution No. 2006-
26 129, Resolution 2006-130, and Ordinance 1353.
 - 27 d. Set aside and vacate its approval of a Statement of Overriding
28 Considerations and Mitigation Monitoring Program.

1 3. The City and the Real Party are enjoined from proceeding with grading,
2 construction, or any other physical implementation of the Black Bench Project that could
3 result in an adverse change or alteration to the physical environment, unless and until such
4 time as the City has certified and adopted an environmental impact report that complies with
5 CEQA.

6 4. The Court shall retain jurisdiction over the proceedings pursuant to Public
7 Resources Code section 21168.9(b) and (c). Nevertheless, the Court intends this to be a
8 final, appealable judgment.

9 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
10 Rules 870 and 870.2.

11 6. Petitioner BBCIA, as prevailing party, is entitled to costs ~~in the amount of~~
12 ~~as established by the appropriate~~
~~pursuant to Code of Civil Procedure section 1033.5~~
~~post-judgment procedures.~~

13 7. Petitioner BBCIA, as prevailing party, is entitled to apply for attorneys' fees and
14 costs through appropriate noticed motions after entry of this Judgment. This Court retains
15 jurisdiction to hear such motions and determine the amount of such fees, if any, pursuant to
16 them. ~~If such a motion is granted, this judgment will be amended to award the amount of~~
17 ~~\$ _____, in attorneys' fees pursuant to Code of Civil Procedure section 1021.5.~~

18 8. Under Public Resources Code section 21168.9(c), the Court does not direct the
19 City to exercise its lawful discretion, in any particular way. Nothing in the judgment or
20 peremptory writ should be construed as requiring respondent or real parties to go forward
21 with the project, or to reapprove the project, or to take any particular action other than as
22 specifically set forth herein.

23 The City shall file a preliminary return to the peremptory writ no later than 60 days
24 after the date of the issuance of the peremptory writ which shall state that an appeal from the
25 judgment has or will be filed or that it has complied with the order to set aside its approval of
26 the EIR and the Black Bench Project.

27 DATED: April 7, 2008

28 T. Calhoun
Honorable Thomas H. Calhoun
JUDGE OF THE SUPERIOR COURT

Exhibit 2

264

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

[Signature]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

460950 MF

BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC.,

Petitioner and Plaintiff,

v.

CITY OF BANNING, CITY COUNCIL OF
THE CITY OF BANNING,

Respondents and Defendants.

Case No. RIC 461069

California Environmental Quality Act case

~~PROPOSED~~ PEREMPTORY WRIT
OF MANDATE

Judge: Honorable Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 22, 2006

SCC/BLACK BENCH, LLC, *et al.*,

Real Parties in Interest.

Judgment having been entered in this proceeding in favor of Petitioner and Plaintiff Banning Bench Community of Interest Association ordering that a peremptory writ of mandate issue,

IT IS SO ORDERED that, immediately on service of this writ, Respondents City of Banning and City Council of the City of Banning (collectively, "Respondent") shall:

1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying under the California Environmental Quality Act ("CEQA") the Final Environmental Impact Report for the Black Bench Specific Plan.

265

1 2. Set aside and vacate its findings under CEQA in connection with its approval of
2 the Black Bench Specific Plan.

3 3. Set aside and vacate its approvals of the Black Bench Project, including the Black
4 Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130, and
5 Ordinance 1353.

6 4. Set aside and vacate its approval of a Statement of Overriding Considerations and
7 Mitigation Monitoring Program.

8 5. Suspend all grading, construction, or any other physical implementation of the
9 Black Bench Project, unless and until such time as the City has certified and adopted an
10 environmental impact report that complies with CEQA.

11 Under Public Resources Code section 21168.9(c), this Court does not direct
12 Respondent to exercise its lawful discretion in any particular way.

13 Under Public Resources Code section 21168.9(b), this Court will retain jurisdiction
14 over Respondent's proceedings by way of a return to this peremptory writ of mandate until
15 the Court has determined that Respondent has complied with the provisions of CEQA.

16 Respondent shall file a preliminary return to this writ no later than sixty (60) days
17 from the date this writ is issued setting forth what Respondents has done to comply with the
18 writ set forth herein.

19 LET THE WRIT OF MANDATE ISSUE.

20
21 DATED:

April 7, 2008

T. Cahraman
Honorable Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

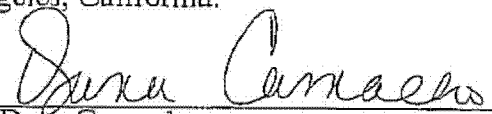
☐ BY FEDERAL EXPRESS ☐ UPS NEXT DAY AIR ☐ OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by ☐ FEDERAL EXPRESS ☐ UPS ☐ Overnight Delivery [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ FEDERAL EXPRESS ☐ UPS ☐ OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

Banning Bench Community of Interest Association, Inc. v. City of Banning, et al.
Case No. RIC 461069

SERVICE LIST

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Alisha M. Santana
LEIBOLD, McCLENDON & MANN LLP

Attorneys for Petitioner and Plaintiff
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Julie H. Biggs, City Attorney

CITY OF BANNING

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Attorneys for Respondents and Defendants

CITY OF BANNING and

**CITY COUNCIL OF THE CITY
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1 EDWARD J. CASEY (State Bar No. 119571)
2 SHIRAZ D. TANGRI (State Bar No. 203037)
3 TAMMY L. JONES (State Bar No. 232693)
4 WESTON, BENSHOOF, ROCHEFORT,
5 RUBALCAVA & MacCUISH LLP
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10 Attorneys for SCC/BLACK BENCH, LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

CENTER FOR BIOLOGICAL DIVERSITY,
Petitioner,

v.

CITY OF BANNING, CITY COUNCIL OF
THE CITY OF BANNING,
and Does 1-20,

Respondents.

SCC/BLACK BENCH, LLC,
and DOES 21 through 50, Inclusive,

Real Parties in Interest.

Case No. RIC 460967
460950 MF

Judge: Hon. Gloria Connor Trask
Dept.: 4 (Riverside Branch)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 21, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

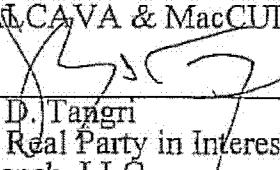

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

Exhibit 1

1 This matter came on regularly for hearing on December 19, 2007, in Department 42 of
2 this Court. Matthew D. Vespa appeared on behalf of Petitioner CENTER FOR BIOLOGICAL
3 DIVERSITY (the "Center"). Respondents CITY OF BANNING and the CITY COUNCIL OF
4 THE CITY OF BANNING (the "City") appeared through attorneys Geralyn L. Skapik and
5 Amy E. Morgan, and Real Party in Interest SCC/BLACK BENCH, LLC ("Real Party")
6 appeared through attorneys Edward J. Casey, Shiraz D. Tangri, and Tammy L. Jones. The
7 Court having reviewed the record of the City's proceedings in this matter, the briefs submitted
8 by counsel, and the arguments of counsel; the matter having been submitted for decision; and
9 the Court having issued an order that judgment and a peremptory writ of mandate issue in this
10 proceeding,

11 IT IS ORDERED that:

12 1. Judgment be entered in favor of the Center in this proceeding.

13 2. A peremptory writ of mandate directed to the City issue under seal of this Court,
14 ordering the City to:

- 15 a. Set aside and vacate its adoption of Resolution No. 2006-128 certifying
16 the Final Environmental Impact Report for the Black Bench Specific
17 Plan pursuant to the California Environmental Quality Act ("CEQA").
18 b. Set aside and vacate its findings under CEQA in connection with its
19 approval of the Black Bench Specific Plan.
20 c. Set aside and vacate its approvals of the Black Bench Project, including
21 the Black Bench Specific Plan, and its adoption of Resolution No. 2006-
22 129, Resolution 2006-130, and Ordinance 1353.
23 d. Set aside and vacate its approval of a Statement of Overriding
24 Considerations and Mitigation Monitoring Program in connection with
25 the Black Bench Project.

26 3. The City and the Real Party are enjoined from proceeding with grading,
27 construction, or any other physical implementation of the Black Bench Project that could result

1 in an adverse change or alteration to the physical environment, unless and until such time as
2 the City has certified and adopted an environmental impact report that complies with CEQA.

3 4. The Court shall retain jurisdiction over the proceedings pursuant to Public
4 Resources Code §21168.9(b) and (c). Nevertheless, the Court intends this to be a final,
5 appealable judgment.

6 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
7 Rules 870 and 870.2.

8 6. The Center, as prevailing party, is entitled to costs ~~in the amount of \$~~ *as established by*
9 ~~pursuant to Code of Civil Procedure Section 1033.5~~ *appropriate post-judgment*
10 *procedures.*

11 7. The Center, as prevailing party, is entitled to apply for attorney's fees and costs
12 through appropriate noticed motions after entry of this Judgment. This Court retains
13 jurisdiction to hear such motions and determine the amount of such fees, if any, pursuant to
14 them. ~~If such a motion is granted, this judgment will be amended to award the amount of \$~~
15 ~~in attorneys' fees pursuant to Code of Civil Procedure Section 1021.5.~~

16 8. Under Public Resources Code §21168.9(c), the Court does not direct the City to
17 exercise its lawful discretion, in any particular way. Nothing in the judgment or peremptory
18 writ should be construed as requiring the City or Real Party to go forward with the Black
19 Bench Project, or to reapprove the Black Bench Project, or to take any particular action other
20 than as specifically set forth herein.

21 The City shall file a return to the peremptory writ no later than 60 days after the date of
22 the issuance of the peremptory writ which shall state that it has complied with writ or that an
23 appeal from the judgment has or will be filed.

24
25 Dated: April 7, 2008

T. Cahraman

Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

274

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



Matthew D. Vespa (SBN 222265)
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Attorneys for Petitioner
CENTER FOR BIOLOGICAL DIVERSITY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE

CENTER FOR BIOLOGICAL
DIVERSITY,

Petitioner,

vs.

CITY OF BANNING,
CITY COUNCIL OF THE CITY OF
BANNING,
and DOES 1-20,

Respondents.

SCC/BLACK BENCH, LLC
and DOES 21-50,

Real Parties in Interest.

Case No. RIC 460967

Case Filed Under the California Environmental
Quality Act

~~PROPOSED~~ PEREMPTORY WRIT OF
MANDATE

Original Date of Filing: November 21, 2006

Judge: Hon. Thomas H. Cahraman
Department: 42

[Proposed] Peremptory Writ of Mandate

Case No. RIC 460967

275

1 Judgment having been entered in this proceeding in favor of Petitioner CENTER FOR
2 BIOLOGICAL DIVERSITY ordering that a peremptory writ of mandate issue,

3 IT IS THEREFORE ORDERED that, immediately on service of this writ, Respondent
4 CITY OF BANNING (the "City") shall do the following:

5 1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying the
6 Final Environmental Impact Report for the Black Bench Specific Plan pursuant to the
7 California Environmental Quality Act ("CEQA").

8 2. Set aside and vacate its findings under CEQA in connection with its approval of
9 the Black Bench Specific Plan.

10 3. Set aside and vacate its approvals of the Black Bench Project, including the
11 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130,
12 and Ordinance 1353.

13 4. Set aside and vacate its approval of a Statement of Overriding Considerations
14 and Mitigation Monitoring Program in connection with the Black Bench Project.


15
16 Pursuant to Public Resources Code section 21168.9(c), this Court does not direct
17 Respondent to exercise its lawful discretion in any particular way.

18 Pursuant to Public Resources Code section 21168.9(b), this Court will retain
19 jurisdiction over this matter by way of a return to this peremptory writ of mandate until the
20 Court has determined that the City has complied with the provisions of CEQA.

21 The City shall file a return to this writ no later than sixty (60) days from the date this writ
22 is issued setting forth what it has done to comply with the writ set forth herein.

23 LET THE WRIT OF MANDATE ISSUE.

24
25 Dated: April 7, 2008



Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as **NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ **BY MAIL:** I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.


☐ **BY FEDERAL EXPRESS** ☐ **UPS NEXT DAY AIR** ☐ **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **Overnight Delivery** [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **OVERNIGHT DELIVERY** [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ **BY FACSIMILE:** I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

Center for Biological Diversity v. City of Banning, et al.

Case No. RIC 460967

SERVICE LIST

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San Francisco, CA 94103
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Fax: (415) 436-9683

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**CENTER FOR BIOLOGICAL
DIVERSITY**

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CENTER FOR BIOLOGICAL DIVERSITY
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Chicago, IL 60637
Tel: (312) 237-1443

Julie H. Biggs, City Attorney
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Banning, CA 92220
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Attorneys for Respondents
**CITY OF BANNING and
CITY COUNCIL OF THE CITY
OF BANNING**

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1 EDWARD J. CASEY (State Bar No. 119571)
2 SHIRAZ D. TANGRI (State Bar No. 203037)
3 TAMMY L. JONES (State Bar No. 232693)
4 WESTON, BENSHOOF, ROCHEFORT,
5 RUBALCAVA & MacCUISH LLP
6 333 South Hope Street, Sixteenth Floor
7 Los Angeles, California 90071
8 Telephone: (213) 576-1000
9 Facsimile: (213) 576-1100

10 Attorneys for SCC/BLACK BENCH, LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

CHERRY VALLEY PASS ACRES AND
NEIGHBORS, a California Non-Profit
Corporation, and CHERRY VALLEY
ENVIRONMENTAL PLANNING GROUP, a
California Non-Profit Corporation,

Petitioners,

v.

CITY OF BANNING, a Municipal Corporation,

Respondent.

SCC/BLACK BENCH, LLC,
and DOES 1 through 100, Inclusive,

Real Parties in Interest.

Case No. RIC 461035

460950 MF

Judge: Commissioner Joan F. Burgess
Dept.: 6 (Riverside Branch)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 22, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

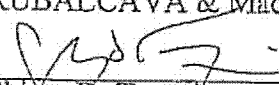

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

Exhibit 1

280

1 ROGERS JOSEPH O'DONNELL
2 ROBERT C. GOODMAN (State Bar No. 111554)
3 ANN M. BLESSING (State Bar No. 172573)
4 311 California Street
5 San Francisco, California 94104
6 Telephone: 415.956.2828
7 Facsimile: 415.956.6457

8 Attorneys for Petitioners Cherry Valley
9 Pass Acres and Neighbors and Cherry Valley
10 Environmental Planning Group

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE - RIVERSIDE BRANCH

11 CHERRY VALLEY PASS ACRES AND
12 NEIGHBORS, a California non-profit
13 corporation; and CHERRY VALLEY
14 ENVIRONMENTAL PLANNING GROUP, a
15 California non-profit corporation,

16 Petitioners,

17 v.

18 CITY OF BANNING, a municipal corporation;

19 Respondent.

20 SCC/BLACK BENCH, LLC; and ROES 1 to
21 100; inclusive,
22 Real Parties in Interest
23
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460950 MF
No. RIC 461035

Case Filed Under the Environmental Quality
Act

~~PROPOSED~~ JUDGMENT

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 22, 2006

25 This matter came on regularly for hearing on December 19, 2007, in Department
26 42 of this Court. Robert C. Goodman and D. Kevin Shipp appeared on behalf of Petitioners

- 1 -

[PROPOSED] JUDGMENT - CASE NO. RIC 461035

256105.2

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

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1 Cherry Valley Pass Acres and Neighbors and Cherry Valley Environmental Planning Group,
2 (collectively referred to hereinafter as "CVPAN"). Respondents City of Banning ("City")
3 appeared through attorneys GERALYN L. Skapik and Amy E. Morgan and Real Party in Interest
4 SCC/Black Bench, LLC ("Real Party") appeared through attorneys Edward J. Casey, Shiraz D.
5 Tangri, and Tammy L. Jones. The Court having reviewed the record of respondent's proceedings
6 in this matter, the briefs submitted by counsel, and the arguments of counsel; the matter having
7 been submitted for decision; and the Court having issued an order that judgment and a
8 peremptory writ of mandate issue in this proceeding,

9 IT IS ORDERED that:

10 1. Judgment be entered in favor of Petitioners Cherry Valley Pass Acres and
11 Neighbors and Cherry Valley Environmental Planning Group in this proceeding.

12 2. A peremptory writ of mandate directed to respondent issue under seal of this
13 Court, ordering respondent to:

- 14 a. Set aside and vacate its adoption of Resolution No. 2006-128 certifying the
15 Final Environmental Impact Report for the Black Bench Specific Plan
16 pursuant to the California Environmental Quality Act ("CEQA");
17 b. Set aside and vacate its findings under the CEQA in connection with its
18 approval of the Black Bench Specific Plan;
19 c. Set aside and vacate its approvals of the Black Bench Project, including the
20 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129,
21 Resolution 2006-130, and Ordinance 1353; and
22 d. Set aside and vacate its approval of a Statement of Overriding Considerations
23 and Mitigation Monitoring Program in connection with the Black Bench
24 Project.

25 3. The City and the Real Party are enjoined from proceeding with grading,
26 construction, or any other physical implementation of the Black Bench Project that could result

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1 in an adverse change or alteration to the physical environment, unless and until such time as the
2 City has certified and adopted an environmental impact report that complies with CEQA.

3 4. The court shall retain jurisdiction over the proceedings pursuant to Public
4 Resources Code §21168.9(b) and (c). Nevertheless, the Court intends this to be a final,
5 appealable judgment.

6 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
7 Rules 870 and 870.2.

8 6. Petitioner CVPAN, as prevailing party, is entitled to costs ~~in the amount of~~
9 ~~\$2,500 pursuant to Code of Civil Procedure Section 1033.5~~ *as established by appropriate post-judgment procedures.*

10 7. Petitioner CVPAN, as prevailing party, is entitled to apply for attorney's fees
11 and costs through appropriate noticed motions after entry of this Judgment. This Court retains
12 jurisdiction to hear such motions and determine the amount of such fees, if any, pursuant to
13 them. ~~If such a motion is granted, this judgment will be amended to award the amount of \$~~
14 ~~_____ in attorneys' fees pursuant to Code of Civil Procedure Section 1021.5.~~

15 8. Under Public Resources Code §21168.9(c), the Court does not direct
16 respondent to exercise its lawful discretion, in any particular way. Nothing in the judgment or
17 peremptory writ should be construed as requiring respondent or real parties to go forward with
18 the project, or to reapprove the project, or to take any particular action other than as specifically
19 set forth herein.

20 9. Respondent shall file a preliminary return to the peremptory writ no later than
21 60 days after the date of the issuance of the peremptory writ which shall state that an appeal from
22 the judgment has or will be filed or that it has complied with the order to set aside its approval of
23 the project.

24 Dated: April 7, 2008

25 T. Cahraman
26 Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

284

1 ROGERS JOSEPH O'DONNELL
2 ROBERT C. GOODMAN (State Bar No. 111554)
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4 311 California Street
5 San Francisco, California 94104
6 Telephone: 415.956.2828
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8 Attorneys for Petitioners Cherry Valley
9 Pass Acres and Neighbors and Cherry Valley
10 Environmental Planning Group

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF RIVERSIDE

460950 MF

11 CHERRY VALLEY PASS ACRES AND
12 NEIGHBORS, *et al.*,

13 Petitioners,

14 v.

15 CITY OF BANNING,

16 Respondent.

Case No. RIC 461035

Case Filed Under the Environmental Quality
Act

~~PROPOSED~~ PEREMPTORY WRIT OF
MANDATE

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

19 SCC/BLACK BENCH, LLC; and ROES 1 to 100;
20 inclusive,
21 Real Parties in Interest

Action Filed: November 22, 2006

22 Judgment having been entered in this proceeding in favor of Petitioners Cherry
23 Valley Pass Acres and Neighbors and Cherry Valley Environmental Planning Group, ordering
24 that a peremptory writ of mandate be issued from this Court,

25 IT IS SO ORDERED that, immediately on service of this writ, Respondent
26 City of Banning (the "City") shall:

- 1 -

[PROPOSED] PEREMPTORY WRIT OF MANDATE - CASE NO. RIC 461035

266450.3

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1 1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying under
2 the California Environmental Quality Act ("CEQA") the Final Environmental Impact Report for
3 the Black Bench Specific Plan.

4 2. Set aside and vacate its findings under the CEQA in connection with its
5 approval of the Black Bench Specific Plan.

6 3. Set aside and vacate its approvals of the Black Bench Project, including the
7 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130,
8 and Ordinance 1353.

9 4. Set aside and vacate its approval of a Statement of Overriding Considerations
10 and Mitigation Monitoring Program in connection with the Black Bench Project.

11 Under Public Resources Code section 21168.9(c), this Court does not direct
12 Respondent to exercise its lawful discretion in any particular way.

13 Under Public Resources Code section 21168.9(b), this Court will retain
14 jurisdiction over Respondent's proceedings by way of a return to this peremptory writ of mandate
15 until the Court has determined that respondent has complied with the provisions of CEQA.

16 The City shall file a preliminary return to this writ no later than sixty (60) days
17 from the date this writ is issued setting forth what respondents have done to comply with the writ
18 set forth herein.

19 LET THE WRIT OF MANDATE ISSUE.

20
21 Dated: April 7, 2008

T. Cahran
Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as **NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

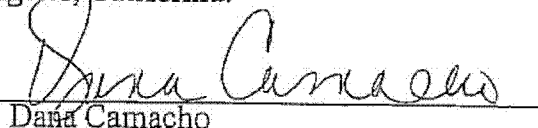
☐ BY FEDERAL EXPRESS ☐ UPS NEXT DAY AIR ☐ OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by ☐ FEDERAL EXPRESS ☐ UPS ☐ Overnight Delivery [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ FEDERAL EXPRESS ☐ UPS ☐ OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

Cherry Valley Pass Acres And Neighbors, et al., v. City of Banning
Case No. RIC 461035

SERVICE LIST

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Attorney for Petitioners
**CHERRY VALLEY PASS ACRES
AND NEIGHBORS, and CHERRY
VALLEY ENVIRONMENTAL
PLANNING GROUP,**

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CITY OF BANNING

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EXHIBIT "B"

Resolution No. 2006-130

RESOLUTION NO. 2006-130

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING LOT SPLIT #04-4509/TENTATIVE TRACT MAP 34001, PERTAINING TO THE PROPERTY GENERALLY LOCATED NORTH OF WILSON STREET, WEST OF BLUFF STREET, BETWEEN SUNSET AVENUE AND HIGHLAND SPRINGS AVENUE.

WHEREAS, an application for Lot Split #04-4509 / Tentative Tract Map 34001, to subdivide 1,488 acres into 1,453 single family lots and common areas has been duly filed by:

Applicant / Owner:	SunCal Companies
Authorized Agent:	Rod Hanway
	Project Location: North of Wilson Street, west of Bluff Street, between Sunset Avenue and Highland Springs Avenue. APN Numbers: 401-230-001 thru 011, 401-240-007 & 008, 401-250-005 & 006, 401-260-005 & 006, 531-200-001 thru 010, 531-210-004, 531-210-008 thru 012, 531-230-001 thru 007, 531-230-011 & 012, 531-240-007, 531-340-001 & 004.
Lot Area:	1,488 Acres

WHEREAS, the General Plan and a Development Agreement, by and between the City of Banning and the project proponent allows for the subdivision of the site up to 1,500 single family lots, lettered lots for open spaces, streets and retention basins, subject to the approval of a Lot Split; and

WHEREAS, on the 29th day of September 2006, the City gave public notice as required under Government Code Section 66451.3 by advertising in the Press Enterprise newspaper and property owners within 1200 feet of the site were mailed a public hearing notice of the holding of a public hearing at which the project would be considered; and

WHEREAS, in accordance with Government Code Section 66452.3, the City has provided the applicant a copy of the Community Development report and recommendation to the City Council at least three (3) days prior to the below referenced noticed public hearing; and

WHEREAS, on the 15th day of August 2006, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Tentative Tract Map and at which time the Planning Commission considered the Tentative Tract Map, and adopted Resolution No. 2006-19 recommending approval of the Tentative Tract Map 34001; and

WHEREAS, on the 11th day of October 2006, the City Council held the noticed public hearing, at which interested persons had an opportunity to testify in support of, or opposition to,

the Tentative Tract Map; the City Council continued consideration of the Tentative Tract Map to October 24th and at which time the City Council considered the Tentative Tract Map; and

WHEREAS, at this public hearing on the 11th day of October 2006, the City Council considered, heard public comments on and adopted the final Environmental Impact Report (SCH #2004111024) for the project by Resolution 2006-128.

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

SECTION 1. ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the Staff Reports dated the 11th and 24th day of October 2006, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and §21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. CEQA: The approval of this Tentative Tract Map is in compliance with the requirements of the California Environmental Quality Act ("CEQA"), in that an Environmental Impact Report was prepared reflecting its independent judgment and analysis and documenting the potential significant impacts associated with implementation of the proposal. 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. A portion of the project is located within the MSHCP criteria area; however, no development will occur over this area. In addition, mitigation is provided through payment of the MSHCP Mitigation Fee.

SECTION 2. MAP ACT FINDINGS.

In accordance with Banning Municipal Code § 2-9 and Government Code § 66473.1, § 66473.5 and § 66474, the Planning Commission, in light of the whole record before it, including but not limited to the Planning Department's staff report and all documents incorporated by reference therein, the City's General Plan, Subdivision Ordinance, Zoning Ordinance, standards for public streets and facilities, and any other evidence within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. Tentative Tract Map 34001 is consistent and compatible with the objectives, policies, general land uses, and programs specified in the City's General Plan in that the property is designated Specific Plan Area with an underlying Very Low Density land use designation (0-2 units/acre). The site is 1,488 acres and the applicant proposes to cluster 1,453 residential parcels, a density of less than one unit per acre. Further, this map will provide executive ("move-up") housing opportunities, which is consistent with Land Use

Residential Goal 2 in that the project will provide "a broad range of housing types to fill the needs of the City's current and future residents". Also, the Map will provide approximately 81.2 acres of parks and 869 acres of open space with a variety of passive and active recreational opportunities, which is consistent with Goal 1 of providing "a high quality public park system with adequate land and facilities to provide recreational facilities and activities for the City's residents."

2. The design and improvement of the subdivision proposed under Tentative Tract Map 34001 is consistent with the City's General Plan in that the proposed subdivision has been designed to meet City standards which will provide satisfactory pedestrian and vehicular circulation, including emergency vehicle access and on site improvements, such as streets, utilities, and drainage facilities insofar as the Tract Map has been conditioned to require their construction in conformance with City standards.
3. The site is physically suitable for the type of development proposed under Tentative Tract Map 34001, in that the flatter portions of the 1,488 acre site will be developed, the ridgelines will be maintained. Further, the subdivision has been designed to follow the existing terrain (northwest to southeast).
4. The site is physically suitable for the density of development proposed under Tentative Tract Map 34001, in that the proposed tract map will allow the development of 1,453 conforming single family lots with lots ranging in size from 6,000 square feet to over 12,000 square feet. The site is 1,488 acres and the applicant proposes to cluster 1,453 residential parcels, a density of less than one unit per acre, the General Plan allows a density from 0 to 2 units per acre.
5. The design of the subdivision and improvements proposed under Tentative Tract Map 34001 is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat in that: No State or Federally listed plant or wildlife species occur on the project site. The project is consistent with MSHCP in that Cell #227 will be preserved in accordance with the applicable standards. Implementation of the proposed project would result in the loss of habitat; however, these lands are outside of the MSHCP conservation area; do not serve as habitats for state or federally-listed threatened or endangered species; and sufficient amount of open space will remain on site, including a sufficient amount of local wildlife movement along/through Cell #227 and Smith Creek. The project will impact natural resources; however, a mitigation measure has been imposed that will require proper site planning with a biologist to ensure that sensitive resources are protected.
6. The design of the subdivision and improvements proposed under Tentative Tract Map 34001 is not likely to cause serious public health problems in that the design of the subdivision is in conformance with the City's General Plan, Specific Plan, and Subdivision Ordinance, Development Agreement and the City's Ordinances relating to Stormwater runoff management and controls. In addition, the design and construction of all improvements for the subdivision has been conditioned to be in conformance with the Specific Plan or adopted City Street and Public Works standards. The City's ordinances, codes, and standards and the Specific Plan provisions have been created based on

currently accepted standards and practices for the preservation of the public health, safety and welfare.

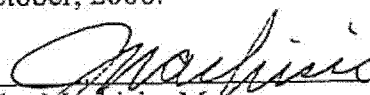
7. The design of the subdivision and improvements proposed under Tentative Tract Map 34001, will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision in that conditions have been imposed that will require all the required easements for public utilities and facilities across and to the site prior to the issuance of building permits.
8. The design of the subdivision proposed Tentative Tract Map 34001, adequately provides for future passive or natural heating and cooling opportunities in the subdivision in that: taking into consideration local climate and the existing contour and configuration of the site and its surroundings, the size and configuration of lots within the proposed subdivision have been arranged, to the greatest extent feasible, to permit orientation of structures in an east-west alignment for southern exposure, or to take advantage of natural shade, or to take advantage of prevailing breezes.

SECTION 3. CITY COUNCIL ACTIONS.


The City Council hereby takes the following action:

1. Approval of Tentative Tract Map. The City Council hereby approves Tentative Tract Map 34001 subject to the Conditions of Approval attached hereto and incorporated herein by reference as Attachment "1".

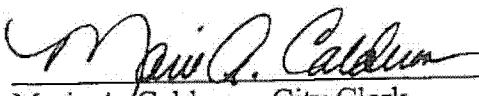
PASSED, APPROVED AND ADOPTED this 24th day of October, 2006.


John Machisic, Mayor

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


Burke, Willfams & Sorensen, LLP
Dep City Attorney

ATTEST:


Marie A. Calderon, City Clerk

CERTIFICATION:

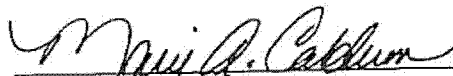
I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2006-130, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 24th day of October 2006, by the following vote, to wit:

AYES: Councilmembers Salas, Welch, Mayor Machisic

NOES: Councilmembers Hanna, Palmer

ABSENT: None

ABSTAIN: None



Marie A. Calderon, City Clerk
City of Banning



DEPARTMENT OF
PLANNING

Planning Department
(951)922-3125

FINAL CONDITIONS OF APPROVAL

PROJECT #: Resolution No. 06-19, Lot Split #04-4509/Tentative Tract Map 34001

SUBJECT: Black Bench

APPLICANT: Sun Cal Companies

LOCATION: North of Wilson Street, west of Bluff Street, between Sunset Avenue and Highland Springs Avenue

APPLICANT SHALL CONTACT THE PLANNING DIVISION, (951) 922-3125, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

A. General Planning Requirements

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

Completion
Date

___/___/___

2. The Approval of Tentative Tract Map 34001 shall be for a period of two (2) years from the date of City Council Approval; the expiration date is October 24, 2008 . All Conditions of Approval must be met on or before the expiration date or the applicant must request an extension of time at least thirty (30) days prior to the expiration date; otherwise, the approval shall expire and become null and void.
3. The development of the property shall provide for no more than 1453 lots as illustrated by Tentative Tract Map 34001. The design of all lots within the subdivision shall meet the minimum property development requirements as outlined in the "Black Bench Specific Plan".
4. Prior to the issuance of any building permits, building elevations shall be submitted to the Planning Department for design review and approval, in accordance with the provisions and requirements of the Black Bench Specific Plan or if not provided in the Specific Plan, by the City's Municipal Code in effect at the time of the submittal. Submittal and approval of Design Review application and related materials is required prior to the issuance of building permits.
5. A detailed landscape and irrigation plan shall be prepared by a licensed landscape architect and submitted to the Planning Department. Landscaping and irrigation shall be designed in accordance with the Black Bench Specific Plan.
6. The issuance of these Conditions of Approval do not negate the requirements of the Engineering/Public Works Department or submittal, review, and approval of: Street improvement plans, signing and striping plans, grading plans, storm drain improvement plans, street lighting plans, water, sewer, and electrical improvement plans, or other plans as deemed necessary by the City Engineer.
7. A copy of the signed Resolution of Approval or Community Development Director's letter of approval, and all Standard Conditions, shall be included in legible form on the grading plans, building and construction plans, and landscape and irrigation plans submitted for plan check.
8. Occupancy of the facilities shall not commence until such time as all Uniform Building Code and State Fire Marshal regulations have been complied with. Prior to occupancy, plans shall be submitted to the City of Banning Fire Marshal and the Building and Safety Division to show compliance. The buildings shall be inspected for compliance prior to occupancy.
9. Revised site plans, if any, and building elevations incorporating all Conditions of Approval shall be submitted for a review and approval in accordance with Design Review requirements prior to the issuance of building permits in accordance with the Specific Plan design guidelines and development standards and relevant Codes.
10. All site, grading, landscape, irrigation, and street improvement plans shall be coordinated for consistency prior to issuance of any permits (such as grading, tree removal, encroachment, building, etc.) or approved use has commenced, whichever comes first.
11. Prior to the issuance of a Certificate of Occupancy within TTM 34001, or any phased portion of TTM 34001, the applicant shall submit to the City for review and approval a detailed landscape and irrigation plan (in accordance with the Black Bench Specific Plan) indicating type, species and location of the minimum number of drought tolerant, multi-branched trees on each lot adjacent to the street right-of-way (all trees shall be planted with root barriers)

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12. The plan shall be forwarded to a Landscape Architect for review and the applicant shall pay all fees associated with the review process. The approved landscape plan shall be implemented/installed prior to the issuance of a Certificate of Occupancy for any building constructed within TTM 34001 or any phased portion of TTM 34001. (Submit landscape and irrigation plans as soon as possible to allow sufficient time for a Landscape Architect to review.)
13. Approval of this request shall not waive compliance with all sections of the Black Bench Specific Plan, all applicable City Ordinances in effect at the time of building permit issuance.
14. A detailed lighting plan, including a photometric diagram, shall be reviewed and approved by the Community Development Director, City Engineer, and Police Department prior to the issuance of building permits. Such plan shall indicate style, illumination, location, height, and method of shielding so as not to adversely affect adjacent properties. Said lighting shall be consistent with the Black Bench Specific Plan.
15. All ground-mounted utility appurtenances such as transformers, AC condensers, etc., shall be located out of public view and adequately screened through the use of a combination of concrete or masonry walls, berming, and/or landscaping to the satisfaction of the Community Development Director. For single family residential developments, transformers shall be placed in underground vaults unless otherwise approved by the Community Development Director.
16. Street names shall be submitted for Community Development Director review and approval in accordance with the adopted Street Naming Policy prior to approval of the final map.
17. All building numbers and individual units shall be identified in a clear and concise manner, including proper illumination.
18. A detailed plan indicating trail widths, maximum slopes, physical conditions, fencing, and weed control, shall be consistent with the Black Bench Specific Plan and shall be submitted for Community Development Director review and approval prior to approval of street improvement and grading plans. Developer shall upgrade and construct all trails, including fencing and drainage devices, in accordance with the Black Bench Specific Plan and Conditions of Approval.
19. The Covenants, Conditions, and Restrictions (CC&Rs) and Articles of Incorporation of the Homeowners' Association are subject to the approval of the Planning and Engineering Divisions and the City Attorney. They shall be recorded concurrently with the Final Map. A recorded copy shall be provided to the City Engineer. The Homeowners' Association shall submit to the Planning Division a list of the name and address of their officers on or before January 1 of each and every year and whenever said information changes.
20. All parkways, open areas, and landscaping shall be permanently maintained by the property owner, homeowners' association, or other means acceptable to the City. Proof of this landscape maintenance shall be submitted for Community Development Director and City Engineer review and approved prior to the issuance of certificate of occupancy for each development phase.
21. The developer shall submit a construction access plan and schedule for the development of all lots for Community Development Director and City Engineer approval; including, but not limited to, public notice requirements, special street posting, phone listing for community concerns, hours of construction activity, dust control measures, and security fencing.
22. All permanent project fencing shall be consistent with the Black Bench Specific Plan and shall be reviewed and approved by the Community Development Department. Walls and fences shall require building permits.

23. Wood fencing shall be treated with stain, paint, or water sealant, in accordance with the Black Bench Specific Plan. _/_/_
24. Air conditioners and other equipment and/or projections, shall not be permitted on the roof tops. _/_/_
25. Textured pedestrian pathways and textured pavement across circulation aisles shall be consistent with the Black Bench Specific Plan and shall be approved by the Department of Public Works. _/_/_
26. All units shall be provided with garage door openers if driveways are less than 18 feet in depth from back of sidewalk. _/_/_
27. Multiple car garage driveways shall be tapered down to a standard two-car width at street. _/_/_
28. On flag lots, a 12-foot wide driveway within flag shall be used to maximize landscape area. _/_/_
29. The Covenants, Conditions and Restrictions shall regulate the storage of recreational vehicles onsite unless they are the principal source of transportation for the owner; and, shall prohibit parking on interior circulation streets other than in designated parking areas. _/_/_
30. Category 5 telephone cable or fiber optic cable shall be provided for single-family developments _/_/_
31. Transit improvements such as bus shelters, bus pullouts, and bus pads shall be provided as required by the Community Services Department. _/_/_
32. All slope planting and irrigation shall be continuously maintained in a healthy and thriving condition by the developer until each individual unit is sold and occupied by the buyer. Prior to releasing occupancy for those units, an inspection shall be conducted by the Planning Division to determine that they are in satisfactory condition. _/_/_
33. Front yard and corner side yard landscaping and irrigation shall be required per the Development Code and/or Black Bench Specific Plan. This requirement shall be in addition to the required street trees and slope planting. _/_/_
34. The final design of the parkways, walls, landscaping, and sidewalks shall be included in the required landscape plans and shall be subject to Community Development Director review and approval and coordinated for consistency with any parkway landscaping plan which may be required by the Engineering Division. _/_/_
35. Special landscape features such as mounding, alluvial rock, specimen size trees, meandering sidewalks, and intensified landscaping, are required in accordance with the Black Bench Specific Plan. _/_/_
36. Landscaping and irrigation systems required to be installed within the public right-of-way of this project area shall be continuously maintained by the developer until maintenance is assumed by the homeowner's association. _/_/_
37. All walls shall be provided with decorative treatment in accordance with the Black Bench Specific Plan. If located in public maintenance areas, the design shall be coordinated with the Engineering Division. _/_/_
38. Tree maintenance criteria shall be developed and submitted for Community Development Director review and approval prior to issuance of building permits. These criteria shall encourage the natural growth characteristics of the selected tree species. _/_/_

39. Prior to issuance of the first building permit, the applicant shall form, to the satisfaction of the City Engineer and City Attorney, a homeowner's association, assessment district, or other vehicle, for the maintenance of all common areas, including landscaped parkways with public rights-of-way, in perpetuity. _____/_____/_____
40. The applicant or successor shall provide amenities along the scenic overlooks have indicated in the Specific Plan. _____/_____/_____
41. One year after the initiation of construction, and annually thereafter until buildout of the proposed project, the project proponent shall supply the City with an analysis of actual water usage per unit, adjusted projected water usage for future development (based on actual on-site usage), and actual City water supplies. At any time should projections show that the proposed project and cumulative development will require water supplies in excess of the Maximum Perennial Yield, no further building permits shall be issued until such time as additional water sources are delivered to the project or the City's water system. _____/_____/_____
42. The open space area (non-parks) shall be offered to a conservation agency for maintenance of open space purposes. If such a conservancy is not willing or able to maintain the open space, the Homeowner's Association or designee shall maintain such areas. _____/_____/_____
43. An easement shall be recorded over the open space area for equestrian/trail purposes. _____/_____/_____
44. Street "D" shall be a private street between the project boundary and Street "B". This private street shall be gated. The gate shall have a side-by-side gate system (for ingress and egress). The ingress gate shall be locked with an approved Knox lock system for emergency vehicles only. The egress gate shall be used for emergency situations only and shall be operated by a weight pressure self-closing system. A camera enforcement system shall be used to prevent/limit the egress use. The gate design shall be reviewed and approved by the Community Development Department, Fire Department and Engineering Department. The gate shall be installed and become operational upon completion of the primary access road. _____/_____/_____
- The Homeowners Association shall be responsible for maintenance of the gate and camera system ultimately; the developer shall maintain said gate initially. The Homeowners Association shall set forth an enforcement protocol system to establish fines for the use of this access in non-emergency situations. The protocol shall be reviewed and approved by the Community Development Director. The protocols shall be included in the CC&R's. No change to this provision shall occur without approval of the City.
45. The proposed Smith Creek Crossing design along Street "D" shall be reviewed and approved by the City Engineer. The design of the crossing shall facilitate wildlife movement along the creek bed. _____/_____/_____
46. The signs indicated on the submitted plans are conceptual only and not a part of this approval. Any signs proposed for this development shall comply with the Sign Ordinance and/or Black Bench Specific Plan. A Uniform Sign Program for this development shall be submitted for Community Development Director review and approval prior to issuance of building permits. _____/_____/_____

B. Access

47. The Black Bench Project (Lot Split #04-4509 (TTM 34001), GPA #06-2502 SPA #04-209 and EIR) requires a primary road access. Two alternative locations are currently under consideration for such primary access and have been analyzed in the EIR, but only one primary access is required. The primary access proposal is planned as an off-site extension of existing Sunset Avenue beginning at its intersection with Mesa Street and continuing northwesterly to the project site ("Sunset Avenue Alignment"). The second access proposal is planned from the off- _____/_____/_____

site northerly extension of Highland Home Road in the northern portion of the Deutsch Specific Plan. It then continues in a northerly direction crossing Smith Creek and entering the project site ("Highland Home Road Alignment").

48. City and Applicant acknowledge that a portion of the property needed to secure each of these road access alignments is on private property outside of City boundaries and not owned or controlled by Applicant. The Applicant shall bear the full burden of securing necessary property rights for the road alignments which are not currently owned or controlled by Applicant in order to achieve either the Highland Home Road Alignment or the Sunset Avenue Alignment. City shall not issue grading or building permits until such time as applicant has provided proof satisfactory to the City that Applicant has secured necessary property rights for either the Highland Home Road Alignment or Sunset Avenue Alignment. In the event Applicant is unable to secure such alignment through private acquisition, Applicant may request that the City or other governmental agency exercise its power of eminent domain to secure the property for one of the road access alignments. However, Applicant acknowledges that the City shall be under no obligation in any way to exercise its power of eminent domain and shall only exercise such power, if at all, in its sole and absolute discretion in accordance with California eminent domain laws and regulations.
49. Applicant acknowledges the provisions of Government Code section 66462.5 which states:
- a. A city, county, or city and county shall not postpone or refuse approval of a final map because the subdivider has failed to meet a tentative map condition which requires the subdivider to construct or install offsite improvements on land in which neither the subdivider nor the local agency has sufficient title or interest, including an easement or license, at the time the final map is filed with the local agency, to permit the improvements to be made. In such cases, unless the city, county, or city and county requires the subdivider to enter into an agreement pursuant to subdivision (c), the city, county or city and county shall, within 120 days of the filing of the final map, pursuant to Section 66457, acquire by negotiation or commence proceedings pursuant to Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure to acquire an interest in the land which will permit the improvements to be made, including proceedings for immediate possession of the property under Article 3 (commencing with Section 1255.410) of Chapter 6 of that title.
 - b. If a city, county, or city and county has not required the subdivider to enter into an agreement pursuant to subdivision (c) and if a city, county, or city and county fails to meet the 120-day time limitation, the condition for construction of offsite improvements shall be conclusively deemed to be waived. The waiver shall occur whether or not the city, county, or city and county has postponed or refused approval of the final map pursuant to subdivision (a).
 - c. Prior to approval of the final map the city, county, or city and county may require the subdivider to enter into an agreement to complete the improvements pursuant to Section 66462 at such time as the city, county, or city and county acquires an interest in the land that will permit the improvements to be made.
 - d. Nothing in this section precludes a city, county, or city and county from requiring a subdivider to pay the cost of acquiring offsite real property interests required in connection with a subdivision.
 - e. "Offsite improvements," as used in this section, does not include improvements that are necessary to assure replacement or construction of housing for persons and families of

low or moderate income, as defined in Section 50093 of the Health and Safety Code.

50. Notwithstanding section 66462.5 of the Government code, (a) Applicant hereby waives any rights to enforce the provisions of Government Code section 66462.5 and acknowledges that Applicant, subject to the ability to request that the City exercise eminent domain, shall have the sole responsibility to secure access to the Black Bench Project and (b) City shall have the discretion to postpone or refuse approval of a final map for Lot Split #04-4509 (TTM 34001) if Applicant fails to construct or install (or enter into a subdivision improvement agreement consistent with the Subdivision Map Act to construct or install) off-site improvements on land owned by a third party.

____/____/____

51. If either the Highland Home Road Alignment or the Sunset Avenue Alignment are not secured by the Applicant and City or any other governmental agency to whom such a request is made decline to exercise rights of eminent domain, then Applicant shall secure access to the Black Bench Project through another road access area alternative (Third Access Alternative). The Third Access Alternative shall require City review and the City shall have the ability to require that the Applicant submit to the City a request for (1) an amendment to the circulation element of the General Plan, (2) an amendment to the Black Bench Specific Plan, and (3) an amendment to Lot Split #04-4509 (TTM 34001) to the extent that the Third Access Alternative is inconsistent with such plans and maps. The Third Access Alternative shall also require further environmental review as required under the California Environmental Quality Act (CEQA).

____/____/____

52. Nothing set forth herein shall waive or modify but rather is intended to implement the rights of the parties as set forth in that certain Development Agreement between City and Applicant dated July 8, 1994.

____/____/____

C. Other Agencies

53. The width of Bluff Street shall be improved to County Standard No. 112 (a local mountain residential street with a 28 foot paved section) from the project entrance to the County/City limit. Safety improvements shall also be constructed on Bluff Street, such as enhanced signage on curves, shoulder improvements where practicable, guardrail installation where appropriate, and raised pavement markers.

____/____/____

54. The applicant shall make any pavement repairs to Bluff Street necessary to mitigate the impacts of project construction traffic on the road. The applicant shall post a bond prior to start of project construction with the Riverside County Transportation Department to guarantee the repair of the road.

____/____/____

55. The applicant shall contact the U.S. Postal Service to determine the appropriate type and location of mail boxes. The final location of the mail boxes shall be subject to Community Development Director review and approval prior to the issuance of building permits.

____/____/____

56. Accent lighting (with shielded tops) such as lamps with a 25 to 40 watt bulb are encouraged on either side of the garage or front portion of the house. This lighting shall be hard wired to a dusk-to-dawn sensor.

____/____/____

57. Lighting shall be provided to all parks.

____/____/____

APPLICANT SHALL CONTACT THE BUILDING AND SAFETY DIVISION, (951) 922-3120, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

D. General Requirements

58. Submit four complete sets of plans including the following:
 - (a). Site/Plot Plan;
 - (b). Foundation Plan;
 - (c). Floor Plan;
 - (d). Ceiling and Roof Framing Plan;
 - (e). Electrical Plans (2 sets, detached) including the size of the main switch, number and size of service entrance conductors, panel schedules, and single line diagrams;
 - (f). Plumbing and Sewer Plans, including isometrics, underground diagrams, water and waste diagram, sewer or septic system location, fixture units, gas piping, and heating and air conditioning, etc.
59. Submit two sets of structural calculations, energy conservation calculations, and a soils report. Architect's/Engineer's stamp and "wet" signature are required prior to plan check submittal.
60. Separate permits are required for fencing and/or walls.
61. Contractors must show proof of State and City licenses and Workers' Compensation coverage to the City prior to permit issuance.
62. Business shall not open for operation prior to posting the Certificate of Occupancy issued by the Building and Safety Division.

E. Site Development

63. Plans shall be submitted for plan check and approved prior to construction. All plans shall be marked with the project file number (i.e., CUP 98-01). The applicant shall comply with the latest adopted Uniform Building Code, Uniform Mechanical Code, Uniform Plumbing Code, National Electric Code, Title 24 Accessibility requirements, and all other applicable codes, ordinances, and regulations in effect at the time of permit application. Please contact the Building and Safety Division for availability of the Code Adoption Ordinance and applicable handouts.
64. Prior to issuance of building permits for a new residential dwelling unit(s) or major addition to existing unit(s), the applicant shall pay development fees at the established rate. Such fees may include, but are not limited to Plan Checking Fees, and School Fees. Applicant shall provide a copy of the school fees receipt to the Building and Safety Division prior to permit issuance.
65. Street addresses shall be provided by the Building Official, after tract/parcel map recordation and prior to issuance of building permits.
66. Construction activity shall not occur between the hours of 8:00 p.m. and 6:30 a.m. Monday through Saturday, with no construction on Sunday or holidays or as modified by the Chief Building Official.

F. New Structures

67. Roofing materials shall be Class "A."

G. Grading

68. Grading of the subject property shall be in accordance with the Uniform Building Code, City Grading Standards, and accepted grading practices. The final grading plan shall be in substantial conformance with the approved grading plan.

69. A geotechnical report shall be prepared by a qualified engineer or geologist and submitted at the time of application for grading plan check.

70. The final grading plans shall be completed and approved prior to issuance of building permits.

APPLICANT SHALL CONTACT THE ENGINEERING DIVISION, (951) 922-3130, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

H. General Requirements

71. A Public Works Permit shall be required prior to commencement of any work within the public right-of-way. The contractor working within the public right-of-way shall submit proof of a Class "A" State Contractor's License, City of Banning Business License, and Liability Insurance. Any existing public improvements, or public improvements not accepted by the City that are damaged during construction shall be removed and replaced as determined by the City Engineer or his/her representative.

72. Prior to the issuance of any grading, construction, or public works permit by the City, the applicant shall obtain any necessary clearances and/or permits from the following agencies:

- Fire Marshal
- Public Works Department (Grading Permit, Improvement Permit)
- Community Development Department
- Riverside County Environmental Health Department
- Banning Unified School District
- California Regional Water Quality Control Board Colorado River Basin (RWQCB)
Provide copy of Section 401 water quality certification.
- South Coast Air Quality Management District (SCAQMD)
- United States Army Corps of Engineers (USACE)
Provide copy of executed Section 404 permit.
- California Department of Fish and Game (DFG)
Provide copy of executed Streambed Alteration Agreement.

The applicant is responsible for meeting all requirements of permits and/or clearances from the above listed agencies. When the requirements include approval of improvement plans, the applicant shall furnish proof of such approvals when submitting improvements plans to the City. Comply with all conditions and mitigation measures if so determined and submit copies of all correspondence with the agencies to the Engineering Division.

73. The following improvement plans shall be prepared by a civil engineer or architect licensed by the State of California as allowed and submitted to the Engineering Division for review and approval. A separate set of plans shall be prepared for each line item listed below. Unless otherwise authorized by the City Engineer in writing, the plans shall utilize the minimum scale specified and shall be drawn on 24" x 36" Mylar. Plans may be prepared at a larger scale if additional detail or plan clarity is desired (Note: the applicant may be required to prepare other improvement plans not listed here pursuant to improvements required by other agencies and utility purveyors).

- A. On-Site Rough Grading Plans 1" = 40' Horizontal
(all conditions of approval shall be reproduced on last sheet of set)
- B. Clearing Plans 1" = 50' Horizontal
 Include fuel modifications zones
 Include construction fencing plan
- C. Construction Haul Route Plans 1" = 50' Horizontal
- D. SWPPP 1" = 40' Horizontal
(Note: A, B, D, & C shall be processed concurrently.)
- E. Storm Drain Plan 1" = 40' Horizontal
- F. Off-Site Street Improvement Plans 1" = 40' Horizontal
 1" = 4' Vertical
- G. Off-Site Landscaping Plans 1" = 20' Horizontal
- H. Off-Site Signing & Striping Plans 1" = 40' Horizontal
- I. Traffic Signal Plans 1" = 20' Horizontal
- J. Traffic Control Plans 1" = 40' Horizontal
- K. On-Site Street Improvement/Signing
 & Striping Plans 1" = 40' Horizontal
 1" = 4' Vertical
- L. On-Site Residential Precise
 Grading Plans 1" = 30' Horizontal

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

All off-site plan and profile street improvement plans and signing & striping plans shall show all existing improvements for a distance of at least 200-feet beyond the project limits, or at a distance sufficient to show any required design transitions.

All on-site signing and striping plans shall show the following at a minimum: stop signs, limit lines and legends, no parking signs, raised pavement markers (including blue raised pavement markers at fire hydrants) and street name signs per Public Works standard plans and/or as approved by the City Engineer.

A small index map shall be included on the title sheet of each set of plans, showing the overall view of the entire work area.

74. Upon completion of construction, the applicant shall furnish the City with reproducible record drawings on Mylar of all improvement plans that were approved by the City Engineer. Each sheet shall be clearly marked "As-Built" or "As-Constructed" and shall be stamped and signed by the engineer or surveyor certifying the accuracy and completeness of the drawings. The applicant shall have all AutoCAD or raster-image files submitted to the City, revised to reflect the "As-Built" conditions. _____
75. Whenever any conditions of approval are proposed to be satisfied by the establishment of a Homeowners' Association, or whenever any property, amenities, or facilities are proposed to be owned or maintained by a Homeowners' Association, such provisions shall be in the form of deed restrictions (conditions, covenants and restrictions, commonly referred to as CC&R's). _____
76. The conditions, covenants and restrictions shall contain provisions which prohibit dissolution of the Homeowners' Association unless another entity has agreed to assume the operation and maintenance responsibilities of the Homeowners' Association. The conditions, covenants and restrictions shall contain provisions that prohibit the developer and his/her successors-in-interest from amending said covenants, conditions and restrictions to conflict with these conditions of approval unless the subject property is reverted to acreage and the subdivision abandoned. _____
77. Prior to the issuance of any public improvement permit or grading permit the developer shall document the location and characteristics of oak trees within the project impact zone for Riverside County and provide for mitigation as required by law. _____
78. All utility systems including gas, electric, telephone, water, sewer, and cable TV shall be provided for underground with easements provided as required and designed and constructed in accordance with City Codes and the utility provider. Telephone, cable TV, and/or security systems shall be pre-wired in the dwelling unit. _____

I. Rights of Way

79. Prior to issuance of any building permits, the applicant shall acquire or confer property rights necessary for access and the construction, or proper functioning in accordance with approved engineering studies, of the proposed development. Conferred rights shall include right-of-way dedications, irrevocable offers to dedicate or grant of easements to the City of Banning for public access, emergency services, maintenance, utilities, storm drain facilities, or temporary construction purposes including the reconstruction of essential improvements as directed by the City Engineer. All costs associated with acquiring rights-of-way shall be paid by the subdivider. _____
80. The applicant shall offer for dedication on the Final Map all public street rights-of-way in conformance with the approved Specific Plans, standard plans, and/or as required by the City Engineer. Offers of dedication shall include corner cut-off at all intersections. _____
81. The conditions, covenants and restrictions shall include the right, but not the obligation, of the City of Banning to maintain the common property, after reasonable notice, if the property owners fail to do the maintenance. The deed restrictions shall permit the City of Banning, if it does maintenance, to recover all costs, both direct and indirect, from the property owners, and to place a pro rata lien on the individual lots of the subdivision if the property owners do not reimburse the City. _____
82. Grant slope easements to the City of Banning for road maintenance purposes for slopes adjoining public right-of-ways. The easements shall extend 10 feet from the toe of slope and 5 feet from the top of slope. _____

83. Direct residential driveway access to Street "A" and Sunset Avenue shall be restricted.
84. Obtain drainage easements as required from the downstream property owner's adjacent properties for the benefit of the public. A note shall be added to the final map stating *"drainage easements shall be kept free of buildings and obstructions."*
85. Prior to the issuance of any certificates of occupancy, the applicant shall not grant any easements over any property subject to a requirement of dedication or irrevocable offer to the City of Banning or the Riverside County Flood Control and Water Conservation District unless such easements are expressly made subordinate to the easements to be offered for dedication to the City or RCFC. Prior to granting any of said easements, the subdivider shall furnish a copy of the proposed easement to the City Engineer for review and approval. Further, a copy of the approved easement shall be furnished to the City Engineer prior to the issuance of any certificate of use and/or occupancy.

J. Public Improvements

86. All public improvements shall be financed, designed, and constructed at the expense of the developer. This may include the formation of and participation in a regional financial mechanism for the construction of required improvements. Additionally, the developer may enter into a reimbursement agreement for those improvements constructed that may provide benefit outside the development in accordance with Banning Municipal Code.
87. Participation in the design and construction of public improvements by the subdivider shall mean the fair share amount to be determined by engineering estimates prepared by the applicant subject to review and approval of the City Engineer; and, the preparation of associated engineering studies.
88. The applicant shall provide estimates to construct, improve, or finance the construction or improvement of public improvements to the City Engineer for review and approval. The estimate shall be differentiate between public improvements outside the property boundaries of the tentative map and public improvements which abut the boundary of the property to be subdivided.
89. Prior to issuance of any permits for the primary access road and utilities to the south, the applicant shall provide evidence that the design of the southern access road and utilities includes provisions consistent with the appropriate seismic codes and regulations associated with any Alquist-Priolo Fault Zone, or City of Banning Hazard Management Zone including the design and construction of any protective measures.
90. All street improvement design shall per Caltrans standards where not specifically addressed by City of Banning approved engineering standards and specifications.
91. Individual onsite street improvements shall be substantially completed for each phase of development prior to delivery of combustible construction materials to the completed building pads.
92. All required onsite and offsite public improvements as identified in the approved traffic impact analysis, approved specific plan, and related engineering studies and reports including storm drain facilities shall be completed in place, tested, and approved by the Engineering Division for each tract or development phase prior to issuance of any Certificate of Occupancy for that tract or development phase. The City Engineer reserves the right to modify any phasing plan.

The following Public Improvements shall be completed prior to issuance of any certificate of occupancy for Phase 1 of the project:

93. Street "A" (90 foot minimum right-of-way) in accordance with the approved Specific Plan, Tentative Tract Map, and development standards from the roundabout (intersection of Street "B" and Street "C") to the intersection of Sunset Avenue and Mesa Street. Approaches to the intersection of Street "A"/Mesa Street shall be at 90 degrees; install cross street stop. _/_/_
94. Additional improvements to Sunset Avenue from Mesa Street to Wilson Street to provide two lanes of traffic with graded shoulders in accordance with County of Riverside Local Mountain Residential Street Standard No. 112. Improvements shall include an asphalt concrete overlay of the existing pavement section in accordance with an engineering study (reviewed and approved by the City Engineer) along with widening the existing roadway where necessary to the said standard, grading the shoulders, guardrail installation, traffic signs, and pavement markings. _/_/_
95. Intersection improvements for Sunset Avenue and Wilson Street, including traffic signal, signs and pavement markings. The improvements shall accommodate additional protected left turn movements in all directions and additional right turn only lane for eastbound Wilson Street. _/_/_
96. Intersection improvements with traffic signals along Sunset Avenue at eastbound and westbound I-10 ramps including the removal and replacement of pavement markings along Sunset Avenue from Lincoln Street to Wilson Street to accommodate said improvements. The traffic signal controllers shall be interconnected with the controllers for Sunset Avenue/Ramsey Street and Sunset Avenue/Lincoln Street intersections to allow coordinated operation; provide southbound left turn pocket at I-10 ramp. _/_/_
97. Intersection improvements with traffic signal at Highland Home Road and Wilson Street. _/_/_
98. Traffic signal at Highland Springs Avenue and Wilson Street. The improvements shall include the addition of one northbound through lane, one southbound left turn lane, one southbound through lane together with one southbound right turn lane, and one eastbound left turn lane. _/_/_
99. Participate in the design and construction of the median island along Wilson Street from Sunset Avenue to Highland Springs Avenue including landscaping costs. _/_/_
100. Participate in the design and construction of the median island along Highland Springs Avenue from Wilson Street to I-10 including landscaping costs. _/_/_
101. Participate in the design and construction of the median island along Sunset Avenue from Wilson Street to I-10 including landscaping costs. _/_/_
102. Participate in the design and construction of the traffic signal at 8th Street and Xenia Avenue including lane widening. _/_/_
103. Participate in the design and construction of the Highland Home Road interchange at I-10 as identified in the approved Traffic Impact Analysis. _/_/_
104. Participate in the design and construction of a northbound free right-turn lane that becomes a westbound loop on-ramp at the northeast corner of the I-10/Highland Springs Interchange, or fare share of required improvements to existing interchange. _/_/_

105. Intersection improvements for additional portion of Bluff Street at "D" Street to accommodate the northbound left turn lane. Install cross street stop.
106. Intersection improvements with traffic signal at Highland Springs Avenue and Starlight Avenue.
107. Traffic signal at Highland Springs Avenue and Oak Valley Parkway.

The following Public Improvements shall be completed prior to issuance of any Certificate of Occupancy for Phase 2 of the project:

108. Improvements to existing Sunset Avenue from Mesa Street to Wilson Street to provide four lanes of traffic in accordance with the Secondary Highway Street Cross Sections of the General Plan Circulation Element
109. Intersection improvements with traffic signal at Street "A" and Mesa Street.
110. Intersection improvements for Highland Home Road and Wilson Street, including modifications to the traffic signal, signs and pavement markings. The improvements shall accommodate additional protected left turn movement for westbound Wilson Street, additional right turn only lane for southbound Highland Home Road and additional right turn lane for westbound Wilson Street.
111. Intersection improvements for Sunset Avenue and Wilson Street including modifications to the traffic signal, signs, and pavement markings. The improvements shall accommodate additional protected left turn movement and through movement for northbound Sunset Avenue, additional left turn lane for eastbound Wilson Street and additional right turn lane and through movement for southbound Sunset Avenue.
112. Intersection improvements with traffic signal (8-phase operation) at Sunset Avenue and Nicolet Street. Provide pavement markings for ultimate improvements along all street approaches.
113. Intersection improvements for Highland Springs Avenue and Wilson Street, including modifications to the traffic signal, signs and pavement markings. The improvements shall accommodate additional protected left turn movement, additional through movement and additional right turn only movement for westbound Wilson Street.
114. Participate in additional improvements required for the eastbound ramp and intersection for I-10 at Sunset Avenue as identified in the approved Traffic Impact Analysis.
115. Replace pavement markings along Sunset Avenue from Wilson Street to Lincoln Street to provide 4 lanes of traffic along with turning movements at I-10.
116. Provide for and participate in the interconnect and coordination plan for the operation of the traffic signals along Sunset Avenue from Mesa Street to Lincoln Street.
117. Provide for and participate in the interconnect and coordination plan for the operation of the traffic signals along Highland Springs Avenue from Oak Valley Parkway to Sun Lakes Boulevard.

The following Public Improvements shall be completed prior to issuance of any building permits for Phase 3 of the project:

- 118. Intersection improvements for Sunset Avenue and Wilson Street including modifications to the traffic signal, signs, and pavement markings. The improvements shall accommodate additional right turn movement for southbound Sunset Avenue, westbound Wilson Street, and northbound Sunset Avenue. _/_/_
- 119. Participate in additional improvements required for the westbound ramp and intersection for I-10 at Sunset Avenue as identified in the approved Traffic Impact Analysis. _/_/_

K. Grading and Drainage

- 120. Submit a Drainage Study with hydrologic and hydraulic analysis for developed and undeveloped (existing) conditions to the Engineering Division for review and approval. The study and analysis shall be prepared by a civil engineer licensed by the State of California. Drainage design shall be in accordance with Banning Master Drainage Plan adopted by Riverside County Flood Control and Water Conservation District (RCFC), RCFC Hydrology Manual, and standard plans and specifications. The 10-year storm flow shall be contained within the street curbs, and the 100-year storm shall be contained within the street right-of-way; when this criteria is exceeded, additional drainage facilities shall be designed and constructed. The hydraulic analysis shall include scour studies for protection of major structures and crossings. _/_/_
- 121. The design of the development shall not cause any increase in flood boundaries, levels or frequencies in any area outside the development. _/_/_
- 122. Any storm drain facilities not accepted by the district for maintenance shall be maintained by the Homeowners Association. The developer shall execute an agreement for perpetual maintenance of said facilities. _/_/_
- 123. The project grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage areas, outlet points and outlet conditions. Otherwise, a drainage easement shall be obtained for the release of concentrated or diverted storm flows. _/_/_

124. The applicant shall comply with Chapter 34 "Stormwater Management and Discharge Controls" of the Banning Municipal Code (BMC); California Building Code Appendix Chapter 33 "Excavation and Grading"; and the State Water Resources Control Board's Order No. 99-08-DWQ.
1. For construction activities including clearing, grading or excavation of land that disturbs one (1) acre or more of land, or that disturbs less than one (1) acre of land, but which is a part of a construction project that encompasses more than one (1) acre of land, the applicant shall be required to submit a Storm Water Pollution Protection Plan (SWPPP) and file a Notice of Intent (NOI) with the Regional Water Quality Control Board.
 2. The applicant's SWPPP shall be reviewed and approved by the City Engineer prior to any on-site or off-site grading being done in relation to this project.
 3. The applicant shall ensure that the required SWPPP is available for inspection at the project site at all times through, and including acceptance of all improvements by the City.
 4. The applicant's SWPPP shall include provisions for all of the following Best Management Practices ("BMPs"):
 - (a). Temporary Soil Stabilization (erosion control).
 - (b). Temporary Sediment Control.
 - (c). Wind Erosion Control.
 - (d). Tracking Control.
 - (e). Non-Storm Water Management.
 - (f). Waste Management and Materials Pollution Control.
 5. All erosion and sediment control BMPs proposed by the applicant shall be approved by the City Engineer prior to any onsite or offsite grading, pursuant to this project.
 6. The approved SWPPP and BMPs shall remain in effect for the entire duration of project construction until all improvements are completed and accepted by the City.
125. Grading and excavations in the public right-of-way shall be supplemented with a soils and geology report prepared by a professional engineer or geologist licensed by the State of California.
126. A rough grading plan and a precise grading plan shall be submitted to the City Engineer for review and approval. A grading permit shall be obtained prior to commencement of any grading activity. Rough grading plans shall include retaining walls with top of wall and top of footing elevations shown. All footings shall have a minimum of 1-foot of cover, and/or sufficient cover to clear any obstructions.
127. Prior to the issuance of a building permit for any building lot, the applicant shall provide a lot pad certification stamped and signed by a qualified civil engineer or land surveyor. Each pad certification shall list the pad elevation as shown on the approved grading plan, the actual pad elevation and the difference between the two, if any. Such pad certification shall also list the relative compaction of the pad soil. The data shall be organized by lot number, and listed cumulatively if submitted at different times.

128. All lot drainage shall be directed to the driveway or curb drains by side yard drainage swales independent of any other lot. _____ / ____ / ____
129. Prior to approval of any grading permits the applicant shall submit a construction haul route plan to the City Engineer for review and approval. Deviation during construction from the approved plan shall constitute a violation of the conditions of the grading permit. _____ / ____ / ____
130. Prior to approval of any grading permits the applicant shall submit a PM10 Management Plan for construction operations for review and approval of the City Engineer. _____ / ____ / ____
131. Prior to approval of any grading permit the applicant shall submit a plan for review and approval of the City Engineer, including executed contracts, for retaining a qualified archeologist, paleontologist, and biologist for observation of grading and excavation activities in accordance with the approved mitigation program. _____ / ____ / ____

L. Landscaping

132. An automatic sprinkler system and landscaping shall be installed within all parkways and median islands prior to occupancy of the first dwelling unit of each phase of the development. The system shall include a landscape controller, a separate water meter and electric meter, and plantings as approved by the Community Development Director. Landscaping plans and specifications shall be reviewed and approved by the City Engineer. _____ / ____ / ____
133. The developer shall prepare a water conservation plan to reduce water consumption in the landscape environment using xeriscape principles. "Xeriscape" shall mean a combination of landscape features and techniques that in the aggregate reduce the demand for and consumption of water, including appropriate low water using plants, non-living ground-cover, a low percentage of turf coverage, permeable paving and water conserving irrigation techniques and systems. A low water-using drought tolerant plant includes species suited to our climate, requiring less water in order to grow well. _____ / ____ / ____
134. A Homeowners' Association shall be established promptly following recordation of the final map and the applicable Conditions, Covenants & Restrictions (CC & R's), shall be prepared for review and approval of the City Engineer providing for maintenance of the parkway and median island landscaping. The developer shall appoint the members of the Board of Directors of the Homeowners' Association, or take such other steps as may be reasonably necessary to assure that members have been appointed or elected to such Board of Directors, until under the terms of the applicable CC & R's individual lot owners have the power to elect the members of the Board of Directors in accordance with the CC & R's. _____ / ____ / ____
135. Landscape improvements shall be certified by a licensed landscape architect or licensed landscape contractor as having been installed in accordance with the approved detailed plans and specifications. The applicant shall furnish said certification, including an irrigation management report, for each landscape irrigation system and any other required implementation report determined applicable, to the City Engineer for review and approval. _____ / ____ / ____
136. Prior to the recordation of each final map, the subdivider shall reserve open space Lots for granting in fee to a Homeowner's Association who shall be responsible for their maintenance and upkeep in a manner meeting the approval of the Fire Marshall and Community Development Director. If a lot cannot be granted in fee, the subdivider shall reserve the necessary rights to maintain the lots. _____ / ____ / ____

M. Traffic

137. Provide a traffic impact analysis for review and approval of the City Engineer prepared in accordance with *County of Riverside Traffic Impact Analysis Preparation Guide* dated August 2005. This includes identifying the desired level of traffic control at project driveways and/or intersections. _____/_____/_____
138. Prior to final map approval, the applicant shall provide a geometric analysis of the existing right-of-way in order to determine if the proposed public improvements are feasible. _____/_____/_____
139. Prior to final map approval, provide a focused traffic impact analysis addressing the traffic safety and operational characteristics of the local streets (George Street, Nicolet Street, Williams Street) along Sunset Avenue. The applicant shall be responsible for construction of public improvements required as identified in the traffic impact analysis. The public improvements may consist of the construction of median islands, traffic signals, pavement markings, parking restrictions, signage, or any combination thereof. _____/_____/_____
140. Street name signs and traffic control devices including traffic legends and traffic striping shall be installed, or relocated in accordance with Caltrans Standards and as shown on the approved plans, and/or as directed by the City Engineer. _____/_____/_____
141. The applicant shall include provisions for Class II bikeways along Street "A", "B", "C", and "D" in accordance with the Open Space, Recreation, Trails, and Bikeway Plan of the approved Specific Plan. The final design of the bikeway shall be as shown on the approved striping plan. _____/_____/_____
142. Prior to the issuance of any certificate of occupancy, all fire hydrants shall have a blue reflective pavement marker indicating the hydrant location on the street as approved by the Fire Marshall, and must be maintained in good condition by the property owner until the street is accepted for maintenance. _____/_____/_____
143. Prior to the issuance of a precise grading permit or building permit, the applicant shall submit and obtain approval of the Fire Marshall for the plans for all public or private access roads, streets and/or easements. The plans shall include plan and sectional views and indicate the grade and width of the access road measured flow-line to flow-line. When a dead-end street exceeds 150 feet or when otherwise required, a clearly marked fire apparatus access turnaround must be provided and approved by the Fire Marshall. Applicable Conditions Covenants & Restrictions or other approved documents shall contain provisions which prohibit obstructions of access roads such as speed bumps/humps, control gates or other modifications within said easement or access road unless prior approval of the Fire Marshall is granted. _____/_____/_____

N. Final Map

144. Prior to approval of any Final Map, the applicant shall construct all on-site and off-site improvements in accordance with the approved plans and satisfy its obligations for same, or shall furnish a fully secured and executed Agreement for Construction of Public Improvements guaranteeing the construction of such improvements and the satisfaction of its obligations for same, or shall agree to any combination thereof, as may be required by the City. _____/_____/_____

145. The applicant shall file an Environmental Constraint Sheet. An Environmental Constraint Sheet means a duplicate of the final map on which are shown the Environmental Constraint Notes. This sheet shall be filed with the County Surveyor simultaneously with the final map and labeled ENVIRONMENTAL CONSTRAINT SHEET in the top margin. Applicable items will be shown under a heading labeled Environmental Constraints Notes. The Environmental Constraint Sheet shall contain the statement:

THE ENVIRONMENTAL CONSTRAINT INFORMATION SHOWN ON THIS MAP SHEET IS FOR INFORMATIONAL PURPOSES DESCRIBING CONDITIONS AS OF THE DATE OF FILING, AND IS NOT INTENDED TO AFFECT RECORD TITLE INTEREST. THIS INFORMATION IS DERIVED FROM PUBLIC RECORDS OR REPORTS, AND DOES NOT IMPLY THE CORRECTNESS OR SUFFICIENCY OF THOSE RECORDS OR REPORTS BY THE PREPARER OF THIS MAP SHEET.

The sheet shall delineate constraints involving, but not limited to, any of the following that are conditioned by the Advisory Agency: archaeological sites, geologic mapping, grading, building, building setback lines, flood hazard zones, seismic lines and setbacks, fire protection, water availability, and sewage disposal.

146. Prior to the recordation of final map or the issuance of a grading permit, the applicant shall obtain approval from the Fire Marshall in consultation with the City Engineer, for a conceptual fuel modification plan and program. Prior to the issuance of any certificate of occupancy, the fuel modification shall be installed and completed under the supervision of the Fire Marshall with an approved plant pallet. The Conditions Covenants & Restrictions as identified in the Landscape Conditions of Approval or other approved documents shall contain provisions for maintaining the fuel modification zones, including the removal of all dead and dying vegetation.

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

Faithful Performance Bond - 100% of estimated cost
Labor and Material Bond - 100% of estimated cost
Monumentation Bond - \$100,000.00

Securities for the public improvements shall be on file with the City Clerk prior to scheduling the final map for approval by City Council. Unit prices for bonding estimates shall be those specified or approved by the City Engineer.

148. Prior to approval of the Final Map, the applicant shall submit a list of street names and addresses in Microsoft Excel spread sheet format for review and approval. The house number system shall be in accordance with Section 21-17 & 21-18 of the Banning Municipal Code. A reduced copy of the subdivision map shall be included with the submittal.

149. Revisions to the tentative map during plan check including, but not limited to, lot line alignments, easements, improvement plan revisions, and similar minor changes which do not alter the design (property rights, number of lots, environmental impact, etc.) may be administratively approved through the plan check process with the mutual consent and approval of the Community Development Director and City Engineer (Tentative Tract Map 34001 consists of 1,453 residential lots). Final maps shall be amended in accordance with the Subdivision Map Act. Changes to the access design shall be cause for revision of the tentative tract map and preparation of revised conditions of approval.

150. Prior to approval of any final map the applicant shall construct all onsite natural gas facilities in accordance with the approved plans and satisfy its obligations for same, or shall furnish a fully secured and executed agreement for construction of said facilities guaranteeing the construction of such improvements and the satisfaction of its obligations for same, or shall agree to any combination thereof, as may be required by the Gas Company.

____/____/____

151. Prior to approval of any final map the applicant shall identify and include in its improvement plans those routine structural and non-structural Best Management Practices (BMP's) as outlined in Supplement A to the Riverside County Drainage Area Management Plans and any attachments or revisions.

____/____/____

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

____/____/____

153. Submit a copy of the title report, closure calculations, and any separate instruments or necessary right-of-way documents to the Engineering Division for review and approval of the City Engineer prior to final map approval.

____/____/____

154. A map of the proposed subdivision drawn at 1"=200' scale showing the outline of the streets including street names shall be submitted to the City to update the city atlas map.

____/____/____

155. An original Mylar of the final map (after recordation) shall be provided to the City for the record files.

____/____/____

O. Trash/Recycling

156. Construction debris shall be disposed of at a certified recycling site. It is recommended that the developer contact the City's franchised solid waste hauler for disposal of construction debris.

____/____/____

P. Fees

157. Plan check fees for final map review, professional report review (geotechnical, drainage, etc.), and all improvement plans review, shall be paid prior to submittal of said documents for review and approval in accordance with the Fee Schedule in effect at the time of submittal.

____/____/____

158. Public Works Inspection fees shall be paid prior to the scheduling the final map for approval by City Council in accordance with the Fee Schedule in effect at time of time of scheduling.

____/____/____

159. Water and sewer connection fees including frontage fees and water meter installation charges shall be paid on a per lot basis at the time of building permit issuance in accordance with the Fee Schedule in effect at that time.

____/____/____

160. A plan storage fee shall be paid prior to approval of the final map and improvement plans in accordance with the Fee Schedule in effect at the time the fee is paid.

____/____/____

161. A Traffic Control mitigation fee shall be paid on a per lot basis prior to issuance of building permits for each lot within the subdivision.

____/____/____

162. A fee shall be paid to Riverside County Flood Control and Water Conservation District in the amount specified by them to perform plan checking for drainage purposes for the proposed subdivision.

____/____/____

APPLICANT SHALL CONTACT THE FIRE MARSHAL AT, (951) 922-3210, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

Q. Code Compliance

163. All Plans, Specifications and Construction shall comply with and conform to the current edition of the Uniform Fire Code (UFC), Uniform Building Code (UBC), and other state and local laws as applicable.

____/____/____

R. Water Supply

164. Fire flow shall be established by the Fire Department using the information provided in the UFC Appendix III A. Fire Flow may be adjusted upward where conditions indicate an unusual susceptibility to fire (minimum 1000gpm for 2 hours).

____/____/____

S. Premises Identification

165. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background. Residential - 3-1/2" mm. Size

____/____/____

T. Spark Arrestors

166. Chimneys used in conjunction with fireplaces or heating appliances in which solid or liquid fuel is used shall be maintained with an approved spark arrestor.

____/____/____

U. Fire Hydrants

167. No combustible materials shall be placed on the site in an area that is more than 150 feet from a working fire hydrant. The fire hydrant system must have been approved by the City Public Works Department.
168. Spacing of fire hydrants shall comply with UFC Appendix III B and the City of Banning Public Works Standards (maximum 300 feet) unless otherwise approved by the City.
169. Minimum 6-inch riser, street valve, approved shear valve and blue dot identification marker shall be provided for each fire hydrant.
170. The City standard fire hydrant is the Residential, James Jones #J3700, or an equivalent approved by the Fire Marshal.
171. Fire Hydrants are to be painted by the developer, contractor, etc., prior to the final inspection. (EOS Standard W714) Rustoleum Red, damp proof #769 and two (2) coats of Rustoleum semi-gloss yellow #659, or an approved equivalent.

____/____/____

____/____/____

____/____/____

____/____/____

____/____/____

V. Fire Access

172. Access shall be required when any portion of the first story of any structure is more than 150 feet from Fire Department apparatus access.
173. No combustible materials shall be placed on the site in an area that exceeds a distance of 150 feet from an approved access that meets the conditions below.
174. Surfaces shall be designed and maintained to support the imposed loads of fire apparatus.

____/____/____

____/____/____

____/____/____

Surfaces shall have all-weather driving capabilities, including bridges and shall meet City Public Works Department standards.

- 175. Minimum unobstructed width shall be 20 feet. _/_/_
- 176. Minimum unobstructed vertical clearance shall not be less than 13 feet 6 inches. _/_/_
- 177. Minimum turning radius shall be 42 feet. _/_/_
- 178. All dead-end access roads in excess of 150 feet shall have approved provisions for turning around of fire apparatus. _/_/_
- 179. Maximum grade shall be established by the Fire Department. _/_/_
- 180. Vehicles shall not be parked or otherwise obstruct the required width of any fire apparatus access. _/_/_
- 181. Two means of ingress/egress shall be provided for emergency vehicles and fire apparatus. _/_/_
- 182. Cul-de-sacs shall not exceed 600 feet in length. _/_/_
- 183. Two means of access/egress from the project shall be in place before the occupancy of the 26th home. All access/egress roads shall meet the minimum City standards for public roads. _/_/_

W. Fees

- 184. Fees are increased annually and may be different at the time of construction. The fee schedule at the time of plan submittal shall apply. _/_/_
 - (a). Residential Dwelling Units - \$543.00 per unit + \$5.00 per unit Disaster Planning
 - (b). Plan Check & Inspection - \$ 84.00 per unit
 - (c). Exception, Sprinkler and Alarm System Plan Check, See Number (7) for Fee Schedule

X. Inspections

- 185. Work begun without a permit or without an approved set of plans at the job site will result in a triple fee and/or the work stopped. _/_/_
- 186. Fee for each inspection is \$84.00 per hour per person. Exception, residential inspections are \$42.00 per unit per person or current fee as established by the City. _/_/_
- 187. Inspections shall be requested a minimum of forty-eight (48) hours prior to the time the required inspection is needed. _/_/_

Y. Hazardous Materials

- 188. The storage, dispensing, use or handling of hazardous materials during construction shall be in accordance with the provisions of UFC Article 80 and UBC Section 307 in addition to all federal, state and local laws or ordinances. _/_/_

Z. A GREENBELT OR FUEL MODIFICATION ZONE MAY BE REQUIRED

189. Prior to the first building permit issued for residential development, the applicant must submit a Wildfire Fire Protection Plan for the entire project and that plan must be approved by the Fire Chief. _____/_____/_____
190. The construction of the required fuel modification zones may be phased with development as long as the construction areas and all occupied residences are protected. Phasing plans must be approved by the Fire Chief. _____/_____/_____

AA. Other Requirements

191. Prior to recordation of the first final tract map for residential development, a fire station site on the Bench, that will serve this project, shall be selected and approved by the Fire Chief. _____/_____/_____
192. Prior to the issuance of the 100th Certificate of Occupancy, fire facilities that will service this project must be fully staffed and operational as determined by the City. _____/_____/_____
193. The City's Fire Protection Master Plan has established a response standard requiring that all "first alarm" resources be able to be on-scene of a fire within 10 minutes of their being dispatched. Due to the location of this project, that standard may not be attainable. Therefore, other measures (i.e. residential fire sprinklers) may be required, by the City and the Fire Department, to mitigate the discrepancy. _____/_____/_____
194. The two cul-de-sacs created by the southern extension of Street BBB and the eastern extension of Street QQ are approximately 700 feet long. City Standard for maximum cul-de-sac length is 600 feet; therefore, these streets shall be redesigned to comply with the City's standards. _____/_____/_____

APPLICANT SHALL CONTACT THE WATER/WASTE WATER UTILITY DIVISION AT, (951) 922-3281, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

BB. Water

195. Install all the necessary water facilities to service the project in accordance with the Water Master Plan and Water System Hydraulic Modeling Report, as approved by the Public Utilities Director. This could include steel or concrete reservoirs, transmission pipelines, booster stations, pressure regulating stations, two points of connections (eastward towards Buff Street), looped systems, SCADA system, emergency generators, and other facilities. _____/_____/_____
196. The project will be required to utilize non-potable water; either recycled water or State Project water, when available, for irrigation of parks, greenbelt areas, and fuel modification zones for fire suppression. This shall require the developer to install all the necessary onsite pipelines and ancillary improvements for supplying non-potable water as per plans approved by the Public Utilities Director. _____/_____/_____

CC. Waste Water

197. Construct all the necessary sewer facilities in accordance with the Sewer Master Plan as approved by the Public Utilities Director. This could include a trunk line from project to the existing Wastewater Treatment Plant located at Charles Street, main lines through the project, SCDA systems, emergency generators, and other facilities. _____/_____/_____

DD. Fees

198. Submit payment of all required fees and charges for Water and Sewer services when applicable at time of tract approval and/or at building permit time. Water and Sewer Connection Fees to be submitted at time of Building Permit request. Also, the developer shall submit recycled/ irrigation water infrastructure fees applicable at the time of issuance of building permit.

____/____/____

*BLACK BENCH RANCH
REPEAL OF RESOLUTIONS
NO. 2006-128, 129, 130 AND
ORDINANCE NO. 1353*

*ORDINANCE
NO. 1389*

EXHIBIT “4”

ORDINANCE NO. 1389

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, VACATING AND REPEALING ORDINANCE NO. 1353 APPROVING SPECIFIC PLAN #04-209 TO ESTABLISH THE DEVELOPMENT STANDARDS AND GUIDELINES TO ALLOW THE DEVELOPMENT OF UP TO 1,500 RESIDENTIAL UNITS, A 13.1 ACRES SCHOOL SITE, 81.2 ACRES OF PARKS AND 869 ACRES OF OPEN SPACE ON A 1,488 ACRE SITE GENERALLY LOCATED NORTH OF WILSON STREET, WEST OF BLUFF STREET, BETWEEN SUNSET AVENUE AND HIGHLAND SPRINGS AVENUE.

WHEREAS, an application for Specific Plan #04-209 to establish the development standards and guidelines for the development of up to 1,500 residential units, a 13.1 acre school site, 81.2 acres of parks and 869 acres of open space on a 1,488 acre site was duly filed by:

Applicant / Owner: SunCal Companies

Authorized Agent: Rod Hanway

Project Location: North of Wilson Street, west of Bluff Street, between Sunset Avenue and Highland Springs Avenue

APN Numbers: 401-230-001 thru 011, 401-240-007 & 008, 401-250-005 & 006, 401-260-005 & 006, 531-200-001 thru 010, 531-210-004, 531-210-008 thru 012, 531-230-001 thru 007, 531-230-011 & 012, 531-240-007, 531-340-001 & 004.

WHEREAS, on October 11 and October 24, 2006 the City Council conducted duly noticed public hearings to consider Ordinance No. 1353 approving Specific Plan # 04-209; and

WHEREAS, at the City Council meeting of November 14, 2006 the City Council approved the second reading of Ordinance No. 1353 approving Specific Plan # 04-209; and

WHEREAS, Petitioners the Center for Biological Diversity, Highland Springs Conference and Training Center, Banning Bench Community of Interest Association, and Cherry Valley Pass Acres and Neighbors filed litigation actions against the City and Real Party in Interest SCC/Black Bench LLC, challenging, among other things, the City's adoption of Ordinance No. 1353 approving Specific Plan # 04-209; and

WHEREAS, on April 24, 2008, the City received notice of the Judgment and Peremptory Writ of Mandate issued by the Riverside Superior Court directing the City to vacate and repeal adoption of Ordinance No. 1353 approving Specific Plan # 04-209; and

WHEREAS, the Judgment and Peremptory Writ of Mandate further direct the City to file a return to Peremptory Writ of Mandate no later than 60 days from issuance of the Judgment and Writ; and

WHEREAS, in order to comply with the Judgment and Peremptory Writ of Mandate issued by the Riverside Superior Court, the City Council therefore desires to vacate and repeal adoption of Ordinance No. 1353 approving Specific Plan # 04-209; and

WHEREAS, on May 30, 2008, the City gave public notice by advertising in the Press Enterprise newspaper and property owners within 1200 feet of the site were mailed public hearing notice of the holding of a public hearing for consideration of this Ordinance No. 1389; and

WHEREAS, at the public hearing on June 10, 2008, the City Council considered and heard comments on the adoption of this Ordinance No. 1389.

NOW, THEREFORE, the City Council of the City of Banning does Ordain as follows:

SECTION 1. FINDINGS.

1. On November 21st and 22nd, 2006, the following litigation matters were filed against the City of Banning and Real Party in Interest SCC/Black Bench LLC:

Highland Springs Conference and Training Center v. City of Banning; Case No. RIC 460950;

Center for Biological Diversity v. City of Banning; Case No. RIC 460967

Cherry Valley Pass Acres and Neighbors and Cherry Valley Environmental Planning Group v. City of Banning; Case No. RIC 461035

Banning Bench Community of Interest Association, Inc. v. City of Banning; Case No. RIC 461069

2. On April 24, 2008, the City received notice of the Judgment and Peremptory Writ of Mandate issued by the Riverside Superior Court (attached hereto as Exhibit "A") in the above referenced cases directing the City to vacate and repeal adoption of Ordinance No. 1353 approving Specific Plan # 04-209.

SECTION 2. SECTION 2. CITY COUNCIL ACTION

The City Council hereby takes the following actions:

1. **Ordinance No. 1353:** The City Council hereby repeals Ordinance 1353 approving Specific Plan # 04-209, which is attached hereto as Exhibit "B".

PASSED, APPROVED, AND ADOPTED this 10th day of June, 2008.

Brenda Salas, Mayor

**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 Ordinance No. 1389 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 10th day of June, 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
Banning, California

EXHIBIT "A"

Judgment and Peremptory Writ of Mandate

EDWARD J. CASEY (State Bar No. 119571)
SHIRAZ D. TANGRI (State Bar No. 203037)
TAMMY L. JONES (State Bar No. 232693)
WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUIISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071
Telephone: (213) 576-1000
Facsimile: (213) 576-1100

Attorneys for SCC/BLACK BENCH, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

HIGHLAND SPRINGS CONFERENCE AND
TRAINING CENTER,

Petitioner,

v.

CITY OF BANNING,

Respondent.

SCC/BLACK BENCH, LLC,
and DOES 1 through 10,

Real Parties in Interest.

Case No. RIC 460950 (MF)

Judge: Hon. Thomas Cahraman
Dept.: 42 (Riverside Hall of Justice)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 21, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUIISH LLP

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

Exhibit 1

325

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

LR

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE - RIVERSIDE BRANCH

Highland Springs Conference and Training
Center

Petitioner,

v.

CITY OF BANNING, a municipal corporation;

Respondent.

No. RIC 460950 MF

California Environmental Quality Act

~~PROPOSED~~ JUDGMENT

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 21, 2006

SCC/BLACK BENCH, LLC; and DOES 1 to
100; inclusive,
Real Parties in Interest

1 This matter came on regularly for hearing on December 19, 2007, in Department 42
2 of this Court. Jan Chatten-Brown and Arthur Pugsley appeared on behalf of Petitioner Highland
3 Springs Conference and Training Center. Respondents City of Banning ("City") appeared
4 through attorneys Geralyn L. Skapik and Amy E. Morgan and Real Party in Interest SCC/Black
5 Bench, LLC ("Real Party") appeared through attorneys Edward J. Casey, Shiraz D. Tangri, and
6 Tammy L. Jones. The Court having reviewed the record of respondent's proceedings in this
7 matter, the briefs submitted by counsel, and the arguments of counsel; the matter having been
8 submitted for decision; and the Court having issued an order that judgment and a peremptory writ
9 of mandate issue in this proceeding,

10 IT IS ORDERED that:

- 11 1. Judgment be entered in favor of Petitioner Highland Springs Conference and
12 Training Center in this proceeding.
 - 13 2. A peremptory writ of mandate directed to Respondent City issue under seal of
14 this Court, ordering Respondent City to:
 - 15 a. Set aside and vacate its certification under the California Environmental
16 Quality Act of the Final Environmental Impact Report for the Black Bench
17 Specific Plan.
 - 18 b. Set aside and vacate its findings under the California Environmental Quality
19 Act in connection with its approval of the Black Bench Specific Plan.
 - 20 c. Set aside and vacate its approvals of the Black Bench Project, including the
21 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129,
22 Resolution 2006-130, and Ordinance 1353.
 - 23 d. Set aside and vacate its approval of a Statement of Overriding Considerations
24 and Mitigation Monitoring Program.
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1 3. ~~The City and the Real Party are enjoined from proceeding with grading,~~
2 ~~construction, or any other physical implementation of the Black Bench Project, unless and until~~
3 ~~such time as the City has certified and adopted an environmental impact report that complies~~ (T.C.)
4 ~~with the California Environmental Quality Act.~~ The City and the Real Party are enjoined from
5 proceeding with grading, construction, or any other physical implementation of the Black Bench
6 Project that could result in an adverse change or alteration to the physical environment, unless
7 and until such time as the City has certified and adopted an environmental impact report that
8 complies with CEQA.

9 4. This Court shall retain jurisdiction over the proceedings pursuant to Public
10 Resources Code §21168.9(b) and (c). Nevertheless, the Court intends this to be a final,
11 appealable judgment.

12 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
13 Rules 870 and 870.2.

14 6. Petitioner Highland Springs Conference and Training Center, as prevailing
15 party, is entitled to costs in the amount of \$ _____, pursuant to Code of Civil Procedure

16 ~~Section 1033.5~~ as established by appropriate post-judgment procedures. (T.C.)

17 7. Petitioner Highland Springs Conference and Training Center, as prevailing
18 party, is entitled to apply for attorney's fees and costs through appropriate noticed motions after
19 entry of this Judgment. This Court retains jurisdiction to hear such motions and determine the
20 amount of such fees, if any, pursuant to them. ~~If such a motion is granted, this judgment will be~~
21 ~~amended to award the amount of \$ _____, in attorneys' fees pursuant to Code of Civil~~ (T.C.)
22 ~~Procedure Section 1021.5.~~

23 8. Under Public Resources Code §21168.9(c), the Court does not direct
24 respondent to exercise its lawful discretion, in any particular way. Nothing in the judgment or
25 peremptory writ should be construed as requiring respondent or real parties to go forward with
26

1 the project, or to reapprove the project, or to take any particular action other than as specifically
2 set forth herein.

3 9. Respondent shall file a preliminary return to the peremptory writ no later than
4 60 days after the date of the issuance of the peremptory writ which shall state that an appeal from
5 the judgment has or will be filed or that it has complied with the order to set aside its approval of
6 the project.

7 Dated: April 7, 2008

T. Cahraman

8
9 Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT
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Exhibit 2

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

LR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

Highland Springs Conference and Training Center

Petitioner,

v.

CITY OF BANNING,

Respondent.

SCC/BLACK BENCH, LLC, and DOES 1 to 100;
inclusive,

Real Parties in Interest.

Case No. RIC 460950

California Environmental Quality Act

~~PROPOSED~~ PEREMPTORY WRIT OF
MANDATE

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 21, 2006

Judgment having been entered in this proceeding, ordering that a peremptory writ of mandate be issued from this Court,

IT IS SO ORDERED that, immediately on service of this writ, Respondent City of Banning and SCC/Black Bench, LLC:

1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying under the California Environmental Quality Act the Final Environmental Impact Report for the Black Bench Specific Plan.

- 1 -

PEREMPTORY WRIT OF MANDATE [PROPOSED] - CASE NO. RIC 460950

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1 2. Set aside and vacate its findings under the California Environmental Quality
2 Act in connection with its approval of the Black Bench Specific Plan.

3 3. Set aside and vacate its approvals of the Black Bench Project, including the
4 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130,
5 and Ordinance 1353.

6 4. Set aside and vacate its approval of a Statement of Overriding Considerations
7 and Mitigation Monitoring Program.

8 5. Suspend all grading, construction, or any other physical implementation of the
9 Black Bench Project, unless and until such time as the City has certified and adopted an
10 environmental impact report that complies with the California Environmental Quality Act.

11 Under Public Resources Code section 21168.9(c), this Court does not direct
12 Respondent to exercise its lawful discretion in any particular way.

13 Under Public Resources Code section 21168.9(b), this Court will retain
14 jurisdiction over Respondent's proceedings by way of a return to this peremptory writ of mandate
15 until the Court has determined that respondent has complied with the provisions of CEQA.

16 Respondent shall file a preliminary return to this writ no later than sixty (60) days
17 from the date this writ is issued setting forth what respondents have done to comply with the writ
18 set forth herein.

19 LET THE WRIT OF MANDATE ISSUE.

20
21 Dated: April 7, 2008

22 T. Cahraman
23 Hon. Thomas H. Cahraman
24 JUDGE OF THE SUPERIOR COURT
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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

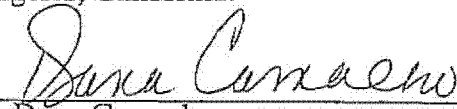
☐ BY FEDERAL EXPRESS ☐ UPS NEXT DAY AIR ☐ OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by ☐ FEDERAL EXPRESS ☐ UPS ☐ Overnight Delivery [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ FEDERAL EXPRESS ☐ UPS ☐ OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

1 Highland Springs Conference and Training Center v. City of Banning
2 Case No. RIC 460950
3

4 SERVICE LIST
5
6

7 Jan Chatten-Brown
8 Douglas P. Carstens
9 Amy Minter
10 **CHATTEN-BROWN & CARSTENS**
11 2601 Ocean Park Boulevard
12 Suite 205
Santa Monica, CA 90405
Tel: (310) 314-8040
Fax: (310) 314-8050

Attorney for Petitioner
**HIGHLAND SPRINGS CONFERENCE
AND TRAINING CENTER**

13 Julie H. Biggs, City Attorney
14 **CITY OF BANNING**
15 99 E. Ramsey St.
16 Banning, CA 92220
17 Tel: (951) 922-3106
18 Fax: (951) 922-3161

Attorneys for Respondent
CITY OF BANNING

19 Stephen R. Onstot
20 Amy E. Morgan
21 **BURKE, WILLIAMS & SORESENSEN, LLP**
22 2800 Market Street, Suite 300
23 Riverside, CA 92501
24 Tel: (951) 788-0100
25 Fax: (951) 788-5785
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28

1 EDWARD J. CASEY (State Bar No. 119571)
2 SHIRAZ D. TANGRI (State Bar No. 203037)
3 TAMMY L. JONES (State Bar No. 232693)
4 WESTON, BENSHOOF, ROCHEFORT,
5 RUBALCAVA & MacCUISH LLP
6 333 South Hope Street, Sixteenth Floor
7 Los Angeles, California 90071
8 Telephone: (213) 576-1000
9 Facsimile: (213) 576-1100

10 Attorneys for SCC/BLACK BENCH, LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC., a
Californian Non-Profit Corporation,

Petitioner and Plaintiff,

v.

CITY OF BANNING and CITY COUNCIL
OF THE CITY OF BANNING,

Respondents and Defendants.

SCC/BLACK BENCH, LLC, a Delaware
Limited Liability Company, and DOES 1
through 25, Inclusive,

Real Parties in Interest.

Case No. RIC 461069
460950 MF

Judge: Hon. Stephen D. Cunnison
Dept.: 1 (Riverside Branch)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 22, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

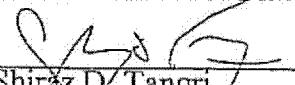

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

Exhibit 1

336

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

KR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

460950 MF

BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC.,

Petitioner and Plaintiff,

v.

CITY OF BANNING, CITY COUNCIL OF
THE CITY OF BANNING,

Respondents and Defendants.

SCC/BLACK BENCH, LLC, *et al.*,

Real Parties in Interest.

Case No. RIC 461069

California Environmental Quality Act case

~~PROPOSED~~ JUDGMENT

Judge: Honorable Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 22, 2006

This matter came on regularly for hearing on December 19, 2007, in Department 42 of this Court. John G. McClendon appeared on behalf of Petitioner and Plaintiff Banning Bench Community of Interest Association, Inc. ("BBCIA"). Respondents and Defendants City of Banning and City Council of the City of Banning (collectively, the "City") appeared through attorneys Geralyn L. Skapik and Amy E. Morgan, and Real Party in Interest SCC/Black Bench, LLC ("Real Party") appeared through attorneys Edward J. Casey, Shiraz D. Tangri, and Tammy L. Jones. At the close of that hearing, the Court took the matter under submission and, on January 29, 2008, issued its Minute Order/Judgment and a Ruling on Submitted Matter ("Minute Order").

1 On March 19, 2008, the parties executed a *Joint Stipulation Regarding The Third*
2 *Cause Of Action To Banning Bench Community Of Interest Association's Petition For Writ*
3 *Of Mandate; Complaint For Declaratory Relief and [Proposed] Order* ("Stipulation")
4 acknowledging that the Court's Minute Order resolved the need for further briefing and/or
5 hearing with regard to BBCIA's Third Cause of Action for Declaratory Relief and was now
6 moot. Pursuant to the Stipulation, the Court ordered the Third Cause of Action for
7 Declaratory Relief dismissed with prejudice for mootness.

8 The Court having reviewed the record of the City's proceedings in this matter; the briefs
9 submitted by counsel and the arguments of counsel; the matter having been submitted for decision;
10 the Court having issued the Minute Order ordering that judgment and a peremptory writ of mandate
11 issue in this proceeding and having signed the Stipulation,

12 IT IS ORDERED that BBCIA's *Petition for Writ of Mandate; Complaint for Declar-*
13 *atory Relief* is DENIED as to its Second Cause of Action and GRANTED as to its First
14 Cause of Action for relief under the California Environmental Quality Act (Public Resources
15 Code § 21000 *et seq.*: "CEQA"); THEREFORE, IT IS FURTHER ORDERED that:

- 16 1. Judgment be entered in favor of BBCIA in this proceeding.
- 17 2. A peremptory writ of mandate directed to the City issue under seal of this Court,
18 ordering the City to:
 - 19 a. Set aside and vacate its certification under CEQA of the Final
20 Environmental Impact Report ("EIR") for the Black Bench Specific
21 Plan.
 - 22 b. Set aside and vacate its findings under CEQA in connection with its
23 approval of the Black Bench Specific Plan.
 - 24 c. Set aside and vacate its approvals of the Black Bench Project, including
25 the Black Bench Specific Plan, and its adoption of Resolution No. 2006-
26 129, Resolution 2006-130, and Ordinance 1353.
 - 27 d. Set aside and vacate its approval of a Statement of Overriding
28 Considerations and Mitigation Monitoring Program.

1 3. The City and the Real Party are enjoined from proceeding with grading,
2 construction, or any other physical implementation of the Black Bench Project that could
3 result in an adverse change or alteration to the physical environment, unless and until such
4 time as the City has certified and adopted an environmental impact report that complies with
5 CEQA.

6 4. The Court shall retain jurisdiction over the proceedings pursuant to Public
7 Resources Code section 21168.9(b) and (c). Nevertheless, the Court intends this to be a
8 final, appealable judgment.

9 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
10 Rules 870 and 870.2.

11 6. Petitioner BBCIA, as prevailing party, is entitled to costs ~~in the amount of~~
12 ~~as established by the appropriate~~
~~post-judgment procedures.~~
13 ~~purported to Code of Civil Procedure section 1033.5~~

14 7. Petitioner BBCIA, as prevailing party, is entitled to apply for attorneys' fees and
15 costs through appropriate noticed motions after entry of this Judgment. This Court retains
16 jurisdiction to hear such motions and determine the amount of such fees, if any, pursuant to
17 them. ~~If such a motion is granted, this judgment will be amended to award the amount of~~
~~in attorneys' fees pursuant to Code of Civil Procedure section 1021.5.~~

18 8. Under Public Resources Code section 21168.9(c), the Court does not direct the
19 City to exercise its lawful discretion, in any particular way. Nothing in the judgment or
20 peremptory writ should be construed as requiring respondent or real parties to go forward
21 with the project, or to reapprove the project, or to take any particular action other than as
22 specifically set forth herein.

23 The City shall file a preliminary return to the peremptory writ no later than 60 days
24 after the date of the issuance of the peremptory writ which shall state that an appeal from the
25 judgment has or will be filed or that it has complied with the order to set aside its approval of
26 the EIR and the Black Bench Project.

27 DATED: April 7, 2008

28 T. Cahraman
Honorable Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

340

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

[Signature]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

460950 MF

BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC.,

Petitioner and Plaintiff,

v.

CITY OF BANNING, CITY COUNCIL OF
THE CITY OF BANNING,

Respondents and Defendants.

Case No. RIC 461069

California Environmental Quality Act case

~~PROPOSED~~ PEREMPTORY WRIT
OF MANDATE

Judge: Honorable Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 22, 2006

SCC/BLACK BENCH, LLC, *et al.*,

Real Parties in Interest.

Judgment having been entered in this proceeding in favor of Petitioner and Plaintiff Banning Bench Community of Interest Association ordering that a peremptory writ of mandate issue,

IT IS SO ORDERED that, immediately on service of this writ, Respondents City of Banning and City Council of the City of Banning (collectively, "Respondent") shall:

1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying under the California Environmental Quality Act ("CEQA") the Final Environmental Impact Report for the Black Bench Specific Plan.

341

1 2. Set aside and vacate its findings under CEQA in connection with its approval of
2 the Black Bench Specific Plan.

3 3. Set aside and vacate its approvals of the Black Bench Project, including the Black
4 Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130, and
5 Ordinance 1353.

6 4. Set aside and vacate its approval of a Statement of Overriding Considerations and
7 Mitigation Monitoring Program.

8 5. Suspend all grading, construction, or any other physical implementation of the
9 Black Bench Project, unless and until such time as the City has certified and adopted an
10 environmental impact report that complies with CEQA.

11 Under Public Resources Code section 21168.9(c), this Court does not direct
12 Respondent to exercise its lawful discretion in any particular way.

13 Under Public Resources Code section 21168.9(b), this Court will retain jurisdiction
14 over Respondent's proceedings by way of a return to this peremptory writ of mandate until
15 the Court has determined that Respondent has complied with the provisions of CEQA.

16 Respondent shall file a preliminary return to this writ no later than sixty (60) days
17 from the date this writ is issued setting forth what Respondents has done to comply with the
18 writ set forth herein.

19 LET THE WRIT OF MANDATE ISSUE.

20
21 DATED:

April 7, 2008

T. Cahraman
Honorable Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as **NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ **BY MAIL:** I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.


☐ **BY FEDERAL EXPRESS** ☐ **UPS NEXT DAY AIR** ☐ **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **Overnight Delivery** [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **OVERNIGHT DELIVERY** [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ **BY FACSIMILE:** I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

Banning Bench Community of Interest Association, Inc. v. City of Banning, et al.
Case No. RIC 461069

SERVICE LIST

John G. McClendon

Alisha M. Santana

LEIBOLD, McCLENDON & MANN LLP

23422 Mill Creek Drive, Suite 105

Laguna Hills, CA 92653

Tel: (949) 457-6300

Fax: (949) 457-6305

Attorneys for Petitioner and Plaintiff

**BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC.**

Julie H. Biggs, City Attorney

CITY OF BANNING

99 E. Ramsey St.

Banning, CA 92220

Tel: (951) 922-3106

Fax: (951) 922-3161

Attorneys for Respondents and Defendants

**CITY OF BANNING and
CITY COUNCIL OF THE CITY
OF BANNING**

Stephen R. Onstot

Amy E. Morgan

BURKE, WILLIAMS & SORENSEN, LLP

2800 Market Street, Suite 300

Riverside, CA 92501

Tel: (951) 788-0100

Fax: (951) 788-5785

1 EDWARD J. CASEY (State Bar No. 119571)
2 SHIRAZ D. TANGRI (State Bar No. 203037)
3 TAMMY L. JONES (State Bar No. 232693)
4 WESTON, BENSHOOF, ROCHEFORT,
5 RUBALCAVA & MacCUISH LLP
6 333 South Hope Street, Sixteenth Floor
7 Los Angeles, California 90071
8 Telephone: (213) 576-1000
9 Facsimile: (213) 576-1100

10 Attorneys for SCC/BLACK BENCH, LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

CENTER FOR BIOLOGICAL DIVERSITY,

Petitioner,

v.

CITY OF BANNING, CITY COUNCIL OF
THE CITY OF BANNING,
and Does 1-20,

Respondents.

SCC/BLACK BENCH, LLC,
and DOES 21 through 50, Inclusive,

Real Parties in Interest.

Case No. RIC 460967
460950 MF

Judge: Hon. Gloria Connor Trask
Dept.: 4 (Riverside Branch)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 21, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

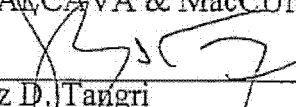

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

Exhibit 1

347

1 Matthew D. Vespa (SBN 222265)
2 CENTER FOR BIOLOGICAL DIVERSITY
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13 Email: jbuse@biologicaldiversity.org

14 Attorneys for Petitioner
15 CENTER FOR BIOLOGICAL DIVERSITY

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 IN AND FOR THE COUNTY OF RIVERSIDE

18 CENTER FOR BIOLOGICAL
19 DIVERSITY,

20 Petitioner,

21 vs.

22 CITY OF BANNING,
23 CITY COUNCIL OF THE CITY OF
24 BANNING,
25 and DOES 1-20,

26 Respondents.

27 SCC/BLACK BENCH, LLC
and DOES 21-50,

Real Parties in Interest.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

Case No. RIC 460967

Case Filed Under the California Environmental
Quality Act (CEQA)

~~PROPOSED~~ JUDGMENT

Original Date of Filing: November 21, 2006

Judge: Hon. Thomas H. Cahraman
Department: 42

[Proposed] Judgment

Case No. RIC 460967

1 This matter came on regularly for hearing on December 19, 2007, in Department 42 of
2 this Court. Matthew D. Vespa appeared on behalf of Petitioner CENTER FOR BIOLOGICAL
3 DIVERSITY (the "Center"). Respondents CITY OF BANNING and the CITY COUNCIL OF
4 THE CITY OF BANNING (the "City") appeared through attorneys Geralyn L. Skapik and
5 Amy E. Morgan, and Real Party in Interest SCC/BLACK BENCH, LLC ("Real Party")
6 appeared through attorneys Edward J. Casey, Shiraz D. Tangri, and Tammy L. Jones. The
7 Court having reviewed the record of the City's proceedings in this matter, the briefs submitted
8 by counsel, and the arguments of counsel; the matter having been submitted for decision; and
9 the Court having issued an order that judgment and a peremptory writ of mandate issue in this
10 proceeding,

11 IT IS ORDERED that:

- 12 1. Judgment be entered in favor of the Center in this proceeding.
- 13 2. A peremptory writ of mandate directed to the City issue under seal of this Court,
14 ordering the City to:
 - 15 a. Set aside and vacate its adoption of Resolution No. 2006-128 certifying
16 the Final Environmental Impact Report for the Black Bench Specific
17 Plan pursuant to the California Environmental Quality Act ("CEQA").
 - 18 b. Set aside and vacate its findings under CEQA in connection with its
19 approval of the Black Bench Specific Plan.
 - 20 c. Set aside and vacate its approvals of the Black Bench Project, including
21 the Black Bench Specific Plan, and its adoption of Resolution No. 2006-
22 129, Resolution 2006-130, and Ordinance 1353.
 - 23 d. Set aside and vacate its approval of a Statement of Overriding
24 Considerations and Mitigation Monitoring Program in connection with
25 the Black Bench Project.
- 26 3. The City and the Real Party are enjoined from proceeding with grading,
27 construction, or any other physical implementation of the Black Bench Project that could result

1 in an adverse change or alteration to the physical environment, unless and until such time as
2 the City has certified and adopted an environmental impact report that complies with CEQA.

3 4. The Court shall retain jurisdiction over the proceedings pursuant to Public
4 Resources Code §21168.9(b) and (c). Nevertheless, the Court intends this to be a final,
5 appealable judgment.

6 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
7 Rules 870 and 870.2.

8 6. The Center, as prevailing party, is entitled to costs ~~in the amount of \$~~
9 ~~pursuant to Code of Civil Procedure Section 1033.5~~ *as established by*
10 *appropriate post-judgment*
procedures.

11 7. The Center, as prevailing party, is entitled to apply for attorney's fees and costs
12 through appropriate noticed motions after entry of this Judgment. This Court retains
13 jurisdiction to hear such motions and determine the amount of such fees, if any, pursuant to
14 them. ~~If such a motion is granted, this judgment will be amended to award the amount of \$~~
15 ~~in attorneys' fees pursuant to Code of Civil Procedure Section 1021.5.~~

16 8. Under Public Resources Code §21168.9(c), the Court does not direct the City to
17 exercise its lawful discretion, in any particular way. Nothing in the judgment or peremptory
18 writ should be construed as requiring the City or Real Party to go forward with the Black
19 Bench Project, or to reapprove the Black Bench Project, or to take any particular action other
20 than as specifically set forth herein.

21 The City shall file a return to the peremptory writ no later than 60 days after the date of
22 the issuance of the peremptory writ which shall state that it has complied with writ or that an
23 appeal from the judgment has or will be filed.

24
25 Dated: April 7, 2008

T. Cahran

Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

351

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



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Attorneys for Petitioner
CENTER FOR BIOLOGICAL DIVERSITY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

CENTER FOR BIOLOGICAL
DIVERSITY,

Petitioner,

vs.

CITY OF BANNING,
CITY COUNCIL OF THE CITY OF
BANNING,
and DOES 1-20,

Respondents.

SCC/BLACK BENCH, LLC
and DOES 21-50,

Real Parties in Interest.

Case No. RIC 460967

Case Filed Under the California Environmental
Quality Act

~~PROPOSED~~ PEREMPTORY WRIT OF
MANDATE

Original Date of Filing: November 21, 2006

Judge: Hon. Thomas H. Cahraman
Department: 42

[Proposed] Peremptory Writ of Mandate

Case No. RIC 460967

352

1 Judgment having been entered in this proceeding in favor of Petitioner CENTER FOR
2 BIOLOGICAL DIVERSITY ordering that a peremptory writ of mandate issue,

3 IT IS THEREFORE ORDERED that, immediately on service of this writ, Respondent
4 CITY OF BANNING (the "City") shall do the following:

5 1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying the
6 Final Environmental Impact Report for the Black Bench Specific Plan pursuant to the
7 California Environmental Quality Act ("CEQA").

8 2. Set aside and vacate its findings under CEQA in connection with its approval of
9 the Black Bench Specific Plan.

10 3. Set aside and vacate its approvals of the Black Bench Project, including the
11 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130,
12 and Ordinance 1353.

13 4. Set aside and vacate its approval of a Statement of Overriding Considerations
14 and Mitigation Monitoring Program in connection with the Black Bench Project.

15
16 Pursuant to Public Resources Code section 21168.9(c), this Court does not direct
17 Respondent to exercise its lawful discretion in any particular way.

18 Pursuant to Public Resources Code section 21168.9(b), this Court will retain
19 jurisdiction over this matter by way of a return to this peremptory writ of mandate until the
20 Court has determined that the City has complied with the provisions of CEQA.

21 The City shall file a return to this writ no later than sixty (60) days from the date this writ
22 is issued setting forth what it has done to comply with the writ set forth herein.

23 LET THE WRIT OF MANDATE ISSUE.

24
25 Dated: April 7, 2008



26 Hon. Thomas H. Cahraman
27 JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as **NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.


☐ BY FEDERAL EXPRESS ☐ UPS NEXT DAY AIR ☐ OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by ☐ FEDERAL EXPRESS ☐ UPS ☐ Overnight Delivery [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ FEDERAL EXPRESS ☐ UPS ☐ OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

Center for Biological Diversity v. City of Banning, et al.
Case No. RIC 460967

SERVICE LIST

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CITY COUNCIL OF THE CITY
OF BANNING**

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EDWARD J. CASEY (State Bar No. 119571)
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Attorneys for SCC/BLACK BENCH, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

CHERRY VALLEY PASS ACRES AND
NEIGHBORS, a California Non-Profit
Corporation, and CHERRY VALLEY
ENVIRONMENTAL PLANNING GROUP, a
California Non-Profit Corporation,

Petitioners,

v.

CITY OF BANNING, a Municipal Corporation,

Respondent.

SCC/BLACK BENCH, LLC,
and DOES 1 through 100, Inclusive,

Real Parties in Interest.

Case No. RIC 461035

460950 MF

Judge: Commissioner Joan F. Burgess
Dept.: 6 (Riverside Branch)

NOTICE OF ENTRY OF ORDERS RE
JUDGMENT AND PEREMPTORY
WRIT OF MANDATE

Action Filed: November 22, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 8, 2008, the Court entered and filed the
Judgment attached hereto as Exhibit "1."

PLEASE TAKE FURTHER NOTICE that on April 8, 2008, the Court entered
and filed the Peremptory Writ of Mandate attached hereto as Exhibit "2."

DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

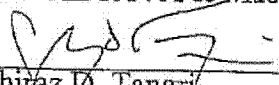

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

Exhibit 1

1 ROGERS JOSEPH O'DONNELL
2 ROBERT C. GOODMAN (State Bar No. 111554)
3 ANN M. BLESSING (State Bar No. 172573)
4 311 California Street
5 San Francisco, California 94104
6 Telephone: 415.956.2828
7 Facsimile: 415.956.6457

8 Attorneys for Petitioners Cherry Valley
9 Pass Acres and Neighbors and Cherry Valley
10 Environmental Planning Group

11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
12 COUNTY OF RIVERSIDE - RIVERSIDE BRANCH

13 CHERRY VALLEY PASS ACRES AND
14 NEIGHBORS, a California non-profit
15 corporation; and CHERRY VALLEY
16 ENVIRONMENTAL PLANNING GROUP, a
17 California non-profit corporation,

18 Petitioners,

19 v.

20 CITY OF BANNING, a municipal corporation;

21 Respondent.

22 SCC/BLACK BENCH, LLC; and ROES 1 to
23 100; inclusive,
24 Real Parties in Interest

460950 MF
No. RIC 461035

Case Filed Under the Environmental Quality
Act

PROPOSED JUDGMENT

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

Action Filed: November 22, 2006

25 This matter came on regularly for hearing on December 19, 2007, in Department
26 42 of this Court. Robert C. Goodman and D. Kevin Shipp appeared on behalf of Petitioners

- 1 -

[PROPOSED] JUDGMENT - CASE NO. RIC 461035

266305.2

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

KR

358

1 Cherry Valley Pass Acres and Neighbors and Cherry Valley Environmental Planning Group,
2 (collectively referred to hereinafter as "CVPAN"). Respondents City of Banning ("City")
3 appeared through attorneys Geralyn L. Skapik and Amy E. Morgan and Real Party in Interest
4 SCC/Black Bench, LLC ("Real Party") appeared through attorneys Edward J. Casey, Shiraz D.
5 Tangri, and Tammy L. Jones. The Court having reviewed the record of respondent's proceedings
6 in this matter, the briefs submitted by counsel, and the arguments of counsel; the matter having
7 been submitted for decision; and the Court having issued an order that judgment and a
8 peremptory writ of mandate issue in this proceeding,

9 IT IS ORDERED that:

10 1. Judgment be entered in favor of Petitioners Cherry Valley Pass Acres and
11 Neighbors and Cherry Valley Environmental Planning Group in this proceeding.

12 2. A peremptory writ of mandate directed to respondent issue under seal of this
13 Court, ordering respondent to:

- 14 a. Set aside and vacate its adoption of Resolution No. 2006-128 certifying the
15 Final Environmental Impact Report for the Black Bench Specific Plan
16 pursuant to the California Environmental Quality Act ("CEQA");
17 b. Set aside and vacate its findings under the CEQA in connection with its
18 approval of the Black Bench Specific Plan;
19 c. Set aside and vacate its approvals of the Black Bench Project, including the
20 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129,
21 Resolution 2006-130, and Ordinance 1353; and
22 d. Set aside and vacate its approval of a Statement of Overriding Considerations
23 and Mitigation Monitoring Program in connection with the Black Bench
24 Project.

25 3. The City and the Real Party are enjoined from proceeding with grading,
26 construction, or any other physical implementation of the Black Bench Project that could result

1 in an adverse change or alteration to the physical environment, unless and until such time as the
2 City has certified and adopted an environmental impact report that complies with CEQA.

3 4. The court shall retain jurisdiction over the proceedings pursuant to Public
4 Resources Code §21168.9(b) and (c). Nevertheless, the Court intends this to be a final,
5 appealable judgment.

6 5. Costs and attorneys fees may be claimed pursuant to California Rules of Court
7 Rules 870 and 870.2.

8 6. Petitioner CVPAN, as prevailing party, is entitled to costs ~~in the amount of~~
9 ~~\$~~ *as established by appropriate post-judgment*
~~pursuant to Code of Civil Procedure Section 1033.5~~ *procedures.*

10 7. Petitioner CVPAN, as prevailing party, is entitled to apply for attorney's fees
11 and costs through appropriate noticed motions after entry of this Judgment. This Court retains
12 jurisdiction to hear such motions and determine the amount of such fees, if any, pursuant to
13 them. ~~If such a motion is granted, this judgment will be amended to award the amount of \$~~
14 ~~_____ in attorneys' fees pursuant to Code of Civil Procedure Section 1021.5.~~

15 8. Under Public Resources Code §21168.9(c), the Court does not direct
16 respondent to exercise its lawful discretion, in any particular way. Nothing in the judgment or
17 peremptory writ should be construed as requiring respondent or real parties to go forward with
18 the project, or to reapprove the project, or to take any particular action other than as specifically
19 set forth herein.

20 9. Respondent shall file a preliminary return to the peremptory writ no later than
21 60 days after the date of the issuance of the peremptory writ which shall state that an appeal from
22 the judgment has or will be filed or that it has complied with the order to set aside its approval of
23 the project.

24 Dated: April 7, 2008

T. Cahran

Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

361

1 ROGERS JOSEPH O'DONNELL
2 ROBERT C. GOODMAN (State Bar No. 111554)
3 ANN M. BLESSING (State Bar No. 172573)
4 311 California Street
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6 Telephone: 415.956.2828
7 Facsimile: 415.956.6457

8 Attorneys for Petitioners Cherry Valley
9 Pass Acres and Neighbors and Cherry Valley
10 Environmental Planning Group

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF RIVERSIDE

13 CHERRY VALLEY PASS ACRES AND
14 NEIGHBORS, *et al.*,

15 Petitioners,

16 v.

17 CITY OF BANNING,

18 Respondent.

460950 MF
Case No. RIC 461035

Case Filed Under the Environmental Quality
Act

~~PROPOSED~~ PEREMPTORY WRIT OF
MANDATE

[Cal. Pub. Res. Code § 21168.5; Cal. Civ. Proc.
Code § 1085]

Judge: Hon. Thomas H. Cahraman
Dept.: 42 (Riverside Branch)

19 SCC/BLACK BENCH, LLC; and ROES I to 100;
20 inclusive,
21 Real Parties in Interest

Action Filed: November 22, 2006

22 Judgment having been entered in this proceeding in favor of Petitioners Cherry
23 Valley Pass Acres and Neighbors and Cherry Valley Environmental Planning Group, ordering
24 that a peremptory writ of mandate be issued from this Court,

25 IT IS SO ORDERED that, immediately on service of this writ, Respondent
26 City of Banning (the "City") shall:

- 1 -

[PROPOSED] PEREMPTORY WRIT OF MANDATE - CASE NO. RIC 461035

266450.3

362

1 1. Set aside and vacate its adoption of Resolution No. 2006-128 certifying under
2 the California Environmental Quality Act ("CEQA") the Final Environmental Impact Report for
3 the Black Bench Specific Plan.

4 2. Set aside and vacate its findings under the CEQA in connection with its
5 approval of the Black Bench Specific Plan.

6 3. Set aside and vacate its approvals of the Black Bench Project, including the
7 Black Bench Specific Plan, and its adoption of Resolution No. 2006-129, Resolution 2006-130,
8 and Ordinance 1353.

9 4. Set aside and vacate its approval of a Statement of Overriding Considerations
10 and Mitigation Monitoring Program in connection with the Black Bench Project.

11 Under Public Resources Code section 21168.9(c), this Court does not direct
12 Respondent to exercise its lawful discretion in any particular way.

13 Under Public Resources Code section 21168.9(b), this Court will retain
14 jurisdiction over Respondent's proceedings by way of a return to this peremptory writ of mandate
15 until the Court has determined that respondent has complied with the provisions of CEQA.

16 The City shall file a preliminary return to this writ no later than sixty (60) days
17 from the date this writ is issued setting forth what respondents have done to comply with the writ
18 set forth herein.

19 LET THE WRIT OF MANDATE ISSUE.

20
21 Dated: April 7, 2008

22 T. Cahran
23 Hon. Thomas H. Cahranan
24 JUDGE OF THE SUPERIOR COURT
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PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On April 24, 2008, I served the document(s) described as **NOTICE OF ENTRY OF ORDERS RE JUDGMENT AND PEREMPTORY WRIT OF MANDATE** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

☒ **BY MAIL:** I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

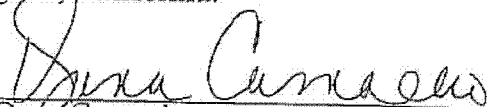
☐ **BY FEDERAL EXPRESS** ☐ **UPS NEXT DAY AIR** ☐ **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **Overnight Delivery** [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ **FEDERAL EXPRESS** ☐ **UPS** ☐ **OVERNIGHT DELIVERY** [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ **BY FACSIMILE:** I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2008, at Los Angeles, California.


Dana Camacho

Cherry Valley Pass Acres And Neighbors, et al., v. City of Banning
Case No. RIC 461035

SERVICE LIST

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Ann M. Blessing

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Fax: (415) 956-6457

Attorney for Petitioners

CHERRY VALLEY PASS ACRES

AND NEIGHBORS, and CHERRY

VALLEY ENVIRONMENTAL

PLANNING GROUP,

Julie H. Biggs, City Attorney

CITY OF BANNING

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Attorneys for Respondent

CITY OF BANNING

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EXHIBIT "B"

Ordinance No. 1353

ORDINANCE NO. 1353

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING SPECIFIC PLAN #04-209, TO ESTABLISH THE DEVELOPMENT STANDARDS AND GUIDELINES TO ALLOW THE DEVELOPMENT OF UP TO 1,500 RESIDENTIAL UNITS, A 13.1 ACRE SCHOOL SITE, 81.2 ACRES OF PARKS, AND 869 ACRES OF OPEN SPACE ON A 1,488 ACRE SITE GENERALLY LOCATED NORTH OF WILSON STREET, WEST OF BLUFF STREET, BETWEEN SUNSET AVENUE AND HIGHLAND SPRINGS AVENUE.

WHEREAS, an application for Specific Plan #04-209, to establish the development standards and guidelines for the development of up to 1,500 residential units, a 13.1 acre school site, 81.2 acres of parks, and 869 acres of open space on a 1,488 acre site, has been duly filed by:

Applicant / Owner:	SunCal Companies
Authorized Agent:	Rod Hanway
Project Location:	Generally located north of Wilson Street, west of Bluff Street, between Sunset Avenue and Highland Springs Avenue.
APN Numbers:	401-230-001 thru 011, 401-240-007 & 008, 401-250-005 & 006, 401-260-005 & 006, 531-200-001 thru 010, 531-210-004, 531-210-008 thru 012, 531-230-001 thru 007, 531-230-011 & 012, 531-240-007, 531-340-001 & 004.
Lot Area:	1,488 Acres

WHEREAS, the Municipal Code allows for the preparation of Specific Plans when land use amendments are proposed; and

WHEREAS, on the 29th day of September 2006, the City gave public notice by advertising in the Press Enterprise newspaper and property owners within 1200 feet of the site were mailed a public hearing notice of the holding of a public hearing at which the project would be considered; and

WHEREAS, at a public hearing on the 15th day of August 2006, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Specific Plan and at which time the Planning Commission considered the Specific Plan and approved Resolution No. 06-18 recommending approval of the Black Bench Specific Plan to the City Council; and

WHEREAS, on the 11th day of October 2006, , the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Specific Plan; the City Council continued consideration of the Specific Plan to October 24th 2006, and at which time the City Council considered the Specific Plan; and

WHEREAS, at this public hearing on the 11th day of October 2006, which was continued to the 24th day of October 2006, the City Council considered and heard public comments on the Specific Plan; and

WHEREAS, the City Council considered the Environmental Impact Report prepared for the proposed project and recommended its certification to the City Council.

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

SECTION 1. ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the Staff Reports dated the 11th and 24th day of October 2006, 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 on this matter, hereby finds and determines as follows:

1. CEQA: The approval of this Specific Plan is in compliance with the requirements of the California Environmental Quality Act ("CEQA"), in that an Environmental Impact Report was prepared reflecting its independent judgment and analysis and documenting the potential significant impacts associated with implementation of the proposal. 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). A portion of the project is located within the MSHCP criteria Cell #227 and has gone through the HANS process with the Riverside Conservation Authority. No development or disturbance of land will occur within the Cell and mitigation will also be made through the payment of the MSHCP mitigation fees.

SECTION 2. GENERAL PLAN CONSISTENCY

The City Council finds that the Specific Plan is consistent with the General Plan, as amended, insofar as the property is designated Specific Plan Area with an underlying Very Low Density land use designation (0-2 units/acre). The site is 1,488 acres and the applicant proposes to cluster 1,452 residential parcels, a density of less than one unit per acre. Further, this map will provide executive ("move-up") housing opportunities, which is consistent with Land Use Residential Goal 2 in that the project will provide "a broad range of housing types to fill the

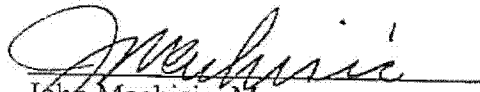
needs of the City's current and future residents". Also, the Map will provide approximately 81.2 acres of parks and 869 acres of open space with a variety of passive and active recreational opportunities, which is consistent with Goal 1 of providing "a high quality public park system with adequate land and facilities to provide recreational facilities and activities for the City's residents."

SECTION 3. CITY COUNCIL ACTIONS.


The City Council hereby takes the following actions:

1. Approval of Specific Plan. The City Council hereby approves Specific Plan #04-209

PASSED, APPROVED AND ADOPTED this 14th day of November, 2006.

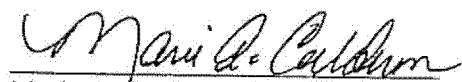

John Machisic, Mayor

APPROVED AS TO FORM AND
LEGAL CONTENT:



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

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. 1353 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 24th day of October, 2006, and was duly adopted at a regular meeting of said City Council on the 14th day of November, 2006, by the following vote, to wit:

AYES: Councilmembers Salas, Welch, Mayor Machisic

NOES: Councilmembers Hanna, Palmer

ABSENT: None


ABSTAIN: None


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

**CITY COUNCIL
PUBLIC HEARING**

DATE: June 10, 2008

TO: Honorable Mayor and City Council

FROM:  Matthew Bassi, Interim Community Development Director

SUBJECT: Tentative Tract Map (TTM) 33540 Time Extension Located Generally North of Gilman Street and West of 8th Street
APN: 535-110-002;-006;-011;-012; 535-311-006 through -23; 535-312-001 through -024; 535-070-014.

RECOMMENDATION: That the City Council adopt Resolution No. 2008-59 (Exhibit 1) approving a one-year extension of time to September 26, 2009 for Tentative Tract Map No. 33540.

BACKGROUND/ANALYSIS:

A tentative tract map expires 24 months after its initial approval. If it is not recorded the applicant may request a time extension. The City Council approved TTM 33540 on September 26, 2006, by adoption of Resolution No. 2006-59. On April 29, 2008, the subdivider submitted an application for an extension of time in accordance with Section 66452.6(e) of the Subdivision Map Act (SMA). This is the first request for an extension of time. The SMA allows a tentative map to be extended for periods not exceeding a total of five years.

Project Location:

The project is located on Gilman Street one block west of Wyte Way, west of 8th and within the Low Density Residential land use designation. The project site is partially vacant; a cemetery is located on the northeast portion of the site. The site was previously used for a cemetery and school and some of the foundations remain on the property as well. The site slopes downward from the northwest to the southeast. The northern boundary of the site is the toe of slope of the surrounding hillsides. A flood control channel bisects the western corner of the site.

Project History:

The Tentative Tract Map creates 172 single-family lots, 3 open space lots, one flood control basin, one cemetery lot, and lettered lots for streets, in the Low Density Residential zoning district on approximately 65 acres. A 7-acre site has been set aside for the cemetery site with access from 8th Street.

The Morongo Band of Mission Indians has indicated a strong interest in the cemetery site because some members of the Tribe either had relatives that attended the school, or attended the school and/or were interred at the cemetery. Both the project proponent and representatives of the Morongo Band of Mission Indians have worked together to find an appropriate way to address and preserve the remains of the Indian School and cemetery.

Environmental/CEQA:

A Mitigated Negative Declaration and Mitigation Monitoring Program prepared for the project was approved on September 26, 2006, by City Council (Resolution No. 2006-59). Section 15162 of the California Environmental Quality Act Guidelines states that once a Negative Declaration has been adopted for a project, no subsequent EIR or Mitigated Negative Declaration shall be prepared unless: 1) substantial changes are proposed to the project, 2) substantial changes occur with respect to the circumstances under which the project is undertaken, or 3) new information of substantial importance is presented which was not known and could not have been known at the time the previous Mitigated Negative Declaration was adopted.

This request for a time extension does not propose changes to the approved project, nor is there evidence of the circumstances noted in conditions 2 or 3 above. Therefore, no environmental review is needed for the proposed time extension.

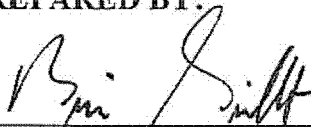
Request for Time Extension:

Attached is a copy of Resolution No. 2006-59 (refer to Exhibit 2) documenting conditions imposed on the project by the City Council along with the corresponding findings. The applicant states that the time extension is necessary because of current economic downturn and shortage of funding.

The request for time extension was routed to the same agencies and departments that previously reviewed the tentative tract map. The reviewing agencies did not identify any change in circumstances and did not express concerns with the proposed request for extension of time. Therefore, staff believes the first one-year time extension for the tentative tract map should be approved. Approval of this time extension will extend the expiration date to record to September 26, 2009.


FISCAL DATA: The construction of the proposed subdivision will generate revenues to the City in the form of one-time building permit fees as well as annual property taxes.

PREPARED BY:



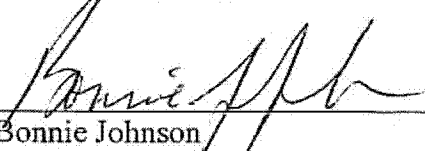
Brian Guillot
Planning Engineer

RECOMMENDED BY:



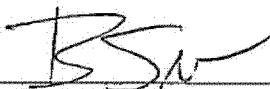
Matthew Bassi
Interim Community Development Director

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

CC Exhibits:

1. Resolution No. 2008-59
2. Copy of Resolution No. 2006-59 (with conditions of approval).
3. 8½" x 11" reduction of the approved map.
4. Copy of letter from applicant.
5. Vicinity map.

Exhibit 1

Resolution No. 2008-59

RESOLUTION NO. 2008-59

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF BANNING, CALIFORNIA APPROVING A
ONE-YEAR EXTENSION OF TIME FOR TENTATIVE
TRACT MAP 33540 (TTM 33540) PREVIOUSLY
APPROVED BY CITY COUNCIL ON SEPTEMBER 26,
2006, BY RESOLUTION NO. 2006-59**

WHEREAS, an application for time extension for Tentative Tract Map No. 33540 has been duly filed by:

Applicant / Owner:	Gilman-Banning, LLC
Project Location:	Generally, north of Gilman Street and west of 8th Street.
APN Number:	535-110-002;-006;-011;-012; 535-311-006 through -23; 535-312-001 through -024; 535-070-014.
Project Area:	65 Acres
Application Complete:	April 29, 2008

WHEREAS, the City Council of the City of Banning, on September 26, 2006, approved Tentative Tract Map 33540, to allow the subdivision of approximately 65-acre site into 172 single family lots ranging in size from 7,000 square feet to 20,000 square feet, along with 3 open space lots; and

WHEREAS, a tentative map expires 24 months after its initial approval unless extensions are granted by the legislative body; and

WHEREAS, Gilman-Banning, LLC, submitted a request for an extension of time for Tentative Tract Map 33540 in accordance with Section 66452.6(e) of the Subdivision Map Act; and

WHEREAS, On September 26, 2006, a Mitigated Negative Declaration and Mitigation Monitoring Program prepared for the project was approved in accordance with the California Environmental Quality Act (CEQA) when the project was approved by City Council by adoption of Resolution No. 2006-59; therefore, a subsequent/supplemental environmental document is not required; and

WHEREAS, on May 30, 2008, the City gave public notice as required under Government Code Section 66451.3 by mailing to property owners within 300 feet of the site and advertising in the Record Gazette newspaper of the holding of a public hearing at which the request for an Extension of Time would be considered; and

WHEREAS, in accordance with Government Code Section 66452.3, the City has provided the applicant with a copy of the Planning Department's report and recommendation to the City Council at least three (3) days prior to the below referenced noticed public hearing; and

WHEREAS, on June 10, 2008, the City Council of the City of Banning held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Tentative Tract Map Extension of Time and at which the City Council considered said Extension of Time; and

WHEREAS, at the public hearing on June 10, 2008, the City Council of the City of Banning considered and heard public comments on approval of Extension of Time for TTM 33540.

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

SECTION 1: The City Council hereby approves a one-year time extension for Tentative Tract Map 33540 in accordance with Government Code Section 66452.6(e).

SECTION 2: Tentative Tract Map 33540 shall expire on September 26, 2009, unless said map has been recorded, or a request has been filed with the City for a second extension of time in accordance with law.

PASSED, APPROVED AND ADOPTED this 10th day of June, 2008.

Brenda Salas, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

**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. 2008-59, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of June 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Exhibit 2

Resolution No. 2005-59

(Approval September 26, 2006)

RESOLUTION NO. 2006-59

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING TENTATIVE TRACT MAP NO. 33540, A REQUEST TO SUBDIVIDE 65 ACRES INTO 172 SINGLE FAMILY RESIDENTIAL LOTS AND 3 OPEN SPACE LOTS WITHIN THE LOW DENSITY RESIDENTIAL LAND USE DISTRICT GENERALLY LOCATED ON THE NORTH SIDE OF GILMAN STREET, ONE BLOCK WEST OF WYTE WAY. APN: 535-070-014; 535-110-002;-006;-011;-012; 535-311-006 THROUGH -023;-29; 535-312-001 THORUGH -024

WHEREAS, an application for TTM 33540 has been duly filed by:

Applicant / Owner:	HDS Group
Authorized Agent:	Hagop Sargisian
Project Location:	Wyte Way and Gilman Street
APN Number:	535-070-014; 535-110-002;-006;-0-12; 535-311-006 THROUGH -023;-29; 535-312-001 THROUGH -024
Lot Area:	65 acres
Application Complete:	February 14, 2006

WHEREAS, the Municipal Code allows for the subdivision of 65 acres into 172 single family residential lots ranging in size from 7,000 square feet to 20,000 square feet and 3 open space lots, subject to the approval of a Tentative Tract Map; and

WHEREAS, on June 1, 2006 the City gave public notice as required under Government Code Section 66451.3 by mailing notices to property owners and advertising in a newspaper of general circulation within the City of Banning of the holding of a public hearing at which the project would be considered; and

WHEREAS, in accordance with Government Code Section 66452.3, the City has provided the applicant and each tenant on the subject property with a copy of the Planning Department's report and recommendation to the Planning Commission at least three (3) days prior to the below referenced noticed public hearing; and

WHEREAS, on May 2, 2006 the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Tentative Tract Map and at which the Planning Commission considered the Tentative Tract Map; and

WHEREAS, on June 13, 2006, the Banning City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or in opposition to, the Tentative Tract Map and at which the Banning City Council considered the Tentative Tract Map; and

WHEREAS, at this public hearing on June 13, July 25 and September 12 and 26, 2006 the Banning City Council considered, heard public comments on and adopted a Mitigated Negative Declaration and Mitigation Monitoring Program for the project by Resolution 2006-58.

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

SECTION 1. ENVIRONMENTAL FINDINGS.

The Banning 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 June 13, 2006 and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and §21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. **CEQA:** The approval of this Tentative Tract Map is in compliance with the requirements of the California Environmental Quality Act ("CEQA"), in that on June 13, and July 25, 2006, at a duly noticed public hearing, the Banning City Council approved Resolution No. 2006-58 approving a Mitigated Negative Declaration and Mitigation Monitoring Program reflecting its independent judgment and analysis and documenting that there was 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. The documents comprising the City's environmental review for the project are on file and available for public review at Banning City Hall, 99 E. Ramsey Street, Banning, California 92220.
2. **Wildlife Resources:** Pursuant to Title 14, California Code of Regulations Section 753.5(c), the Planning Commission has determined, based on consideration of the whole record before it, that there is no evidence that the proposed project will have the potential for any adverse effect on wildlife resources or the habitat upon which wildlife depends. Furthermore, on the basis of substantial evidence, the Planning Commission hereby finds that any presumption of adverse impact has adequately been rebutted. Therefore, pursuant to Fish and Game Code Section 711.4(c)(2)(B) and Title 14, California Code of Regulations, Section 753.5(a)(3), the project is not required to pay Fish and Game Department filing fees.
3. **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.

MAP ACT FINDINGS.

In accordance with Banning Municipal Code and Government Code § 66473.1, § 66473.5 and § 66474, the City Council, in light of the whole record before it, including but not limited to the Planning Department's staff report and all documents incorporated by reference therein, the City's General Plan, Subdivision Ordinance, Zoning Ordinance, standards for public streets and facilities, and the City's Single Family Residential Design Guidelines and any other evidence within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. Tentative Tract Map 33540 is consistent and compatible with the objectives, policies, general land uses, and programs specified the City's General Plan in that:

The General Plan land use designation for the site is Low Density Residential "LDR" which allows project densities from 0 to 5 dwelling units per acre. The proposed Map will result in the development of 173 single family residential dwelling units at a density of 2.6 units per acre. This density level is within the range permitted under the General Plan land use designation for this site. One of the primary goals stated in the Land Use Element of the General Plan is that existing neighborhoods be preserved and enhanced (Goal 1). The proposed Map serves to achieve this objective through the development of single family residential lots and supporting infrastructure while maintaining the City's scenic and cultural resources for the enjoyment of existing and future residents. Specifically, the open space at the base of the slope/ridge has been reserved as open space. This area will be maintained in perpetuity by a Home Owners Association. The lots are expected to be used for detached single-family homes, a use allowed in the General Plan. Further the project serves to achieve Goal 1 of the General Plan Circulation Element, the development of a safe and efficient transportation system. Gilman Street, the primary access for the project, as well as all internal streets will meet the street designation depicted in the City's General Plan (local streets). Further all streets have been reviewed by the Engineering/Public Works Department to ensure proper design standards. Considering all of these aspects, the proposed Map furthers the objectives and policies of the General Plan and is compatible with the general land uses specific in the General Plan.

2. The design and improvement of the subdivision proposed under Tentative Tract Map 33540 is consistent with the City's General Plan in that:

The proposed subdivision has been designed to meet City standards, which provide satisfactory pedestrian and vehicular circulation, including emergency vehicle access and on site improvements, such as streets, utilities, and drainage facilities have been designed and are conditioned to be constructed in conformance with City standards.

3. The site is physically suitable for the type of development proposed under Tentative Tract Map 33540, in that:

The site is generally rectangular in shape and slopes from the northwest to the southeast, and consists of 65 acres. The site is not located within a flood plan. The project is located within an Alquist Priolo special studies zone, seismic and geologic reports have been generated and a "no build zone has been established. No structures or residential lots are proposed for this zone.

4. The site is physically suitable for the density of development proposed under Tentative Tract Map 33540, in that:

The site is generally rectangular in shape, relatively flat, and slopes from the northwest to the southeast and consists of 65 acres. The subdivision has been designed to accommodate the development of 172 (e.g. single family residential dwelling) units considering the shape and topography of the site. The project as proposed has a density of 2.6 units per acre. According to the density ranges provided in the Land Use Element of the City's General Plan for the Low Density Residential (LDR) land use designation and in the City's Zoning Ordinance for the LDR zone, a density of 0-5 units per acre is appropriate for a site of this size and configuration.

5. The design of the subdivision and improvements proposed under Tentative Tract Map 33540, is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat in that:

A portion of the site contains a cemetery; the balance of the site is vacant with the exception of some remnant foundations from the previously occurring Indian School on the property. A biological assessment was conducted on the proposed project site. The study included records searches as well as surveys. The general biological survey found that the majority of the habitat on the site consists of non-native grasslands. The on-site survey identified 49 common species on the site. The northern edge of the site is foraging habitat for avian species and provides a corridor for wildlife, and will be preserved as open space. A preliminary assessment for burrowing owl habitat was completed as required by the Riverside County Multi-Species Habitat Conservation Plan (MSHCP). The site was found to contain suitable habitat for the species, however, no birds were observed. A mitigation measure has been included which requires a protocol survey for burrowing owl to be completed 30-days prior to the issuance of grading permits. Should burrowing owls be located on site, a biologist shall submit recommendations for relocation of the animals to the Planning Department for review and approval. There is no evidence that vernal pool complex, similar bodies of water, or conditions suitable for forming such bodies of water exist on the site. This determination is based on the Biological Assessment conducted by Pacific Southwest in November 2004 and the City's General Plan. In addition, this project has been conditioned to comply with the environmental policies and regulations of the City of Banning and those of all local and regional governmental agencies having jurisdiction over the site.

6. The design of the subdivision and improvements proposed under Tentative Tract Map 33540, is not likely to cause serious public health problems in that:

The design of the subdivision is in conformance with the City's General Plan, Zoning Ordinance, and Subdivision Ordinance, the construction of all units on the site has been conditioned to comply with all applicable City of Banning ordinances, codes, and standards including, but not limited to, the California Uniform Building Code, the City's Ordinances relating to Storm water runoff management and controls. In addition, the design and construction of all improvements for the subdivision has been conditioned to be in conformance with adopted City street and public works standards. The City's ordinances, codes, and standards have been created based on currently accepted standards and practices for the preservation of the public health, safety and welfare. Finally, the proposed street system throughout the subdivision will improve emergency vehicular access.

7. The design of the subdivision and improvements proposed under Tentative Tract Map 33540, will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision in that:

No easements of record or easements established by judgment of a court of competent jurisdiction for public access across the site have been disclosed in a search of the title records for the site and the City does not otherwise have any constructive or actual knowledge of any such easements.

8. The design of the subdivision proposed Tentative Tract Map 33540, adequately provides for future passive or natural heating and cooling opportunities in the subdivision in that:

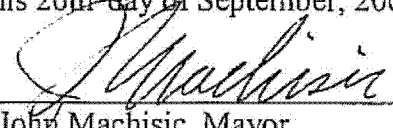
Taking into consideration local climate and the existing contour and configuration of the site and its surroundings, the size and configuration of lots within the proposed subdivision have been arranged, to the greatest extent feasible, to permit orientation of structures in an east-west alignment for southern exposure, or to take advantage of natural shade, or to take advantage of prevailing breezes.

CITY COUNCIL ACTIONS.

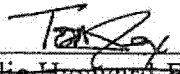
The Banning City Council hereby takes the following actions:

- I. **Tentative Tract Map.** The Banning City Council approves Tentative Tract Map 33540 subject to the Conditions of Approval attached hereto and incorporated herein by reference as Exhibit "A".


PASSED APPROVED AND ADOPTED this 26th day of September, 2006.


John Machisic, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:


~~Julie Hayward-Biggs~~ Thomas D. Jex
Dep City Attorney

ATTEST:


Marie 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. 2006-59 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 26th day of September 2006 by the following vote, to wit:

AYES: Councilmembers Hanna, Palmer, Salas, Welch,
Mayor Machisic

NOES: None

ABSTAIN: None

ABSENT: None


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



DEPARTMENT OF
PLANNING

FINAL CONDITIONS OF APPROVAL

PROJECT #: Tentative Tract Map 33540

SUBJECT: Subdivision of 65+ acres into 172 Single family residential lots

APPLICANT: HDS Group

LOCATION: APN: 535-070-014; 535-110-002, -006, -011, -012; 535-311-006 through -023; 535-312-001 through -024

APPLICANT SHALL CONTACT THE PLANNING DIVISION, (951) 922-3125, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

A. General Requirements

Completion
Date

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

___/___/___

Tentative Tract No. 33540 is recommended for approval by the Planning Commission. Full approval is subject to City Council action.

___/___/___

A copy of the signed Resolution of Approval or Community Development Director's letter of approval, and all Standard Conditions, shall be included in legible form on the grading plans, building and construction plans, and landscape and irrigation plans submitted for plan check.

___/___/___

(A) 60-foot easement shall be recorded against the property to provide legal access from the northerly terminus of "F" Street to the northern property boundary. (B) Legal and practical access shall be provided from Eighth Street to the existing cellular tower access road north of Lot 175.

___/___/___

B. Time Limits

This tentative tract map shall expire unless extended by the Planning Commission, unless a complete final map is filed with the City Engineer within 2 years from the date of the approval.

___/___/___

C. Site Development

The site shall be developed and maintained in accordance with the approved plans which include site plans, architectural elevations, exterior materials and colors, landscaping, sign program, and grading on file in the Planning Division, the conditions contained herein, Development Code regulations.

___/___/___

The cemetery shall be maintained in perpetuity; a covenant shall be recorded on the property affirming this Conditions. Said covenant shall be reviewed and approved by the City Attorney.

___/___/___

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

Occupancy of the facilities shall not commence until such time as all Uniform Building Code and State Fire Marshal regulations have been complied with. Prior to occupancy, plans shall be submitted to the City of Banning Fire Marshal and the Building and Safety Division to show compliance. The buildings shall be inspected for compliance prior to occupancy.

___/___/___

Revised site plans and building elevations incorporating all Conditions of Approval shall be submitted for Community Development Director review and approval prior to the issuance of building permits.

___/___/___

All site, grading, landscape, irrigation, and street improvement plans shall be coordinated for consistency prior to issuance of any permits (such as grading, tree removal, encroachment, building, etc.) or prior to final map approval in the case of a custom lot subdivision, or approved use has commenced, whichever comes first.

___/___/___

Approval of this request shall not waive compliance with all sections of the Development Code, all other applicable City Ordinances, and applicable Community or Specific Plans in effect at the time of building permit issuance.

___/___/___

All trash pick-up shall be for individual units with all receptacles shielded from public view.

___/___/___

All ground-mounted utility appurtenances such as transformers, AC condensers, etc., shall be located out of public view and adequately screened through the use of a combination of concrete or masonry walls, berming, and/or landscaping to the satisfaction of the Community Development Director. For single family residential developments, transformers shall be placed in underground vaults.

___/___/___

Street names shall be submitted for Community Development Director review and approval in accordance with the adopted Street Naming Policy prior to approval of the final map.

___/___/___

All building numbers and individual units shall be identified in a clear and concise manner, including proper illumination.

___/___/___

The Covenants, Conditions, and Restrictions (CC&Rs) and Articles of Incorporation of the Homeowners' Association are subject to the approval of the Planning and Engineering Divisions and the City Attorney. They shall be recorded concurrently with the Final Map or prior to the issuance of building permits, whichever occurs first. A recorded copy shall be provided to the City Engineer. The Homeowners' Association shall submit to the Planning Division a list of the name and address of their officers on or before January 1 of each and every year and whenever said information changes.

___/___/___

All parkways, open areas, and landscaping shall be permanently maintained by the property owner, homeowners' association, or other means acceptable to the City. Proof of this landscape maintenance shall be submitted for Community Development Director and City Engineer review and approved prior to the issuance of building permits.

___/___/___

The developer shall submit a construction access plan and schedule for the development of all lots for Community Development Director and City Engineer approval; including, but not limited to, public notice requirements, special street posting, phone listing for community concerns, hours of construction activity, dust control measures, and security fencing.

___/___/___

Six-foot decorative block walls shall be constructed along the project perimeter. If a double wall condition would result, the developer shall make a good faith effort to work with the adjoining property owners to provide a single wall. Developer shall notify, by mail, all contiguous property owner at least 30 days prior to the removal of any existing walls/ fences along the project's perimeter.

___/___/___

On corner side yards, provide minimum 5-foot setback between walls/fences and sidewalk.

___/___/___

For residential development, return walls and corner side walls shall be decorative masonry.

___/___/___

Future development for (each building pad/parcel) shall be subject to separate Development/Design Review process for Planning Commission approval.

___/___/___

D. Building Design

All dwellings shall have the front, side and rear elevations upgraded with architectural treatment, detailing and increased delineation of surface treatment subject to Community Development Director review and approval prior to issuance of building permits.

___/___/___

E. Parking and Vehicular Access (indicate details on building plans)

All units shall be provided with garage door openers if driveways are less than 18 feet in depth from back of sidewalk.

___/___/___

Multiple car garage driveways shall be tapered down to a standard two-car width at street.

___/___/___

On flag lots, use a 12-foot driveway within flag to maximize landscape area.

___/___/___

F. Landscaping

A detailed landscape and irrigation plan, including slope planting and model home landscaping in the case of residential development, shall be prepared by a licensed landscape architect and submitted for Community Development Director review and approval prior to the issuance of building permits or prior final map approval in the case of a custom lot subdivision.

___/___/___

Existing trees required to be preserved in place shall be protected with a construction barrier, and so noted on the grading plans. The location of those trees to be preserved in place and new locations for transplanted trees shall be shown on the detailed landscape plans. The applicant shall follow all of the arborist's recommendations regarding preservation, transplanting, and trimming methods.

___/___/___

For single family residential development, all slope planting and irrigation shall be continuously maintained in a healthy and thriving condition by the developer until each individual unit is sold and occupied by the buyer. Prior to releasing occupancy for those units, an inspection shall be conducted by the Planning Division to determine that they are in satisfactory condition.

___/___/___

The final design of the perimeter parkways, walls, landscaping, and sidewalks shall be included in the required landscape plans and shall be subject to Community Development Director review and approval and coordinated for consistency with any parkway landscaping plan which may be required by the Engineering Division.

___/___/___

Landscaping and irrigation systems required to be installed within the public right-of-way on the perimeter of this project area shall be continuously maintained by the developer or Home Owners Association.

___/___/___

All walls shall be provided with decorative treatment. If located in public maintenance areas, the design shall be coordinated with the Engineering Division.

___/___/___

Tree maintenance criteria shall be developed and submitted for Community Development Director review and approval prior to issuance of building permits. These criteria shall encourage the natural growth characteristics of the selected tree species.

___/___/___

Landscaping and irrigation shall be designed to conserve water through the principles of Xeriscape.

___/___/___

G. Environmental – Mitigation Measures

In those instances requiring long term monitoring (i.e.) beyond final certificate of occupancy), the applicant shall provide a written monitoring and reporting program to the Community Development Director prior to issuance of building permits. Said program shall identify the reporter as an individual qualified to know whether the particular mitigation measure has been implemented.

___/___/___

Any lot with a rear yard slope of more than 10 feet will be designed to include terracing of that slope, and intermediate usable yard space within the slope area. This may include staggered retaining walls, stairs and patios, to the clarification of the Director of Community Development

___/___/___

Alternatively, the tract map can be redesigned to limit pad elevations between adjacent lots to 10 feet or less.

___/___/___

All manufactured slopes of 10 feet or more shall be landscaped and irrigated in such a manner as to assure 100% coverage within 12 months. Landscaping shall be native groundcover or similar. Irrigation systems shall be operated and maintained by a groundcover or similar. All irrigation systems shall be operated and maintained by a homeowners' association, in order to assure long term survival of the plantings. A maintenance easement shall be recorded on each lot on which such a slope occurs, in favor of the homeowners' association.

___/___/___

The applicant shall submit, for review and approval, a PM10 Management Plan for all grading and construction activities, for review and approval by the City Engineer prior to the issuance of grading permits.

___/___/___

SCAQMD Rule 403 shall be implemented.

___/___/___

No more than 5 acres shall be actively graded during any one day.

___/___/___

During all grading and construction activities, the site shall be watered at least twice daily.

___/___/___

All trucks hauling dirt, sand or soil shall be covered, or shall maintain two feet of freeboard.

___/___/___

Streets accessing the project site shall be swept at the end of each work day.

___/___/___

All grading activities shall be suspended during wind speeds of 25 mph or greater.

___/___/___

All diesel powered vehicles and equipment shall be properly maintained.

___/___/___

Electric or natural gas powered equipment shall be used to the greatest extent possible.

___/___/___

Ridesharing and transit incentives shall be provided to the construction crews.

___/___/___

Pre-coated or natural colored building materials shall be used to the greatest extent possible.

___/___/___

Within 30 days prior to the issuance of grading permits, a protocol survey for burrowing owls shall be conducted to determine if the species occurs on the site. Should the species be identified, the biologist shall provide the Planning Department with recommendations for relocation, for their review and approval. No grading permit shall be issued until the relocation has been completed

___/___/___

Within 30 days prior to the issuance of grading permits, if the grading permit is sought between February 1 and August 31, a survey of nesting birds subject to the provisions of the Migratory Bird Treaty Act shall be conducted. Should nests be identified, the biologist shall provide the Planning Department with recommendations for buffer areas and construction restriction, for their review and approval. No grading permit shall be issued until the recommendations have been implemented.

___/___/___

No staging, grading or other ground disturbance shall be permitted within the open space area (lot 176)

___/___/___

The open space area (lot 176) shall be fenced to prevent encroachment. The Planning Department shall approve the fence. Signs shall be placed at each end of the fence, identifying the area as protected, and prohibiting encroachment by humans dogs or other domestic animals.

___/___/___

Prior to any ground disturbing activity, the applicant shall secure, and shall provide written evidence of the same to the Planning Department, appropriate permits from the California Regional Water Quality Control Board, the US Army Corps of Engineers and the California Department of Fish and Game. The US Army Corps permit shall assure mitigation for the loss of 0.29 acres of federal jurisdictional areas; and the CDFG permit shall assure mitigation for the loss of 0.71 acres of state jurisdictional areas.

___/___/___

A Phase III recovery consistent with the Plan submitted by L & L Environmental shall be completed on the project site prior to any ground disturbing activity on the project site. The final report shall be provided to the City Planning Department for review and approval.

___/___/___

The project shall convey, with recordation of the final map, a 7± acre parcel (lot 175) to the Morongo Band of Mission Indians.

___/___/___

The applicant shall, prior to the issuance of building permits, construct a temporary chain link fence to separate the cemetery from the tract. The fence shall be reviewed and approved by the Planning Department prior the issuance of building permits. The fence shall be replaced by a permanent decorative block wall within 30 days of completion of grading activities."

___/___/___

The applicant shall, prior to the issuance of grading permits, complete the design of the burial grounds by a licensed landscape architect, including the relocation of cement slabs, the adobe wall, the grotto, selected stone works, planters and trees.

___/___/___

The applicant shall, prior to issuance of grading permits, install wrought iron fencing to enclose the parcel to be conveyed to the Morongo Band, and extending to the entrance on 8th Street.

___/___/___

The applicant shall pave and landscape the access road from the 7± acre parcel to 8th Street.

___/___/___

The applicant shall, prior to the issuance of grading permits, have the site surveyed by a qualified arborist to determine whether the olive trees on the west end of the property can be transplanted to the boundary of the cemetery to act as a buffer. The transplantation shall be complete prior to the issuance of occupancy permits for any house on the property.

___/___/___

The applicant and the Morongo Band shall develop a plan for the preservation of the cemetery and other items to be relocated within the 7± acre parcel.

___/___/___

The applicant shall, at his expense, engage a qualified archaeologist to complete the cataloging of the artifacts collected in the 1990 survey, and shall cause these artifacts to be delivered to the Morongo Band upon completion of the cataloging effort.

___/___/___

All ground disturbing activities on any portion of the site will be monitored by a qualified archaeologist and a representative of the Morongo Band. The archaeologist shall be empowered to stop or redirect activities should artifacts be uncovered. The archaeologist shall deliver a report documenting all monitoring activities to the Planning Department and the Morongo Band within 30 days of completion of grading activities.

___/___/___

If human remains or potential human remains are identified during earth moving activities, all work shall stop in that area, and the Riverside County Coroner shall be contacted. No further activity shall occur in the area in the areas until the Coroner has completed his investigation, including Native American consultation.

___/___/___

A permanent name marker and the existing bronze plaque (in possession of the Riverside County Parks and History Division) shall be placed in the cemetery.

___/___/___

The applicant shall, in conjunction with City staff, prepare formal paperwork for nomination of the site to the National Register of Historic Places, California Register of Historic Places, and appropriate County and Local designations and assure the filing of the paperwork with the appropriate agencies.

___/___/___

A Historic American Engineering Record level recordation of the Gilman Home Channel shall be completed prior to any ground disturbing activity the project site.

___/___/___

Consistent with the recommendations of the L&L Environmental Survey, the channel shall be preserved in place, either in whole or in part, or relocated in part to the open space area north of the project site. If relocated, a memorial plaque explaining the significance of the structure shall be incorporated into the relocation.

___/___/___

Construction activities shall be limited to those hours prescribed in the Municipal Code.

___/___/___

All construction equipment, including heavy equipment, shall be muffled.

___/___/___

Construction staging and storage areas shall be located along the northern portion of the site, south of the open space and cemetery lots.

___/___/___

Continuous grading activities along the eastern boundary of the project site shall be limited to no more than 15 minutes within an hour.

___/___/___

H. Other Agencies

The applicant shall contact the U.S. Postal Service to determine the appropriate type and location of mail boxes. Multi-family residential developments shall provide a solid overhead structure for mail boxes with adequate lighting. The final location of the mail boxes and the design of the overhead structure shall be subject to Community Development Director review and approval prior to the issuance of building permits.

___/___/___

APPLICANT SHALL CONTACT THE ENGINEERING DIVISION, (951) 922-3130, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

I. General

The Department of Public Works recommends the following Conditions of Approval for Tentative Tract Map 33540. Unless stated otherwise, all conditions shall be completed by the Developer at no cost to any Government Agency.

___/___/___

Prior to the issuance of any grading, construction, or public works permit by the City, the applicant shall obtain any necessary clearances and/or permits from the following agencies:

- Fire Marshal
- Public Works Department (Grading Permit, Improvement Permit)
- Community Development Department
- Riverside County Environmental Health Department
- Banning Unified School District
- California Regional Water Quality Control Board Colorado River Basin (RWQCB)
- South Coast Air Quality Management District (SCAQMD)
- United States Army Corps of Engineers (USACE)
- California Department of Fish and Game (DFG)

The applicant is responsible for meeting all requirements of permits and/or clearances from the above listed agencies. When the requirements include approval of improvement plans, the applicant shall furnish proof of such approvals when submitting improvements plans to the City.

The following improvement plans shall be prepared by a civil engineer or architect licensed by the State of California as allowed and submitted to the Engineering Division for review and approval. A separate set of plans shall be prepared for each line item listed below. Unless otherwise authorized by the City Engineer in writing, the plans shall utilize the minimum scale specified and shall be drawn on 24" x 36" Mylar. Plans may be prepared at a larger scale if additional detail or plan clarity is desired (Note: the applicant may be required to prepare other improvement plans not listed here pursuant to improvements required by other agencies and utility purveyors).

- | | |
|-------------------------------|---------------------|
| A. On-Site Rough Grading Plan | 1" = 40' Horizontal |
| B. Haul Route Plan | 1" = 40' Horizontal |
| C. Clearing Plan | 1" = 50' Horizontal |

- Include fuel modifications zones
- Include construction fencing plan

- | | |
|----------|---------------------|
| D. SWPPP | 1" = 40' Horizontal |
|----------|---------------------|

Note: A, B & C shall be processed concurrently.

- | | |
|---|---|
| E. Storm Drain Plan | 1" = 40' Horizontal |
| F. Off-Site Street Improvement Plans | 1" = 40' Horizontal
1" = 4' Vertical |
| G. Off-Site Landscaping Plans | 1"=20' Horizontal |
| H. Off-Site Signing & Striping Plans | 1" = 40' Horizontal |
| I. On-Site Street Improvement/ Signing & Striping Plans | 1" = 40' Horizontal
1"= 4' Vertical |
| J. On-Site Residential Precise Grading Plans | 1" = 30' Horizontal |

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

All off-site plan and profile street improvement plans and signing & striping plans shall show all existing improvements for a distance of at least 200-feet beyond the project limits, or at a distance sufficient to show any required design transitions.

All on-site signing and striping plans shall show the following at a minimum: stop signs, limit lines and legends, no parking signs, raised pavement markers (including blue raised pavement markers at fire hydrants) and street name signs per Public Works standard plans and/or as approved by the City Engineer.

A small index map shall be included on the title sheet of each set of plans, showing the overall view of the entire work area.

Upon completion of construction, the applicant shall furnish the City with reproducible record drawings on Mylar of all improvement plans that were approved by the City Engineer. Each sheet shall be clearly marked "As-Built" or "As-Constructed" and shall be stamped and signed by the engineer or surveyor certifying the accuracy and completeness of the drawings. The applicant shall have all AutoCAD or raster-image files submitted to the City, revised to reflect the "As-Built" conditions.

 / /

All utility systems including gas, electric, telephone, water, sewer, and cable TV shall be provided for underground, with easements provided as required, and designed and constructed in accordance with City Codes and the utility provider. Telephone, cable TV, and/or security systems shall be pre-wired in the residence.

 / /

J. Rights of Way

Prior to issuance of any permit(s), the applicant shall acquire or confer property rights necessary for the construction or proper functioning of the proposed development. Conferred rights shall include right-of-way dedications, irrevocable offers to dedicate or grant of easements to the City for emergency services, maintenance, utilities, storm drain facilities, or temporary construction purposes including the reconstruction of essential improvements.

 / /

The applicant shall offer for dedication on the Final Map all public street right-of-ways in conformance with the City's General Plan, Municipal Code, applicable precise plans, standard plans, and/or as required by the City Engineer.

 / /

Offer to dedicate for public purposes the right-of-way for "A" Street through "J" Street as a general local streets; 60 foot width. The geometrics for the knuckle shall be in accordance with the City of Banning Standard No. G-806. The geometrics for the cul-de-sac shall be in accordance with the City of Banning Standard No. G-800. Offers of dedication shall include corner cut-off at intersection.

 / /

Offer to dedicate for public purposes the 24 foot wide right-of-way for a secondary access way for Wyte Way.

 / /

Offer to dedicate for public purposes the necessary right-of-way in order to meet the City of Banning master planned half street width of 30 feet fronting Gilman Street.

 / /

Obtain right-of-way, or offer to dedicate for public purposes the necessary right-of-way to construct the knuckle at the westerly end of Gilman Street.

 / /

Grant slope easements to the City of Banning for road maintenance purposes for any slopes supporting street sections. The easements shall extend 5 feet from the toe of slope to provide adequate access

 / /

Grant a storm drain easement along master planned storm drain Line "A" for the benefit of Riverside County Flood Control and Water Conservation District in accordance with their standards.

 / /

Prior to the issuance of any certificates of occupancy, the applicant shall not grant any easements over any property subject to a requirement of dedication or irrevocable offer to the City of Banning or the Riverside County Flood Control and Water Conservation District unless such easements are expressly made subordinate to the easements to be offered for dedication to the City or RCFC. Prior to granting any of said easements, the sub divider shall furnish a copy of the proposed easement to the City Engineer for review and approval. Further, a copy of the approved easement shall be furnished to the City Engineer prior to the issuance of any certificate of use and/or occupancy.

 / /

K. Public Improvements:

Construct half street improvements in accordance with City standards fronting Gilman Street including street lighting, curb and gutter, access ramps, sidewalk, and asphalt concrete paving, street name signs, traffic signs and striping, and any transitions. Curb returns have a 35 foot radius along Gilman Street. Street lights on Gilman Street shall be installed offset of the existing street lights. Where the transverse slope of the existing pavement exceeds 3% the applicant shall remove pavement and join the existing pavement surface. Applicants' geotechnical engineer shall provide the design of the pavement section based upon the Caltrans method.

//_

Construct full street improvements for "A" Street through "J" Street in accordance with City Standards including street lighting, curb and gutter, cross gutters and spandrels, access ramps, drive approaches, sidewalk, and asphalt concrete paving, street name signs, traffic signs and striping, and any transitions. Applicants' geotechnical engineer shall provide the design of the pavement section based upon the Caltrans method.

//_

Construct 24 foot wide secondary access road connecting the cul-de-sac at Wyte Way to the cul-de-sac at 8th Street in accordance with City Standards including asphalt concrete paving, traffic signs and striping, and any transitions. Applicants' geotechnical engineer shall provide the design of the pavement section based upon the Caltrans method. The road shall be accessed by drive approaches at the respective cul-de-sacs.

//_

Construct the missing portion of curb, gutter and sidewalk along Gilman Street at the south-westerly end that joins to the knuckle, approximately 150 feet more or less.

//_

Construct drive approach(s) for the properties/utilities accessed from the knuckle at the westerly end of Gilman Street. The applicant shall be responsible for paving the drive ways located within the public right-of-way.

//_

All street improvement design shall provide pavement transitions per Caltrans standards for transition to existing street sections.

//_

L. Grading and Drainage:

Submit a Drainage Study with hydrologic and hydraulic analysis for developed and undeveloped (existing) conditions to the Engineering Division for review and approval. The study and analysis must be prepared by a civil engineer licensed by the State of California. Drainage design shall be in accordance with Banning Master Drainage Plan adopted by Riverside County Flood Control and Water Conservation District (RCFC), RCFC Hydrology Manual, and standard plans and specifications. The 10-year storm flow shall be contained within the street curbs, and the 100-year storm shall be contained within the street right-of-way; when this criteria is exceeded, additional drainage facilities shall be designed and constructed.

//_

Prior to recordation of the final map or approval of the grading plan, the subdivider shall submit a geologic investigation/report for review and approval to demonstrate that the site is not threatened by surface displacement from future faulting in accordance with the Alquist-Priolo Earthquake Fault Zoning Act. Such a report may require building setbacks and/or engineering strengthening that could significantly alter the design of the proposed tentative tract map. The subdivider shall be responsible for the costs associated with the review and approval of geologic investigation/report.

//_

The design of the development shall not cause any increase in flood boundaries, levels or frequencies in any area outside the development. Note: Discharge to the rock and mortar channel (existing Line "A") downstream of project shall not be increased from existing discharge rate.

____/____/____

Design and Construct master planned storm drain system Line "A" within tract boundary in accordance with RCFC design and construction standards.

____/____/____

Design and Construct missing portion of master planned storm drain system Line "A-4" and in accordance with RCFC design and construction standards.

____/____/____

Design and Construct master planned East Gilman Home Debris Basin in accordance with RCFC design and construction standards.

____/____/____

The project grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage areas, outlet points and outlet conditions. Otherwise, a drainage easement shall be obtained for the release of concentrated or diverted storm flows. The project shall accept and convey storm flows from the adjacent property westerly of the project.

____/____/____

The applicant shall comply with Chapter 34 "Stormwater Management and Discharge Controls" of the Banning Municipal Code (BMC); California Building Code Appendix Chapter 33 "Excavation and Grading"; and the State Water Resources Control Board's Order No. 99-08-DWQ.

- a) For construction activities including clearing, grading or excavation of land that disturbs one (1) acre or more of land, or that disturbs less than one (1) acre of land, but which is a part of a construction project that encompasses more than one (1) acre of land, the applicant shall be required to submit a Storm Water Pollution Protection Plan (SWPPP) and file a Notice of Intent (NOI) with the Regional Water Quality Control Board.
- b) The applicant's SWPPP shall be reviewed and approved by the City Engineer prior to any on-site or off-site grading being done in relation to this project.
- c) The applicant shall ensure that the required SWPPP is available for inspection at the project site at all times through, and including acceptance of all improvements by the City.
- d) The applicant's SWPPP shall include provisions for all of the following Best Management Practices ("BMPs"):
 - i) Temporary Soil Stabilization (erosion control).
 - ii) Temporary Sediment Control.
 - iii) Wind Erosion Control.
 - iv) Tracking Control.
 - v) Non-Storm Water Management.
 - vi) Waste Management and Materials Pollution Control.
- e) All erosion and sediment control BMPs proposed by the applicant shall be approved by the City Engineer prior to any onsite or offsite grading, pursuant to this project.
- f) The approved SWPPP and BMPs shall remain in effect for the entire duration of project construction until all improvements are completed and accepted by the City.

Grading and excavations in the public right-of-way shall be supplemented with a soils and geology report prepared by a professional engineer or geologist licensed by the State of California.

A rough grading plan and a precise grading plan shall be submitted to the City Engineer for review and approval. A grading permit shall be obtained prior to commencement of any grading activity. Rough grading plans shall include perimeter walls with top of wall and top of footing elevations shown. All footings shall have a minimum of 1-foot of cover, and/or sufficient cover to clear any obstructions.

Prior to the issuance of a building permit for any building lot, the applicant shall provide a lot pad certification stamped and signed by a qualified civil engineer or land surveyor. Each pad certification shall list the pad elevation as shown on the approved grading plan, the actual pad elevation and the difference between the two, if any. Such pad certification shall also list the relative compaction of the pad soil. The data shall be organized by lot number, and listed cumulatively if submitted at different times.

All lot drainage shall be directed to the driveway by side yard drainage swales independent of any other lot.

Obtain clearance or approval from the U.S. Army Corps of Engineers, California Department of Fish and Game, Regional Water Quality Control Board, and Riverside County Flood Control and Water Conservation District as required. Comply with all conditions and mitigation measures if so determined and submit copies of all correspondence with the agencies to the Community Development Director and City Engineer.

//_

M. Landscaping:

Prior to occupancy of the first dwelling unit of the development, an automatic sprinkler system and landscaping shall be installed within the common areas including perimeter slopes. The system shall include a landscape controller, a separate water meter, a separate electric meter, and plantings as approved by the Community Development Director. A homeowner's association shall be responsible for the maintenance and upkeep of the common areas in a manner meeting the approval of the Community Development Director.

//_

Prior to the recordation of the final map, the subdivider shall reserve open space Lots 174 to 178 for granting in fee to a homeowner's association who shall be responsible for their maintenance and upkeep in a manner meeting the approval of the Fire Marshall and Community Development Director. If a particular lot may not be granted in fee, the subdivider shall reserve the necessary rights to maintain the lot(s) as described herein.

//_

N. Traffic:

The subdivider shall be responsible for the preparation of a Traffic Impact Analysis (TIA) in order to identify the fair share part of any improvements that may be required. The TIA shall be prepared in accordance with County of Riverside guidelines.

//_

Prior to the issuance of any certificate of occupancy, all fire hydrants shall have a blue reflective pavement marker indicating the hydrant location on the street as approved by the Fire Marshall, and must be maintained in good condition by the property owner until the street is accepted for maintenance.

//_

Prior to the issuance of a precise grading permit or building permit, the applicant shall submit and obtain approval of the Fire Marshall for the plans for all public or private access roads, streets and courts. The plans shall include plan and sectional views and indicate the grade and width of the access road measured flow-line to flow-line. When a dead-end street exceeds 150 feet or when otherwise required, a clearly marked fire apparatus access turnaround must be provided and approved by the Fire Marshall. Applicable CC&Rs or other approved documents shall contain provisions which prohibit obstructions such as speed bumps/humps, control gates or other modifications within said easement or access road unless prior approval of the Fire Marshall is granted.

//_

Place a two way stop with limit lines along Gilman Street at 8th Street.

//_

Place centerline striping along Gilman Street.

//_

Perform a traffic signal warrant study in accordance with Caltrans standards for the intersection of Wilson Street and 8th Street. If a traffic signal is warranted, the subdivider shall be responsible for constructing the traffic signal at this location prior to occupancy of the 85 single family dwelling.

//_

O. Final Map:

Prior to approval of any Final Map, the applicant shall construct all on-site and off-site improvements in accordance with the approved plans and satisfy its obligations for same, or shall furnish a fully secured and executed Agreement for Construction of Public Improvements guaranteeing the construction of such improvements and the satisfaction of its obligations for same, or shall agree to any combination thereof, as may be required by the City

The applicant shall file an Environmental Constraint Sheet. An Environmental Constraint Sheet means a duplicate of the final map on which are shown the Environmental Constraint Notes. This sheet shall be filed simultaneously with the final map, with the County Surveyor, and labeled ENVIRONMENTAL CONSTRAINT SHEET in the top margin. Applicable items will be shown under a heading labeled Environmental Constraints Notes. The Environmental Constraint Sheet shall contain the statement: THE ENVIRONMENTAL CONSTRAINT INFORMATION SHOWN ON THIS MAP SHEET IS FOR INFORMATIONAL PURPOSES DESCRIBING CONDITIONS AS OF THE DATE OF FILING, AND IS NOT INTENDED TO AFFECT RECORD TITLE INTEREST. THIS INFORMATION IS DERIVED FROM PUBLIC RECORDS OR REPORTS, AND DOES NOT IMPLY THE CORRECTNESS OR SUFFICIENCY OF THOSE RECORDS OR REPORTS BY THE PREPARER OF THIS MAP SHEET. The sheet shall delineate constraints involving, but not limited to, any of the following that are conditioned by the Advisory Agency: archaeological sites, geologic mapping, grading, building, building setback lines, flood hazard zones, seismic lines and setbacks, fire protection, water availability, and sewage disposal.

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

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

Faithful Performance Bond 100% of estimated cost
Labor and Material Bond 100% of estimated cost
Monumentation Bond \$5,000.00

Securities for the public improvements shall be on file with the City Clerk prior to scheduling the final map for approval by City Council. Unit prices for bonding estimates shall be those specified or approved by the City Engineer.

Prior to approval of the Final Map, the applicant shall submit a list of street names and addresses in Microsoft Excel spread sheet format for review and approval. The house number system shall be in accordance with Section 21-17 & 21-18 of the Banning Municipal Code. A reduced copy of the subdivision map shall be included with the submittal.

Revisions to the tentative map during plan check including, but not limited to, lot line alignments, easements, improvement plan revisions, and similar minor changes which do not alter the design (property rights, number of lots, environmental impact, etc.) may be administratively approved through the plan check process with the mutual consent and approval of the Community Development Director and City Engineer. Final maps shall be amended in accordance with the Subdivision Map Act.

Prior to approval of any final map the applicant shall identify and include in its improvement plans those routine structural and non-structural Best Management Practices (BMP's) as outlined in Supplement A to the Riverside County Drainage Area Management Plans and any attachments.

___/___/___

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

___/___/___

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

___/___/___

A map of the proposed subdivision drawn at 1"=200' showing the outline of the streets including street names shall be submitted to the City to update the city atlas map.

___/___/___

An original Mylar of the final map (after recordation) shall be provided to the City for the record files.

___/___/___

P. Fees:

Plan check fees for final map review, professional report review (geotechnical, drainage, etc.), and all improvement plans review, shall be paid prior to submittal of said documents for review and approval in accordance with the Fee Schedule in effect at the time of submittal.

___/___/___

Public Works Inspection fees shall be paid prior to the scheduling the final map for approval by City Council in accordance with the Fee Schedule in effect at time of time of scheduling.

___/___/___

Water and sewer connection fees including frontage fees and water meter installation charges shall be paid on a per lot basis at the time of building permit issuance in accordance with the Fee Schedule in effect at that time.

___/___/___

A Traffic Signal Mitigation fee shall be paid on a per lot basis prior to issuance of building permits for each lot within the subdivision.

___/___/___

A fee shall be paid to Riverside County Flood Control and Water Conservation District in the amount specified by them to perform plan checking for drainage purposes for the proposed subdivision.

___/___/___

APPLICANT SHALL CONTACT THE FIRE MARSHAL AT, (951) 922-3210, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

Q. Fire Department Developer Fees:

Fees are increased annually and may be different at the time of construction. The fee schedule at the time of plan submittal shall apply.

___/___/___

Residential Dwelling Units - \$543.00 per unit +
\$ 5.00 per unit Disaster Planning

Plan Check & Inspection - \$ 84.00 per unit

R. Fire Hydrants:

1. Prior to construction or renovation, working fire hydrants shall be provided when any portion of any structure exceeds 150 feet from a water supply on a public street. _/_/_
2. Spacing of fire hydrants shall comply with UFC Appendix III B and the City of Banning Public Works Standards. (maximum 300 feet) _/_/_
 - a. _/_/_
3. Minimum 6-inch riser, street valve, approved shear valve and blue dot identification marker shall be provided for each fire hydrant. _/_/_
4. The City standard fire hydrant is the Residential, James Jones #J3700, or an equivalent approved by the Fire Marshal. _/_/_
5. Fire Hydrants are to be painted by the developer, contractor, etc., prior to the final inspection. (EOS Standard W714) Rustoleum Red, damp proof #769 and two (2) coats of Rustoleum semi-gloss yellow #659, or an approved equivalent. _/_/_

S. Water Supply:

1. Fire flow shall be established by the Fire Department using the information provided in the UFC Appendix III A. Fire Flow may be adjusted upward where conditions indicate an unusual susceptibility to fire. (minimum 1000gpm for 2 hours) _/_/_

T. Fire Department Access:

1. Shall be required when any portion of the first story of any structure is more than 150 feet from Fire Department apparatus access. _/_/_
2. Minimum clearances or widths may be increased when the minimum standards are not adequate for Fire Department access. _/_/_
3. Surfaces shall be designed and maintained to support the imposed loads of fire apparatus. Surfaces shall have all-weather driving capabilities, including bridges. _/_/_
4. Minimum quality road surfaces shall be in place prior to combustible materials being delivered to the site. _/_/_
5. Minimum unobstructed width shall be 20 feet. _/_/_
6. Minimum unobstructed vertical clearance shall not be less than 13 feet 6 inches. _/_/_
7. Minimum turning radius shall be 42 feet. _/_/_
8. All dead-end access roads in excess of 150 feet shall have approved provisions for turning around of fire apparatus. _/_/_
9. Maximum grade shall be established by the Fire Department. _/_/_
10. Vehicles shall not be parked or otherwise obstruct the required width of any fire apparatus _/_/_

access.

11. Two means of ingress/egress shall be provided for emergency vehicles and fire apparatus.

12. The requirements for this segment are covered in UFC Article 9.

U. Premises Identification.

1. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background.

Residential - 3-1/2" mm. Size

V. Spark Arrestors

1. Chimneys used in conjunction with fireplaces or heating appliances in which solid or liquid fuel is used shall be maintained with an approved spark arrestor.

W. Inspections

1. Inspections shall be requested a minimum of forty-eight (48) hours prior to the time the required inspection is needed.
2. Fee for each inspection is \$42.00 per hour per person. Exception, residential inspections are \$21.00 per unit per person.
3. Work begun without a permit or without an approved set of plans at the job site will result in a triple fee and/or the work stopped.

X. Hazardous Materials:

The storage, dispensing, use or handling of hazardous materials during construction shall be in accordance with the provisions of UFC Article 80 and UBC Section 307 in addition to all federal, state and local laws or ordinances.

Y. Fuel Modification/Hazard Reduction Plan (Req'd Note for all Maps and Plans)

A "greenbelt" or fuel modification zone will be required along the northern portion of the project.

The Greenbelt/Zone Plan and the provisions for maintenance shall meet the standard developed by the Fire Department. That standard is presented below.

Standard Banning Fire Services Requirements for
"Fuel Modification Zones"
Around Projects in **High Fire Hazard Areas**

Lots that are within planning areas adjacent to open space (Wildland/Urban Interface Areas) will be developed in accordance with a Fire Protection Plan that provides adequate buffering and fuel modification zones consistent with City Fire Department standards. Fuel management zones will be provided as outlined below.

Areas where slopes exceed 30% will undergo trimming and/or clearing of flammable native vegetation for a minimum distance of one-hundred (150) feet from any structure and a minimum distance of seventy-five (75) feet from any property line. No less than fifty (50) feet of these cleared areas will be planted with non-flammable ("wet-zone") vegetation with the remainder remaining clear of trees or large shrubs. The fuel management zones may be reduced through the use of concrete walls as a rear yard edge treatment or as otherwise approved by the City Fire Department. Where residential areas are adjacent to open space areas with slopes not exceeding 30%, a minimum of 100 feet from any structure and a minimum of 50 feet of non-flammable ("wet zone") vegetation must be provided outside of any property line.

The above listed fuel modification zone widths may be increased in areas of extremely steep slopes or where strong winds may influence fire behavior. Fuel modification areas can extend into private lots as long as a Homeowners Association establishes enforceable restrictions related to no additional structures (i.e. garages, barns, storage buildings, wooden decks, patio covers, etc.) within required setbacks. Maintenance of fuel management zones will be the responsibility of either a Homeowners Association, neighborhood association or other appropriate maintenance agency/entity approved by the City of Banning.

Prior to approval of any Tentative Tract Map or Land Use Permit for properties adjacent to wildland interface zones, the project proponent will prepare a Fire Protection Plan for approval by the City Fire Department. The Fire Protection Plan will provide definition of standards, locations, roadway widths, emergency access, design, maintenance, types of vegetation to be used in "wet zones", construction timing, financing and other applicable conditions related to fire protection.

Construction of the buildings that are directly adjacent to the wildland areas must meet the following minimum requirements in addition to other applicable codes:

1. All eaves must be fire protected (i.e. boxed and stuccoed)
2. All attic openings must be screened with a mesh no larger than 1/8 inch.
3. Windows must be dual-paned with aluminum frames.
4. Only non-combustible siding may be used.

APPLICANT SHALL CONTACT THE WATER DEPARTMENT AT, (951) 922-3282, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

Z. Water

1. Submit Water Improvement Plans to the Engineering Division for review and approval. Design water lines throughout and to property boundaries to tract. The proposed new water lines shall connect into the City's water system on Gilman Street. To receive water service without using a hydromatic station, the upper elevation of the highest house pad shall be placed below the 2610 elevation. Also, in some areas of the tract, special seismic design should be considered. _/_/_
2. All water lines and fitting shall be a minimum of 8-inches in diameter and shall be DIP or 10- gage steel pipes, cement mortar lined & wrapped. Water line easements shall be a minimum width of 20 feet. _/_/_
3. Fire hydrants shall be installed within and on the tract boundaries as per the approval plans, at a 300-foot maximum spacing. _/_/_
4. A backflow device must be installed for each irrigation water connection and inc compliance with the State of California Department of Health Regulations. Contact the City of Banning, After Operations Division, prior to installation. _/_/_
5. A Reimbursement Agreement may be entered into for the proposed constructed and extended water line on Gilman Street that others can use for their benefit. _/_/_

AA. Sewer

1. Submit Sewer Improvement Plans to the City Engineer for review and approval. Design and construct sewer lines throughout the tract beginning in the vicinity just easterly of proposed Street "A" and Gilman Street and, also, westerly on Gilman Street to the end of the proposed cul-de-sac for Gilman Street. _/_/_
2. All sewer lines shall be extra strength Vitrified Clay Pipe and the sewer mains shall be a minimum of 8-inches in diameter. Sewer line easements to be a minimum of 20-feet wide and shall have an all weather access cover. _/_/_
3. A sewer check valve shall be provided for each lot with a finished pad elevation lower than the rim elevation of the immediate up-stream sewer manhole. _/_/_
4. A Reimbursement Agreement may be entered into for the proposed constructed and extended sewer line on Gilman Street that others can use for their benefit. _/_/_

BB. Sewer

1. Water and Sewer Connection Fees and Water Meter Installation charges shall be paid on a per lot basis and per EDU at the time of issuance of building permits, for each lot within this subdivision in accordance with the fee schedule in effect at the time the fees are paid. Also, pay all water and sewer frontage fees, if applicable, and in accordance with the fee schedule in effect at the time the fees are submitted, prior to plan checking proceeding. _/_/_

Exhibit 3

Reduction of TTM 33540

[illegible]

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CITY OF BANNING, CA

ITEMS	1	5
2025-2026		

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Exhibit 4

Copy of letter from applicant

*Gilman-Banning, LLC
150 S. Arroyo Parkway, Suite 102
Pasadena, CA 91105
626.229.1925-ph 626.229.1934-fax*

April 29, 2008

APR 29 2008
CR

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

Re: Request for Tentative Tract Map 33540 Extension

Dear Mr. Guillot,

Gillman-Banning, LLC is applying for a Tentative Map extension, due to the current economy and lending shortage conditions. If you require any additional information, please do not hesitate to call me at 626.229.1925.

Sincerely,

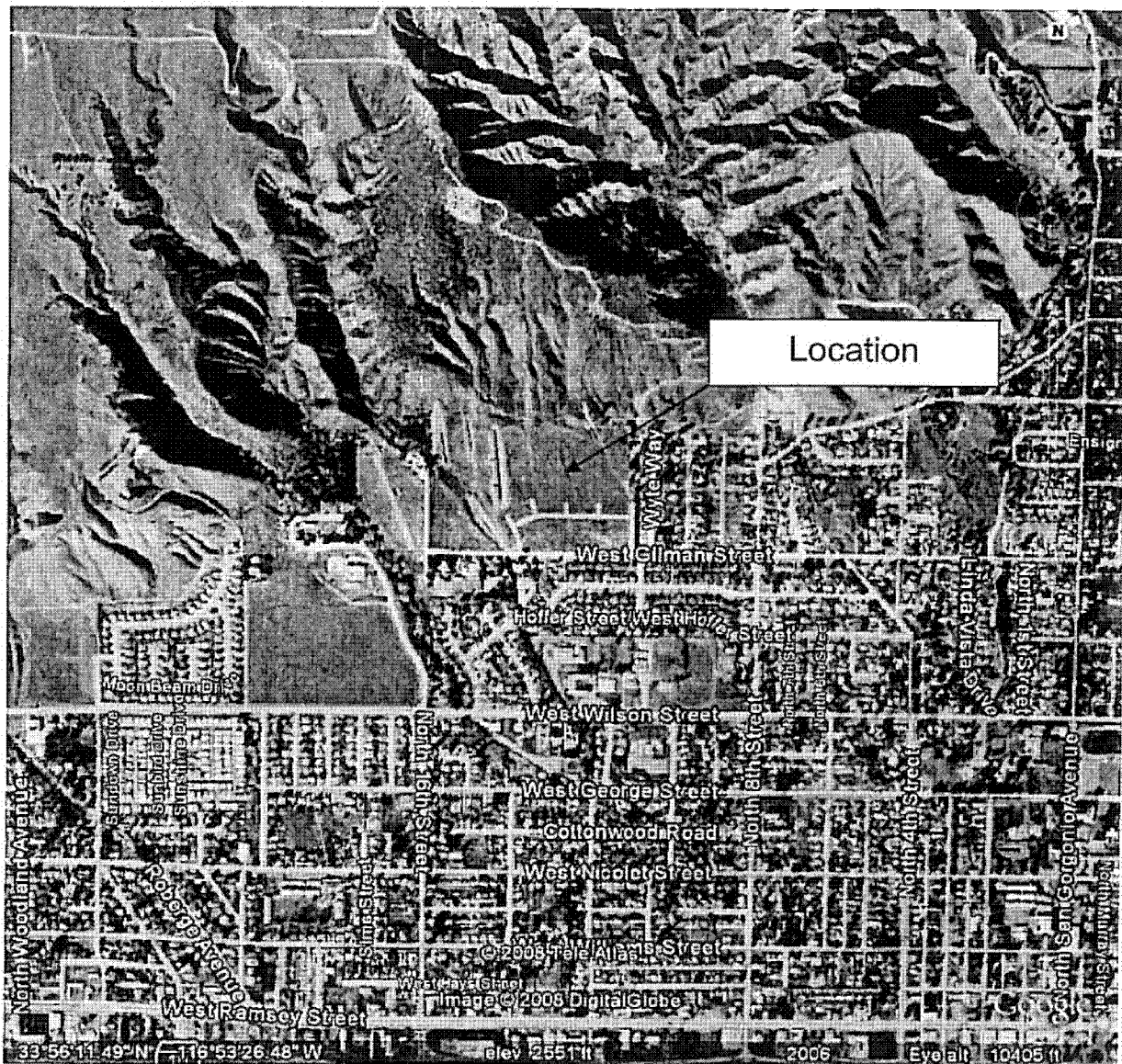


Hagop Sargisian
Manager

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Exhibit 5

Vicinity map



Vicinity Map

TTM 33540

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**CITY COUNCIL AGENDA
REPORT OF OFFICERS**

Date: June 10, 2008
TO: City Council
FROM: Ted Yarbrough, Fire Marshal/Emergency Services Coordinator
SUBJECT: City of Banning's 2008 Disaster Survival Exposition

SUMMARY: The 3rd annual City of Banning Disaster Survival Exposition was held on April 29, 2008. This event was held at the Banning Community Center. There were 33 exhibitors at the Expo who provided information on disaster preparedness. Six City departments participated and had exhibits both inside and outside the building.

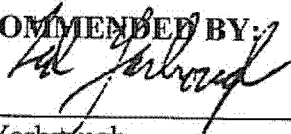
Advertising for the event was done via announcements in the utility bills, banners over Ramsey St., billboard advertising on the freeway, bilingual flyers that were distributed to churches and community organizations, posters put up at stores, newspaper ads and articles, and an art and coloring contest through the school district. This year's event drew more than 200 more people than last year's and that was verified by a manual count of attendees as they entered the Community Center.

The Disaster Expo Committee feels the change of venue to the Community Center helped to improve attendance. The Community Center is better located, provides for more parking while still having plenty of room for outside exhibits and has better acoustics which made it easier to talk to visitors than did the Armory. The Expo organizing committee was comprised of Banning Councilmember Debbie Franklin, Banning Office Specialist Lynn Holmes, Volunteer Bob Ewert, Banning P.D. Staff Sergeant Mark Smith and Banning Fire Services Captain Specialist Ted Yarbrough.

The committee acknowledges the assistance provided by the Banning Electric Department and the Public Works Department for services provided prior to the event.

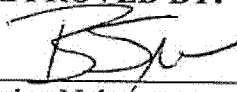
FISCAL DATA: The event is funded by the City of Banning with donations from The Morongo Band of Mission Indians, Riverside County Supervisor Marion Ashley, Lamar Advertising, Community Action Partnership of Riverside County and United Water Contractors.

RECOMMENDED BY:



Ted Yarbrough
Fire Marshal/
Emergency Services Coordinator

APPROVED BY:



Brian Nakamura
City Manager

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**CITY COUNCIL AGENDA
DISCUSSION ITEM**

DATE: June 10, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Brian S. Nakamura, City Manager

SUBJECT: City Council Provide Further Staff Direction Regarding the Proposed Transient Occupancy Tax (TOT) and Warehouse Tax Ballot Measures.

RECOMMENDATION:

That the City Council provide further direction to staff regarding the proposed Transient Occupancy Tax and Warehouse Tax ballot measures.

BACKGROUND:

In March 2008 the City Council unanimously approved adoption of Resolution No. 2008-29, amending the scope of services for the professional services contract with Godbe Research to incorporate the public education and pre-electoral planning elements of the project (Phase II) and approve an additional appropriation in the amount of \$47,500 to fund the contract. And, to direct staff to work with the City's ballot measure consultants regarding public education and pre-electoral planning for the following ballot measures: a warehouse tax and a Transient Occupancy Tax (TOT) rate.

Staff is prepared to initiate the Godbe Research contract amendment regarding the public education and pre-electoral planning components for both a warehouse tax and transient occupancy tax (TOT) rate. The Kosmont Study as presented at the May 27, 2008 City Council meeting, suggests that "the City may be able to place a relatively nominal warehouse tax on such uses."

That said, staff recommends that the City Council consider the following:

- Public education: staff clearly understands that public education efforts were to focus on both the warehouse and transient occupancy tax measures, but this may ultimately have a negative effect on a successful campaign. The general public may have difficulty in determining which ballot measure is best suited for addressing the City's structural budget deficit and further feel that a path of least resistance is an opportunistic effort by the City to succeed; and
- Timing: is critical in regards to the public education and pre-electoral planning components of a potential ballot measure. If public education

occurs prematurely voters are less likely to recall details of a ballot measure and will vote accordingly. Likewise, it is imperative that the general public have a clear understanding of a ballot measure's actual, not forecasted, fiscal impacts; and

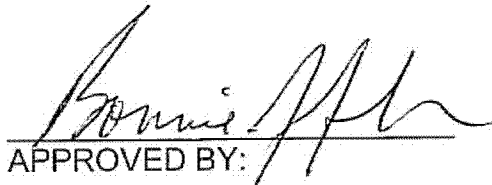
- Fiscal Impacts: given the current economic climate whereby motel, hotel, and warehousing development has slowed significantly, it may be difficult to accurately measure fiscal impacts, which may impact voter confidence.

FISCAL DATA:

City Council direction to move forward with the public education and pre-electoral planning components of the ballot measure will initiate the attach Godbe Research amended contract in the amount of \$47,500.



RECOMMENDED BY:



APPROVED BY:

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF BANNING
AND
GODBE RESEARCH**

ARTICLE 1. PARTIES AND DATE

This First Amendment to the Professional Services Agreement ("First Amendment") dated as of the 26th day of March, 2008 is entered into by and between the City of Banning ("City") and Godbe Research, a Corporation, ("Consultant").

ARTICLE 2. RECITALS

2.1 City and Godbe Research entered into that certain Professional Services Agreement dated the 18th day of December, 2007 ("Agreement"), whereby Godbe Research agreed to conduct Feasibility Analysis and Voter Opinion Research.

2.2 City and Godbe Research now desire to amend the Agreement to revise the Scope of Services to include Phase II, Pre-Electoral Planning and Public Information described further in Exhibit "A" attached hereto and to include additional compensation not to exceed forty seven thousand five hundred dollars (\$47,500.00)

ARTICLE 3. TERMS

3.1 "Exhibit "A". A new Exhibit "A" which is attached hereto is hereby added to the Agreement."

3.2 **Continuing Effect of Agreement.** Except as amended by this First Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this First Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this First Amendment.

3.3 **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Godbe Research each ratify and reaffirm each and every one of their respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement. Each party represents and warrants to the other that the Agreement is currently an effective, valid and binding obligation.

Godbe Research represents and warrants to City that, as of the date of this First Amendment, City is not in default of any material term of the Agreement and that there have been no

events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Godbe Research that, as of the date of this First Amendment, Godbe Research is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

3.4 Adequate Consideration. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this First Amendment.

3.5 Counterparts. This First Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

CITY OF BANNING

GODBE RESEARCH

By: _____
Brian Nakamura
City Manager

Signature: _____

Name: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

Burke, Williams & Sorensen, LLP
City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

I. Consultant will perform the following Services:

A. Guide Client in finalizing the specific "plan" to be implemented if voters approve the measure.

B. Develop and guide Client in implementing a public information program to ensure Banning voters understand the City's needs, the plan to address those needs, and how enhanced services benefit them.

C. Develop key themes and messages and provide City staff and supporters with talking points, frequently asked questions and answers and other collateral to coordinate communication efforts to ensure a unified message is delivered to voters.

D. Develop a community outreach strategy to ensure voters are informed about the City's plan and have an opportunity to provide input and feedback.

E. Development of a customized stakeholder strategy that engages opinion leaders, local elected leaders and key community organizations to ensure they are informed on the City's plan and have the opportunity to provide input.

F. Assist in determining the final tax rate and structure.

G. Prepare the official 75 word Ballot Statement and Argument.

H. Review resolutions prepared by legal counsel.

II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:

A. Talking points, frequently asked questions and answers.

B. Community and stakeholder outreach strategies

C. Official Ballot Statement and Argument.

III. During performance of the Services, Consultant will keep the City apprised of the status of performance by delivering the following status reports:

A. Phone calls, electronic correspondence, and meetings as needed throughout the process. Meetings will not exceed the \$2,500 in expenses for the project.

IV. The tangible work products and status reports will be delivered to the City pursuant to the following schedule:

A. Phase II work will commence in December 2008. All work will be completed no later than June 30, 2009

V. Consultant will utilize the following personnel to accomplish the Services:

- A. Bryan Godbe
- B. Dr. Amelia Caine
- D. Bonnie Moss (Tramutola)
- D. Sabrina Dickenson

VI. Consultant will utilize the following subcontractors to accomplish the Services:

- A. Tramutola (dba Sidewalk Strategies)

VII. AMENDMENT

The Scope of Services, including services, work products, and personnel, are subject to change by mutual Agreement. In the absence of mutual Agreement regarding the need to change any aspects of performance, Consultant shall comply with the Scope of Services as indicated above.

**CITY COUNCIL AGENDA
DISCUSSION ITEM**

DATE: June 10, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Brian S. Nakamura, City Manager

SUBJECT: City Council Consider Staff Recommendation Regarding the Proposed Modification of Redevelopment/Economic Development Director to Redevelopment Manager

RECOMMENDATION:

That the City Council provide further direction to the City Manager regarding the reclassification of Redevelopment/Economic Development Director to Redevelopment Manager.

BACKGROUND:

At the May 27, 2008 City Council meeting staff presented a reorganization affecting the Public Utilities, Human Resources, Community Development, and Redevelopment/Economic Development director's positions. Specifically, the reorganization's objective was threefold, to bring parity among the organization's department directors, minimize overlap of duties within executive level positions, which provides for streamlining and efficient use of resources, and address economic/budgetary impacts related to personnel costs.

The reorganization's intent is to bring forth efficiencies within the Community Development Department, which is responsible for land use matters and directly related to the City's current redevelopment and economic development efforts. The proposed Redevelopment Manager compensation as reflected in the attached job description is commensurate with expected qualifications and responsibilities.

In regards to the Redevelopment/Economic Development Director, if the City Council wishes to continue with the position staff recommends that compensation be equivalent to or greater than that of the Community Development and Human Resources Directors. This recommendation is based upon the following data:

Hemet -- (Asst. City Manager - Redevelopment) \$155,179
Rialto -- (Redevelopment/Economic Development Dir.) \$123,084 -- \$164,940
Colton -- (Redevelopment Director) \$105,336 -- \$116,113
Temecula -- (Housing/Redevelopment Director) \$103,308 -- \$132,240
Palm Springs -- (Asst. City Manager -- Dev/Redev/Econ) \$134,508 -- \$163,704

Staff understands that the cities listed may not be of equal size, budget, and/or demographics, but it is the employment market base the City of Banning competes with for such classifications. Also, the salary ranges do not reflect benefits.

FISCAL DATA:

If the City Council were to hire a Redevelopment Director at the existing salary range per the Classification Plan, this would result in approximately \$5,480 in increased salary and benefit costs to CRA. However, this would also result in a reallocation of the Community Development Director position which under the proposed reorganization was to be funded 40% by CRA and 60% by the General fund. This reallocation would result in annual savings to the CRA of approximately \$89,650 and an annual General fund impact of the same approximate amount.

RECOMMENDED BY:

APPROVED BY:



CITY OF BANNING, CALIFORNIA

Redevelopment Manager

Salary Range 81

\$77,227 - \$104,483

Job Code: 3110

FLSA

☒ Exempt

☐ Non-Exempt

JOB DEFINITION: Under general direction, plans, organizes and manages the City's redevelopment programs and; supervises the day-to-day activities related to economic development and redevelopment.

ESSENTIAL FUNCTIONS: *The following duties ARE NOT intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Coordinates development projects and functions as liaison and facilitator between business, development professionals and City staff; responds to leads and inquiries for potential new business development; develops and manages marketing strategies to attract potential businesses.

Researches policies, procedures and programs relative to economic development and redevelopment including low and moderate income housing; recommends and implements appropriate policies, procedures and programs in accordance with City goals and objectives; develops and implements programs to assist with low/moderate income housing, economic development and redevelopment including negotiations and preparation of related agreements; identifies and pursues potential funding opportunities.

Selects, assigns, evaluates and manages assigned personnel; prioritizes, schedules and delegates work assignments of assigned staff; identifies and implements staff training programs.

Performs other duties as assigned or required.

KNOWLEDGE, SKILLS and ABILITIES:

Knowledge of:

- Applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives including community development and redevelopment laws and regulations, California real estate law and relocation assistance law.
- City and Department policies and procedures.
- Practical methodology, techniques and objectives of community development and redevelopment.
- Management and supervisory principles.
- Redevelopment and Economic Development finance and accounting principles.
- Research methods and procedures.
- Marketing methods and procedures.

Ability to:

- Read, understand, interpret and apply relevant City, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Prepare clear and concise written reports and make presentations to community groups

(continued on reverse side)

- Effectively coordinate and monitor the project planning and implementation effort.
- Assess and prioritize multiple tasks, projects and/or demands.
- work within deadlines to complete projects and assignments.
- Assess, analyze, identify and implement solutions to complex problems.
- Establish and maintain effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.

Skill in:

- Operating a personal computer utilizing a variety of software applications.

CITY OF BANNING, CALIFORNIA

Redevelopment Manager

Job Code: 3110

MINIMUM QUALIFICATIONS: A Bachelor's degree in Urban Planning, Economics, Public Administration or a related field **AND** five (5) years of economic development and/or redevelopment experience that includes one (1) year of management and/or supervision.

A Master's Degree in Urban Planning or Real Estate may be substituted for 2 years of the required experience.

Experience in economic development and establishing programs related to business attraction and retention is highly desirable.

ADDITIONAL REQUIREMENTS: Must have at the time of application and must maintain a California driver license. May be required to work outside the traditional work schedule.



CITY OF BANNING, CALIFORNIA

Economic Development/Redevelopment Director
Range 84
\$83,165 - \$112,517

Job Code:

3110

FLSA ☒ Exempt ☐ Non-Exempt

JOB DEFINITION: Under general direction, directs, manages and performs a variety of tasks associated with managing economic development and redevelopment functions for the City.

ESSENTIAL FUNCTIONS: *The following duties ARE NOT intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Coordinates development projects and functions as liaison and facilitator between business, development professional and City staff. Responds to leads and inquiries for potential new business development. Develops and manages marketing strategies to attract potential businesses.

Researches policies, procedures and programs relative to economic development and redevelopment including low and moderate income housing. Recommends and implements appropriate policies, procedures and programs in accordance with City goals and objectives. Develops and implements programs to assist with low/moderate income housing including negotiations and preparation of related agreements. Identifies and pursues potential funding opportunities.

Selects, assigns, evaluates and manages assigned personnel work activities. Prioritizes, schedules and delegates work assignments of assigned staff. Identifies and implements new employee and on-going staff training programs.

Performs other duties as assigned or required.

KNOWLEDGE and SKILLS:

- Knowledge of applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of management and/or supervision principles.
- Knowledge of finance and/or accounting principles.
- Knowledge of research methods and procedures.
- Knowledge of marketing methods and procedures.

- Skill in reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in assessing, analyzing, identifying and implementing solutions to complex problems.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.
- Skill in operating a personal computer utilizing a variety of software applications.

(continued on reverse side)

CITY OF BANNING, CALIFORNIA

Economic Development/Redevelopment Director

Job Code: 3110

MINIMUM QUALIFICATIONS: A Bachelor's degree in Business Administration, Economics or related field **AND** five (5) years of economic development and/or redevelopment experience that includes one (1) year of management and/or supervision.

ADDITIONAL REQUIREMENTS: Must have at the time of application and must maintain a California driver license. May be required to work outside the traditional work schedule.