

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

June 24, 2008
6:30 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

The following information comprises the agenda for a regular meeting of the City Council and a Joint Meeting of the City Council, the Banning Utility Authority and the Community Redevelopment Agency and a Joint Meeting of the City Council and Community Redevelopment Agency.

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.

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.

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

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 10
Items to be pulled _____, _____, _____, _____ for discussion.
(Resolutions require a recorded majority vote of the total membership of the City Council)**

1. Approval of Minutes – Special Meeting – 06/10/08	1
2. Conflict of Interest Code Notification	2
3. Accept the Right-of-Way Dedication for 887 W. Ramsey Street	3
Drainage at City Hall Performed by Whitmore Construction, Inc.	8
4. Amending the Existing Agreement for Consultant Services with PARSONS Water & Infrastructure, Inc. to Provide Additional Work for the Design of the Wastewater Treatment Plant Expansion. .	12
5. Bus Shelter Update	23
6. Resolution No. 2008-76, Awarding the Construction Contract for Project No. 2008-07, Cabinet and Countertop Replacement at the Banning Community Center to Whitmore Construction, Inc., Banning, California.	25
7. Resolution No. 2008-78, Amending the Transportation Uniform Mitigation Fee (TUMF) Applicable to All Developments in the City of Banning.	31
8. Resolution No. 2008-81, Awarding the Construction Contract for Project No. 2008-06, Replacement of Flooring at the Banning Community Center and Senior Center to KV's Paint and Decorating Center, Inc. of Beaumont, California.	37
9. Resolution No. 2008-84, Approving the Execution and Submittal for the FY 07-08 California Transit Security Grant Program from the Governor's Office of Homeland Security.	43

- **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. Tentative Tract Map (TTM) 32370 Time Extension. Located Generally in the northern portion of the city, 1500 feet north of Wilson Street, west of Mountain Avenue. APN: 535-030-038
 Staff Report 46
Recommendation: That the City Council adopt Resolution No. 2008-75, approving a one-year extension of time to July 12, 2009, for Tentative Tract Map No. 32370.

2. Resolution No. 2008-77, Approving the Consumer Price Index (CPI) Increase for the Service Charges for the Collection, Transportation and Disposal of Solid Waste.
 Staff Report 78
Recommendation: That the City Council adopt Resolution No. 2008-77, Approving the Consumer Price Index (CPI) Increase for the Service Charges for the Collection, Transportation and Disposal of Solid Waste, as set forth in the City of Banning's Franchise Agreement with Waste Management of the Inland Empire.

3. Repeal of Resolutions 2006-128, 129 130 and Ordinance No. 1353.
 Staff Report 89
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)

V. REPORTS OF OFFICERS

1. Duane Burk, Public Works Director
 - A. Resolution No. 2008-55, Awarding the Construction Contract, Approving the Professional Services Agreements for Construction Inspection Services and Miscellaneous Construction Services for Project No. 2006-07, Construction of New Banning Police Station 327

Recommendation: Adopt Resolution No. 2008-55:

- 1) **Awarding the Construction Contract for Project No. 2006-07, "Construction of the New Banning Police Station," to Oakview Construction, Inc. of Calimesa, California, in an amount "Not to Exceed" \$11,089,836.00.**
- II) **Approving the Professional Services Agreement for Construction Inspection Services with A&E Inspection Services of Beaumont, California, in an amount "Not to Exceed" \$243,984.00.**
- III) **Awarding Miscellaneous Construction Services, including soils and materials testing, to Landmark Geo-Engineers and Geologists, and surveying to HP Engineering, Inc., for a total amount "Not to Exceed" \$168,000.00.**
- IV) **Approving an approximate 8% construction contingency in an amount of \$890,000.00 to be used in the event that additional work arises from unforeseen conditions.**
- V) **Authorizing the appropriation of \$12,391,820.00 from BUA funds to Account No. 470-2200-413-9010 and authorizing the Director of Finance to make the necessary budget adjustments related to these funds.**

2. Ted Yarbrough, Fire Marshal/Emergency Services Coordinator
 - A. Fire Hazard Severity Zone Determinations for the City of Banning 343

- 3. Brian Nakamura, City Manager
 - A. Godbe Tramultola Transient Occupancy Tax Public Outreach and Education Update 345

Recommendation: **That the City Council, subsequent to update by Godbe Tramutola provide direction to City staff regarding the Transient Occupancy Tax public outreach and education component of a potential ballot initiative.**

VI. RECESS CITY COUNCIL MEETING TO A JOINT MEETING OF THE CITY COUNCIL, BANNING UTILITY AUTHORITY, and COMMUNITY REDEVELOPMENT AGENCY.

Call to Order Joint Meeting

A. REPORTS OF OFFICERS

A-1. Bonnie Johnson, Finance Director

- 1) Recommendation to Adopt Three Resolutions (1) Adopting the City’s annual Budgets for the Fiscal Period 2008-09, (2) Adopting the Fiscal Year 2008-09 Gann Limit Calculation and (3) Adopting the Utility Authority’s Annual Budget for the Fiscal Period 2008-09.

Staff Report 350

Recommendations:

- a) **That the City Council adopt Resolution No. 2008-82, Approving the Annual budget for the Fiscal Period July 1, 2008 to June 30, 2009.**
- b) **That the City Council adopt Resolution No. 2008-83, Approving the Fiscal Year 2008-09 Gann Limit Calculation.**
- c) **The Banning Utility Authority Board adopt Resolution No. 2008-03UA, Approving the Annual Budget for the Fiscal**

- 2) Recommendation to Adopt CRA Resolution No. 2008-08, Adopting the Annual Budget for the Fiscal Year 2008-09.

Staff Report 359

Recommendations:

- a) **That the Agency Board adopt CRA Resolution No. 2008-08, Authorizing the adoption of the Annual Budget for the Fiscal Year July 1, 2008 to June 30, 2009.**

Adjourn Joint Meeting of City Council, Banning Utility Authority and Community Redevelopment Agency

VII. CALL TO ORDER A JOINT MEETING OF THE CITY COUNCIL, and the COMMUNITY REDEVELOPMENT AGENCY.

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 Agency Board approve Consent Item 1 through 4
Items to be pulled _____, _____, _____, _____ for discussion.
(Resolutions require a recorded majority vote of the total membership of the Board)**

- 1. Approval of Minutes – Regular Meeting – 05/27/08 364
- 2. City Council and Agency Board Adopt the 2008-09 Cooperative and Repayment Agreement Between the City of Banning and the Banning Redevelopment Agency for the payment of Administrative Expenses. 379
- 3. City Council adopt Resolution No. 2008-85 and Agency Board adopt CRA Resolution No. 2008-10, Approving a Loan and Repayment Between the City and the Redevelopment Agency to Facilitate the Funding of Redevelopment Capital Projects. 386
- 4. City Council adopt Resolution No. 2008-80 and Agency Board adopt CRA Resolution No. 2008-11, Awarding the Construction Contract for Project No. 2008-05, Removal of an Underground Storage Tank and Appurtenances at 311 E. Ramsey Street to West Tek, Inc. of Spring Valley, CA for an amount Not to Exceed \$66,000.00, which includes an approximate 10% Construction contingency 392

DIRECTOR’S REPORT

- A. Brian Nakamura, Executive Director
 - 1) Review and Approval of Fixed Based Operator Services Staff Report 403

Recommendation: That the Agency Board provide further direction to the Executive Director and Staff regarding the Fixed Based Operator Services desired for the Banning Municipal Airport.

Adjourn Joint Meeting of City Council and the Community Redevelopment Agency

RECONVENE REGULAR MEETING OF THE CITY COUNCIL

VIII. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items –

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

FUTURE MEETINGS

1. Joint Meeting of the City Council and the Morongo Band of Mission
Indians to be held on June 30, 2008

IX. 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

06/10/08
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Salas on June 10, 2008 at 5:30 p.m. at the Banning Civic Center Small Conference Room, 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
Matt Bassi, Interim Community Development Director
Marie A. Calderon, City Clerk

CLOSED SESSION

1. Pending Litigation
The City Council will meet in closed session to 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)

Mayor Salas opened the item for comments from the public. There were none. Meeting went into closed session at 5:32 p.m. and returned to regular session at 6:03 p.m. with no reportable action.

ADJOURNMENT

By common consent the meeting adjourned at 6:03 p.m.

Marie A. Calderon, City Clerk

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: June 24, 2008
TO: Honorable Mayor and City Council Members
FROM: Marie Calderon, City Clerk
SUBJECT: Conflict of Interest Code Notification

RECOMMENDATION:

That the City Council receive and place on file this notification that the 2008 Conflict of Interest Code will be brought forward to the City Council no later than October 1, 2008 for approval.

JUSTIFICATION:

The Political Reform Act requires every local government agency to review its conflict of interest code biennially.

RECOMMENDED BY:



Marie A. Calderon, City Clerk

APPROVED BY:



Brian Nakamura, City Manager

**CITY COUNCIL MEETING
CONSENT ITEM**

DATE: June 24, 2008

TO: City Council

FROM: Kahono Oei, City Engineer

①

SUBJECT: Accept the Right-of-Way dedication for 887 W. Ramsey Street

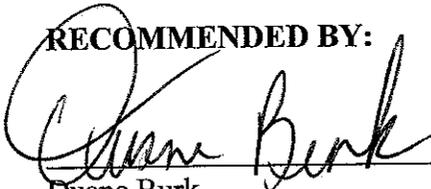
RECOMMENDATION: Accept the Right-of-Way dedication for 887 W. Ramsey Street, as described in Exhibit "A" and Exhibit "B", and direct the City Clerk to accept and record said dedication.

JUSTIFICATION: It is essential to obtain the right-of-way in order to construct the street improvements and meet the proposed right-of-way width requirement set forth by the adopted Circulation Element.

BACKGROUND: The property owner has submitted an application to build a new commercial structure at 887 W. Ramsey Street. As part of the Conditions of Approval, the owner is required to dedicate the necessary right-of-way fronting his property in order to be able to build the street improvements at the proper location, per the City's general plan

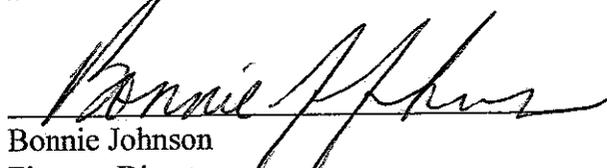
FISCAL DATA: Not applicable.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

<p>EXEMPT RECORDING REQUESTED BY City of Banning PER GOV'T CODE 6103 AND WHEN RECORDED MAIL TO:</p> <p>City of Banning – City Clerk P.O. Box 998 Banning, CA 92220</p> <p>MAIL TAX STATEMENTS TO:</p> <p>City of Banning – City Clerk P.O. Box 998 Banning, CA 92220</p>	
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

OFFER OF DEDICATION – ROAD PURPOSES

The undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the City of Banning, a political subdivision of the State of California, and its successors or assigns, for public road, street, highway and utility purposes, the real property situated in the City of Banning, County of Riverside, State of California, described in Exhibit "A" (legal description) and shown on Exhibit "B" (plat map) attached hereto and incorporated herein by this reference as though set forth in full.

It is understood and agreed that the City of Banning and its successors or assigns shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council, or of the local governing bodies or its successors or assigns.

The provisions hereof shall inure to the benefit of and be binding upon heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS THEREOF, these presents have executed this instrument this _____ day of _____, 20_____.

Angel Speed L.P.
Corporation (Type Name)

Pope-Tam, L.L.C.
Corporation (Type Name)

Neil Angelillo
Signature

James M. Frager
Signature

Neil Angelillo, General Partner
Name and Title (Type)

JAMES M FRAGER - MANAGER
Name and Title (Type)

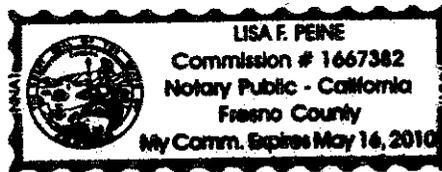
STATE OF California } ss.
COUNTY OF FRESNO }

On February 15, 2008, before me, Lisa F. Peine, a Notary Public in and for the State of California, Neil Angelillo, personally appeared Neil Angelillo, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Lisa F. Peine



4

ACKNOWLEDGMENT

State of California
County of San Diego

On February 20, 2008 before me, Teresa A. Dugan
(insert name and title of the officer)

personally appeared James M. Trager
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Teresa A. Dugan (Seal)

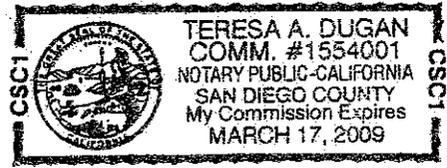


EXHIBIT A

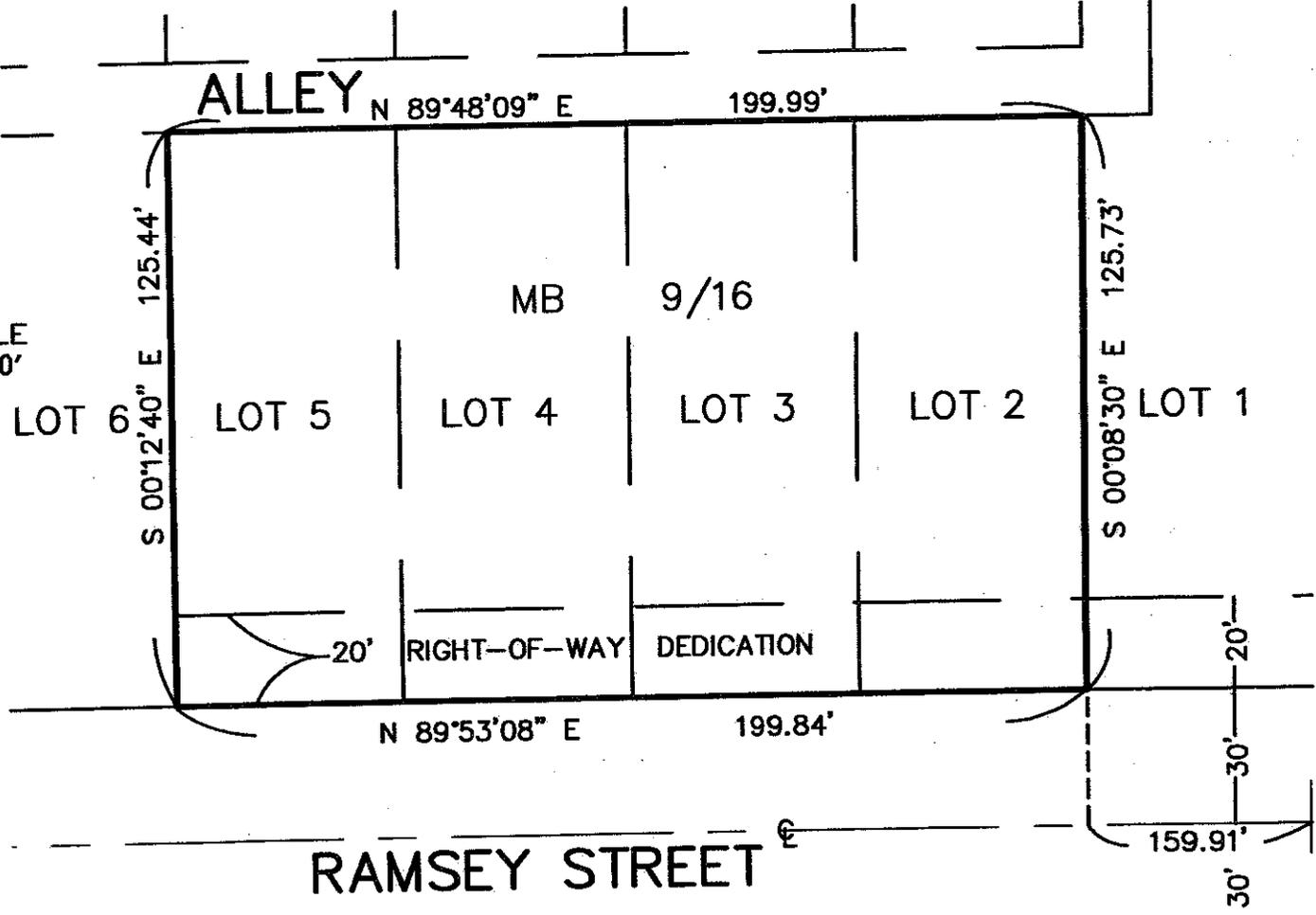
THE SOUTHERLY 20 FEET OF LOTS 2, 3, 4, AND 5 OF BONITA HEIGHTS NO. 1,
IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA,
AS SHOWN BY MAP ON FILE IN BOOK 9, PAGE 16 OF MAPS, IN THE OFFICE
OF THE COUNTY RECORDER OF SAID COUNTY.

END DESCRIPTION

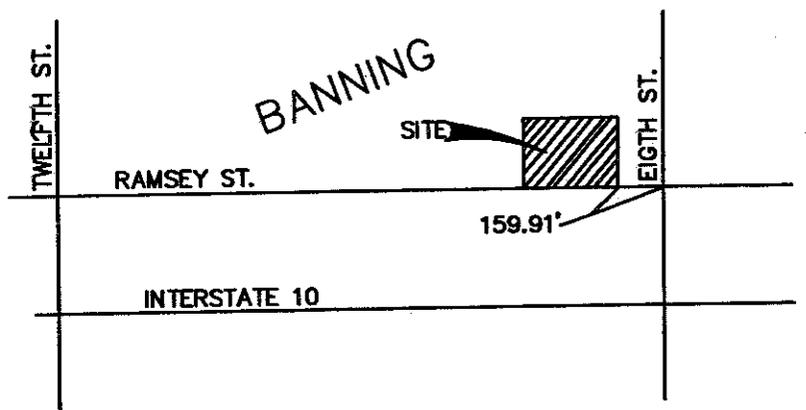
AREA OF DEDICATION IS 0.09 ACRES



SCALE
1"=40'



RAMSEY STREET



VICINITY MAP

NO SCALE
AREA OF DEDICATION IS 0.09 ACRES

Herald Steven Lantis
 HERALD STEVEN LANTIS, P.L.S. 7627

LANTIS SURVEYING & ENGINEERING

10676 UNION STREET
 CHERRY VALLEY, CA. 92223
 (951) 769-6467

RIGHT OF WAY DEDICATION EXHIBIT B

LOTS 2, 3, 4 AND 5 OF BONITA HEIGHTS NO. 1, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9, PAGE 16 OF MAPS.

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: June 24, 2008

TO: Honorable Mayor and City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Notice of Completion for "Emergency Repairs Related to Water Damage at City Hall" Performed by Whitmore Construction, Inc.

RECOMMENDATION: That the City Council accept the "Emergency Repairs Related to Water Damage at City Hall" as complete and direct the City Clerk to record the Notice of Completion.

JUSTIFICATION: The contractor has completed the assigned work.

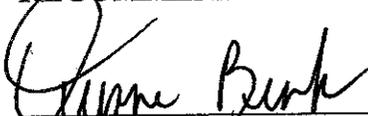
BACKGROUND: On April 22, 2008, the City Council adopted Resolution No. 2008-42, "Approving Emergency Repairs Related to Water Damage at City Hall and Authorizing the Director of Finance to make the Necessary Budget Adjustments and Appropriations to Cover Costs Incurred in the Amount of \$7,093.97."

The immediate removal of water damaged walls and window frames and rebuilding of the damaged areas was necessary in order to provide a safe working environment, eliminate the risk of mold, and remove the City's potential liability. The City Council's approval (on April 22, 2008) to override the formal bid process was necessary in order to expedite repairs and disburse payment.

Whitmore Construction, Inc.'s scope of work for this project included removing windows on the south side of City Hall, west of the front door; installing new dual pane commercial grade anodized brown windows and frames; patching holes around the windows and in the drywall on the interior walls; and lathing, plastering, and painting the exterior walls around the new windows.

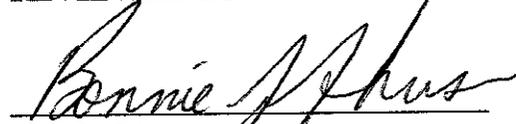
FISCAL DATA: This project was completed at the original contract amount of \$7,093.97. This emergency contract was funded through the Capital Improvement Fund (City Hall Interior Reorganization), Account No. 470-3200-412.90-15.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



Bonnie Johnson
Director of Finance

APPROVED BY:



Brian Nakamura
City Manager

1 WHEN RECORDED MAIL TO:
2

3 City Clerk's Office
4 City of Banning
5 P.O. Box 998
6 Banning, California 92220
7

8 FREE RECORDING:
9 Exempt Pursuant to
10 Government Code §6103
11

12
13 NOTICE OF COMPLETION
14 EMERGENCY REPAIRS RELATED TO WATER DAMAGE AT CITY HALL
15 IN THE CITY OF BANNING

16
17 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the City of Banning,
18 a municipal corporation, pursuant to the provisions of Section 3093 of the Civil Code of
19 the State of California, and is hereby accepted by the City of Banning pursuant to
20 authority conferred by the City Council this June 24, 2008, and the grantees consent to
21 recordation thereof by its duly authorized agent.
22

23 (1) That the City of Banning and Whitmore Construction, Inc. of Banning,
24 Calif., the vendee, under the April, 2008 contract, for the furnishing of labor, materials,
25 tools, equipment and other services necessary for "Emergency Repairs Related to Water
26 Damage at City Hall" within the City of Banning. The scope of work under this project
27 included following items, in accordance with the City of Banning Standard
28 Specifications:
29

30 Removing windows on the south side of City Hall, west of the front door; installing new
31 dual pane commercial grade anodized brown windows and frames; patching holes around
32 the windows and in the drywall on the interior walls; and lathing, plastering, and painting
33 the exterior walls around the new windows.
34

35 (2) That the work of improvement was completed on March 24, 2008, and the
36 Nature of Interest was repair water damage on the south side of City Hall, west of the
37 front door.

38 (3) That the City of Banning, a municipal corporation, whose address is
39 Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is completing work
40 of improvement.

41 (4) That the said work of improvement was performed at City Hall, 99 E.
42 Ramsey St., Banning, California, 92220.

43 (5) That the original contractor for said improvements was Whitmore
44 Construction, Inc., State Contractor's License No. 445152.

45
46 Dated: June 24, 2008

47
48 CITY OF BANNING
49 A Municipal Corporation

50
51
52 By _____
53 Duane Burk
54 Director of Public Works

55 APPROVED AS TO FORM:
56
57
58 _____
59 Burke, Williams & Sorensen, LLP
60 City Attorney
61

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

STATE OF CALIFORNIA)

) ss

COUNTY OF RIVERSIDE)

MARIE A. CALDERON, being duly sworn, deposes and says:

That she is the City Clerk of the City of Banning, which City caused the work to be performed on the real property hereinabove described, and is authorized to execute this Notice of Completion on behalf of said City; that she has read the foregoing Notice and knows the contents thereof, and that the facts stated therein are true based upon information available to the City of Banning, and that she makes this verification on behalf of said City of Banning.

City Clerk of the City of Banning

//

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: June 24, 2008

TO: City Council

FROM: George Thacker, Assistant Water/Wastewater Director

SUBJECT: Amending the Existing Agreement for Consultant Services with PARSONS Water & Infrastructure, Inc. to Provide Additional Work for the Design of the Wastewater Treatment Plant Expansion.

RECOMMENDATION: The City Council approves amending the existing Consultant Services Agreement for "Design and Construction Management of the Wastewater Treatment Plant Expansion" in the amount "Not to Exceed" of \$91,367.00.

JUSTIFICATION: Expansion of the Wastewater Treatment Plant is essential to accommodate growth and recycled water for irrigation purposes.

BACKGROUND: The City Council approved a Consultant Services Agreement for "Design and Construction Management of the Wastewater Treatment Plant" with PARSONS Water & Infrastructure, Inc. at the July 25, 2006 Council Meeting in the amount of \$2,229,652.00. Amendment No. 1 was signed on March 21, 2007, in the amount of \$42,000.00 for designing the selected Membrane Bioreactor (MBR) System and other related processes.

PARSONS has completed 95% of the design of the expansion of the plant. Staff is presently working with the Colorado River Regional Water Quality Control (CRRWQCB) for a new Discharge Permit and with the State Water Resources Control Board for an SRF loan and grant for this project.

The additional *Scope of Work* included in Amendment No. 2 for the design engineering includes the following: Influent Flow Meter specification and drawing, additional Landscape Work, design combined Standby Generator, include Wrought Iron Fence and Road Improvements for Charles Street, develop specification for Laboratory Equipment, additional work for the CEQA document, review Liberty Energy proposal involving the WWTP, and Evaluation of TDS and TN Discharge Concentrations at the WWTP.

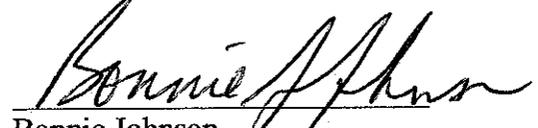
These additions are necessary to improve the overall function and efficiency of the operations of the WWTP, and develop a report to help with the establishment of the discharge requirements for the proposed Wastewater Discharge Permit to be approved by the CRRWQCB for the expanded WWTP. Amendment No. 2 is in the amount of not to exceed of \$91,367.00 and the new contract amount will now be a total of \$2,363,019.00.

FISCAL DATA: The funds for this Amendment No. 2 shall be utilized from the FY 08-09 BUA Wastewater Capital Project Fund, Account No. 683-6300-454-9078 Planning/Design-Capital.

RECOMMENDED BY:


James D. Earhart
Director of Public Utilities

REVIEWED BY:


Bonnie Johnson
Finance Director/
Assistant City Manager

APPROVED BY:


Brian Nakamura
City Manager

SECOND AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES

BETWEEN THE CITY OF BANNING

AND

PARSONS WATER & INFRASTRUCTURE, INC.

ARTICLE 1. PARTIES AND DATE

1.1 This Second Amendment to the Agreement for Consultant Services ("Second Amendment") dated as of the 10th day of June, 2008 is entered into by and between the City of Banning ("City") and PARSONS Water and Infrastructure, Inc., a California Corporation ("Consultant").

ARTICLE 2. RECITALS

2.1 City and PARSONS entered into that certain Agreement for Consultant Services dated 26th day of July, 2006 ("Agreement"), whereby PARSONS agreed to provide engineering design and construction management services for the expansion of the Wastewater Treatment Plant (WWTP).

2.2 City and PARSONS now desire to amend the Agreement to include additional compensation of \$85,167.00 to the original Contract Amount plus Amendment No. 1 and revise the Scope of Services. The original plus Amendment No. 1 Scope of Work Tasks and subtasks are modified and revised to include the following: Influent Flow Meter specification and drawing, additional Landscape Work, design combined Standby Generator, include Wrought Iron Fence and Road Improvements for Charles Street, develop specification for Laboratory Equipment, additional work for the CEQA document, review Liberty Energy proposal involving the WWTP, and Evaluation of TDS and TN Discharge Concentrations at the WWTP. The attached Exhibits "A", "B", and "C" for this Amendment No. 2 describes the revisions more clearly.

ARTICLE 3. TERMS

3.1 Contract Amount: Original Amount plus Amendment No. 1 of \$2,271,652.00 plus \$91,367.00 for Amendment No. 2 equals a Total Amount of \$2,363,019.00 (5.8% Increase).

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

3.3 Affirmation of Agreement; Warranty Re Absence of Defaults. City and PARSONS 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.

PARSONS 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 PARSONS that, as of the date of this First Amendment, PARSONS 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: PARSONS

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

16

Exhibit "A"

The Scope of Work for the Consultant Services dated June 10, 2008, is modified and revised per this amendment to include the following:

Added an Influent Flow Meter specifications and drawings.

Included more Landscape Work on Charles Street.

Combined Standby Generator for the two existing generators.

Added Wrought Iron Fence and Road Improvements along Charles Street.

Included new Laboratory Equipment specifications.

Required additional CEQA Work.

Reviewed Liberty Energy Proposal to discharge to the WWTP.

Evaluation of TDS and TN Discharge Concentrations.

A more detailed report provided by PARSONS Water & Infrastructure, Inc. is reflected in the attached pages of this Exhibit "A".

EXHIBIT "B" SCHEDULE OF SERVICES

The design of the project will be completed by a revised target date of September, 2008, and construction will start by revised date of December, 2008. The anticipated completion of the construction of the project is still projected to be by target date of December, 2010. Services are to be rendered through the date of Notice of Completion for the construction of the project.

EXHIBIT "C" COMPENSATION

The increase in scope of fees for Amendment No. 2 is \$91,367.00. The total scope of fees is now the original amount plus Amendment No. 1 of \$2,271,652.00 plus \$91,376.00 for this Amendment No. 2, which equals \$2,363,019.00 (5.8% Increase).

Please note Fee Estimate provided by Consultant attached to this Exhibit "C".

ATTACHMENT 1

City of Banning 1.5 MGD Water Reclamation Facility Expansion Summary of Additional Work

Original scope of work Tasks and subtask as described and subsequently modified in Amendment No.1 are further modified during the detailed design phase of the project. During several meeting with the City the following additional work are added to the existing scope of work. The cost associated with this work is attached for your consideration.

- 1. Influent Flow Meter** - The City requested to install influent flow meter to record the flow coming to the plant. Parsons evaluated "Sewer Flow Monitoring Study" prepared by ADS Environmental Services to select a location and flow measuring device applicable for the existing plant influent structure. Parsons prepared specification and drawings for the flow meter and metering vault.
- 2. Landscape Work** - Original Landscaping work included only along the west side fence of the existing plant site. During the 60% submittal meeting, the City requested to extend the landscaping work along the fence on the south side of the plant boundary that separates the Animal Shelter area from the plant. The landscaping work was included along the north plant fence up to the east end of Charles Street. Parsons designed and developed drawings for the proposed extension of landscape work as an additional work item.
- 3. Combined Standby Generator** - Original scope of work is to provide one standby diesel power generator for proposed expansion. The City requested to evaluate the possibility of combining two existing and one proposed emergency engine generators into one emergency generator only. Parson evaluated the condition of all existing emergency generators and proposed one new standby generator for the proposed expansion and replacement of the old existing 300kW emergency generator to serve the entire plant facilities. The existing 200kW generator will remain in service. Parson revised the standby generator design accordingly. The design includes additional electrical conduits and wire runs. Parsons provided a revised design of the standby Diesel Generator as an additional work item.
- 4. Wrought Iron Fence and Road Improvements for Charles Street** - Original scope of work did not include new fence on the north plant boundary along Charles Street. The City decided to include wrought iron fence along Charles Street extended up to the end of the pavement and a new motorize wrought iron gate at the plant entrance replacing the existing chain link gate. The City also requested to include Charles Street improvement to include curb and gutters on the south side of the street. Parsons designed and developed drawings for the wrought iron fence and gate as an additional work item.

5. **Laboratory Equipment** – Original scope of work was to design a new Laboratory and Control Building only. Later on the City's plant operation staff provided us a list of laboratory tests that will be conducted at the new Laboratory facility. They also identified the type of equipment needed for proposed tests. Parsons was asked to select laboratory equipment and develop specification for each equipment that the construction contractor will supply and install. Parsons prepared specifications and drawings for the laboratory equipment as per the list of tests to be performed as an additional work item.
6. **CEQA Document** – Parsons prepared the CEQA document based on the standard criteria to meet the requirements of all regulatory agencies that review it. We used emission factors published by the USEPA because we were also computing air pollutant emissions for the EPA General Conformity Analysis. The federal conformity analysis is a requirement for this project because it is part of CEQA-Plus required for the loan/grant application. USEPA wants us to use USEPA emission factors for the General Conformity Analysis. USEPA will not accept South Coast Air Quality Management District (SCAQMD) methodology. We typically have never received comments from the SCAQMD on which emission factors to use. What SCAQMD wants is something totally different than what is required by USEPA for the General Conformity Analysis. Later on, the review comments received from SCAQMD asking for recalculation construction emission based on Construction emission using the SCAQMD CEQA Air Quality Handbook (November 1993). The City advised Parsons to recalculate the emission. Parsons provided the recalculation as an additional work item.
7. **Liberty Energy Proposal Review** - Parson evaluated the impact of the liberty Energy proposal on the design of the Water Reclamation Facility and use of the recycled water discharged from the proposed energy plant.
8. **Evaluation of TDS and TN Discharge Concentration** – At a meeting with the City on June 5, 2008, the City requested to evaluate the current and future discharge concentration of Total Nitrogen (TN) and Total Dissolved Solid (TDS) from the existing treatment plant. Parsons will prepare a letter report reflecting the existing effluent quality including mass balance and describe different implementation methods to reduce the effluent concentrations of TN and TDS from the existing plant along with the WRF expansion. In addition Parsons will review the Total Organic Carbon (TOC) concentration in the plant influent and estimate the expected TOC level in the recycled water from the proposed 1.5 mgd WRF. The report will assist the Regional Board to establish the concentration limits for the aforementioned constituents.

ATTACHMENT 2

City of Banning 1.5 MGD WRF Expansion - Fee Estimate for Additional Work

June 10, 2008

Additional Items	# of Add. Drwgs.	Labor Category	Hours	Rate/hr	Total Labor Cost	ODCs	Total Cost
1. INFLUENT FLOW METER	1	Project Manager	10	185	\$7,770.00	\$500.00	\$8,270.00
		Project Engineer	16	170			
		Senior Engineer	25	128			
2. LANDSCAPE WORK	2	Project Manager	16	185	\$12,895.00	\$800.00	\$13,695.00
		Project Engineer	18	170			
		Senior Engineer	25	128			
		Engineer	35	105			
3. COMBINED STANDBY GENERATOR	-	Project Manager	8	185	\$10,435.00	\$300.00	\$10,735.00
		Project Engineer	16	170			
		Senior Engineer	20	128			
		Engineer	35	105			
4. WROUGHT FENCE AND ROAD IMPROVEMENTS FOR CHARLES STREET	2	Project Manager	16	185	\$15,860.00	\$600.00	\$16,460.00
		Project Engineer	20	170			
		Senior Engineer	25	128			
		Engineer	60	105			
5. LABORATORY EQUIPMENT	1	Project Manager	8	185	\$13,598.00	\$100.00	\$13,698.00
		Project Engineer	16	170			
		Senior Engineer	16	128			
		Engineer	70	105			
6. CEQA DOCUMENT	-	Project Manager	6	185	\$4,814.00	\$200.00	\$4,814.00
		Project Engineer	8	170			
		Senior Engineer	8	128			
		Administrative Staff	16	70			
7. LIBERTY ENERGY PROPOSAL REVIEW	-	Project Manager	8	185	\$4,200.00	-	\$4,200.00
		Project Engineer	16	170			
8. EVALUATION OF TN AND TDS DISCHARGE CONCENTRATION	-	Technical Review Committee	10	195	\$19,395.00	\$100.00	\$19,495.00
		Project Manager	32	185			
		Project Engineer	40	170			
		Engineer	45	105			

\$91,367.00

22

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: June 24, 2008
TO: Honorable Mayor and Members of the City Council
FROM: Brian S. Nakamura, City Manager
SUBJECT: Bus Shelter Update.

INFORMATION:

That the City Council receives and files this update regarding financing, repairs and improvements to City bus shelters in preparation for transfer to the Banning Chamber of Commerce.

BACKGROUND:

On March 25, 2008, the City Council provided direction for staff to work with the Banning Chamber of Commerce regarding the possible transfer of maintenance and operations of the City's bus shelters. One purpose for this transfer is to provide the Chamber of Commerce with an opportunity to improve its revenue base through the sale of advertising spaces within the shelters.

It has been determined that the existing bus shelters are in need of repairs and should be completed prior to transfer from the City to the Chamber of Commerce. Once the bus shelters are transferred it will become the responsibility of the Chamber to maintain and operate the bus shelters to an acceptable standard as defined and agreed to by and between the Riverside Transportation Agency (RTA) and City of Banning.

The City has received notice that its Riverside County Transportation Commission (RCTC) grant application in the amount of \$40,000 has received first round approval. The grant will enable to City to apply funds toward repairing its bus shelters to an acceptable standard, prior to transfer to the Chamber of Commerce. Additionally, the Public Works Department has just completed its inventory of repairs needed for bus shelters and will begin the process of determining actual costs.

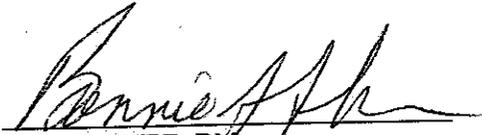
The needed repairs may exceed the grant award amount and thus would require an additional funding allocation.

FISCAL DATA:

N/A at this time. City staff will bring forward a revised staff report of City Council action subsequent to notification of award of the RCTC grant and determination of funding needed for bus shelter repairs.



RECOMMENDED BY:
Brian S. Nakamura



APPROVED BY:
Bonnie J. Johnson

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: June 24, 2008

TO: Honorable Mayor and City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2008-76, "Awarding the Construction Contract for Project No. 2008-07, "Cabinet and Countertop Replacement at the Banning Senior Center"

RECOMMENDATION: Adopt Resolution No. 2008-76, "Awarding the Construction contract for Project No. 2008-07, 'Cabinet and Countertop Replacement at the Banning Senior Center,'" to Whitmore Construction, Inc. of Banning, California for an amount "Not to Exceed" \$31,000.00, which includes an approximate 10% construction contingency.

JUSTIFICATION: It is necessary to install solid surface countertops and vinyl cabinets at the Banning Senior Center in order to meet current standards as dictated by the Riverside County Department of Health. Whitmore Construction, Inc., a well-qualified company, is the only contractor to submit a bid for this project at the June 4, 2008 bid opening.

BACKGROUND: Staff has determined that the existing cabinets and countertops at the Banning Senior Center are in a major state of disrepair and has recommended that they be replaced, in order to meet the current standards dictated by the Riverside County Department of Health.

The scope of work under this project includes the removal of all upper and lower cabinets and countertops in the Senior Center kitchen, including two island work areas; the installation of new upper and lower vinyl cabinets in the same locations; the installation of new granite countertops on all lower cabinets, with 6" backsplash and 1-1/2" bullnose on all exposed edges; and disposal of old cabinets and countertops.

The project was advertised in a local newspaper on May 23, 2008, and Whitmore Construction, Inc. was the only contractor to attend the May 28, 2008 non-mandatory, pre-bid walkthrough and the only contractor to submit a bid for the project, in the amount of \$27,970.00. The bid advertisement and bid summary sheets are attached as Exhibits "A" and "B", respectively. The Engineer's Estimate for this project is \$30,000.00. If approved, it is anticipated the project will be completed by July 31, 2008.

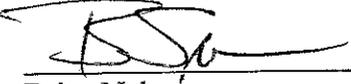
FISCAL DATA: The necessary funds to pay for this project are available in the Capital Improvement Fund, Account No. 001-4000-461.90-15, for FY 2007/08.

RECOMMENDED BY:



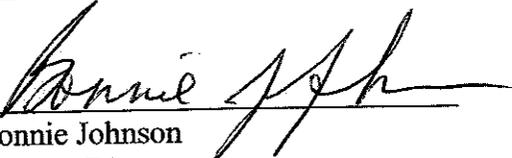
Duane Burk
Director of Public Works

REVIEWED BY:



Brian Nakamura
City Manager

REVIEWED BY:



Bonnie Johnson
Finance Director

RESOLUTION NO. 2008-76

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AWARDING THE CONSTRUCTION CONTRACT FOR PROJECT NO. 2008-07, "CABINET AND COUNTERTOP REPLACEMENT AT THE BANNING SENIOR CENTER"

WHEREAS, staff has determined that the existing cabinets and countertops at the Banning Senior Center are in a major state of disrepair and need to be replaced in order to meet current standards dictated by the Riverside County Department of Environmental Health; and

WHEREAS, the scope of work under this project includes the removal of all upper and lower cabinets and countertops in the Senior Center kitchen, including two island work areas; the installation of new upper and lower vinyl cabinets in the same locations; the installation of new granite countertops on all lower cabinets, with 6" backsplash and 1-1/2" bullnose on all exposed edges; and hauling away of old cabinets and countertops; and

WHEREAS, the project was advertised for bids on May 23, 2008 in a local newspaper and the only bid received and opened on June 4, 2008 was from Whitmore Construction, Inc., in the amount of \$27,970.00; and

WHEREAS, funding is available in the Capital Improvement Fund, Account No. 001-4000-461.90-15, for Fiscal Year 2007/08.

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

Section I. Award the construction contract for Project No. 2008-07, "Cabinet and Countertop Replacement at the Banning Senior Center," to Whitmore Construction, Inc. of Banning, California, for an amount "Not to Exceed" \$31,000.00, which includes an approximate 10% construction contingency, and all other bids are hereby rejected.

Section II. Authorize the Mayor to execute the Construction Contract agreement with Whitmore Construction, Inc. of Banning, California for Project No. 2008-07, "Cabinet and Countertop Replacement at the Banning Senior Center." This authorization will be rescinded if the contract agreement is not executed by both parties within fifteen (15) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 24th 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. 2008-76 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 24th day of June, 2008.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

28

EXHIBIT "A"

NOTICE INVITING TO BID PROJECT NO. 2008-07 "CABINET AND COUNTERTOP REPLACEMENT AT THE BANNING SENIOR CENTER"

RECORD-GAZETTE

Record Gazette

Friday, May 23, 2008

PUBLIC NOTICES

**NOTICE INVITING
TO BID
PROJECT NO. 2008-07,
"CABINET AND
COUNTERTOP
REPLACEMENT AT THE
BANNING SENIOR
CENTER"**

OWNER: City of Banning
PROJECT DESCRIPTION:

DESCRIPTION: The scope of work under this project includes the removal of all upper and lower cabinets and countertops in the Senior Center kitchen, including two island work areas; the installation of new upper and lower cabinets in the same locations; the installation of new granite countertops on all lower cabinets, with 6" backsplash and 1-1/2" bullnose on all exposed edges; and hauling away of old cabinets and countertops. Material preferences will be provided at the non-mandatory job inspection listed below, or by contacting Steve Parker, Building Maintenance Manager, at (951) 538-9401.

NON-MANDATORY PRE-BID INSPECTION: May 28, 2008 at 11 a.m., at the Banning Community Center, 789 N. San Geronio Ave., Banning.

REQUIREMENTS: Prevailing Wage, Certified Payroll, Bid Bond, Payment and Performance Bond, Insurance, and City Business License. Pursuant to the provisions of Public Contract Code Section 3300, the City has determined that the Contractor shall possess a valid Class B license at the time that the Contract is awarded. Failure to possess the specified license

shall render the bid as not responsible and/or non-responsive and shall act as a bar to award the Contract to any bidder not possessing said license at the time of award. Pursuant to the provisions of Public Contract Code Section 22300, Contractor may substitute certain securities for funds withheld by City to ensure his performance under the contract. At the request and expense of Contractor, securities equivalent to any amount withheld shall be deposited at the discretion of City, with either City or a state or federally chartered bank, as the escrow agent, who shall then pay any funds otherwise subject to retention to Contractor. Upon satisfactory completion of the contract, the securities shall be returned to Contractor.

SEALED BIDS DUE:
June 4, 2008 and Opened Publicly @ 2 p.m., local time, City Hall, 99 E. Ramsey St., Banning, CA 92220, Attn: City Clerk.
Dated: 5-19-08
Marie A. Calderon
City Clerk
Publish the Record Gazette
No. 1949

5/23, 2008

Public Notices
Your Right To Know

29

**CITY COUNCIL MEETING
CONSENT ITEM**

DATE: June 24, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Matthew Bassi, Interim Community Development Director

SUBJECT: Resolution 2008-78 superseding Resolution 2007-43, a Resolution amending the Transportation Uniform Mitigation Fees applicable to all developments in the City of Banning

RECOMMENDATION:

Approve Resolution No. 2008-78, a resolution of the City of Banning amending the Transportation Uniform Mitigation Fees applicable to all developments in the City of Banning.

JUSTIFICATION: It is essential to adopt this resolution in order to comply with the Transportation Uniform Mitigation Fee (TUMF) policy implemented by the Western Riverside Council of Governments.

BACKGROUND: The City Council adopted Ordinance No. 1291 during its regular meeting on March 25, 2003, authorizing participation in the TUMF program and agreeing to levy and collect the TUMF fees from new development within the City. On January 11, 2005 the City Council amended Ordinance No. 1291 by adopting Ordinance No. 1322, which increased the fees in order to keep pace with increased road construction costs.

On February 6, 2006, WRCOG's Executive Committee approved a series of recommendations revising the TUMF program consistent with the two-year review process. The proposed Ordinance was necessary to revise the program to offset the traffic volumes that will exceed the capacity of the Regional Transportation System. Therefore, the Ordinance included revisions to the Regional Transportation System program as well as cost refinements necessary to maintain the value of the TUMF dollar. Additional revisions included:

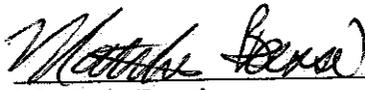
- Exempt private, non-profit schools (9K-12);
- Future program reviews will be consistent with the Southern California Association of Governments regional forecast model

The proposed resolution is being processed at the request of WRCOG for the 2008-2009 fiscal year. The WRCOG Board of Directors recently passed a resolution keeping the TUMF fees the same as last year and they are now asking cities to adopt an updated / new resolution agreeing to keep the TUMF fees the same. The fees imposed by WRCOG will be as follows:

Single Family Residential	\$10,046/unit
Multi Family Residential	\$7,054/unit
Industrial	\$2.09/ sq. ft.
Retail	\$11.46/ sq. ft.
Service	\$6.14/ sq. ft.
Class A & B Office	\$2.19/sq. ft

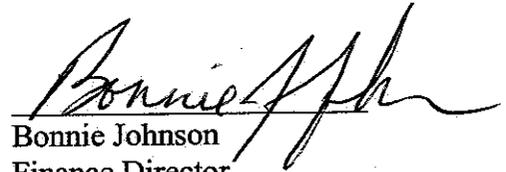
FISCAL DATA: No change from existing fees that will be collected.

RECOMMENDED BY:



Matthew Bassi
Interim Community Development Director

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

Exhibit:

1. Resolution 2008-78

*TRANSPORTATION
UNIFORM MITIGATION
FEE (TUMF)*

*RESOLUTION
NO. 2008-78*

EXHIBIT “1”

RESOLUTION NO. 2008-78

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AMENDING THE TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) APPLICABLE TO ALL DEVELOPMENTS IN THE CITY OF BANNING.

WHEREAS, the City of Banning ("City") is a member agency of the Western Riverside Council of Governments ("WRCOG"), a joint powers agency comprised of the County of Riverside and fourteen cities located in Western Riverside County; and

WHEREAS, the member agencies of WRCOG recognized that there was insufficient funding to address the impacts of new development on the regional system of highways and arterials in Western Riverside County (the "Regional System"); and

WHEREAS, in order to address this shortfall, the member agencies formulated a plan whereby a transportation mitigation fee would be assessed on new development and would be used to fund the necessary improvements for the Regional System; and

WHEREAS, in furtherance of this plan, the WRCOG Executive Committee adopted the "Western Riverside County Transportation Uniform Fee Nexus Study", dated October 18, 2002 (the "2002 Nexus Study"); and

WHEREAS, based on the 2002 Nexus Study, the City adopted Ordinance 1291 on March 25, 2003 pursuant to California Government Code sections 66000 *et seq.* authorizing the City to impose the Transportation Uniform Mitigation Fee ("TUMF") upon new development; and

WHEREAS, on February 6, 2006, the WRCOG Executive Committee adopted the "Western Riverside Transportation Fee Nexus Study 2005 Update" (the "Nexus Study") which served as a basis for the City Council to adopt an amended TUMF Ordinance on April 11, 2006; and

WHEREAS, SECTION 22E-6.3 (C) of the TUMF Ordinance authorizes periodic review and adjustment to the applicable TUMF in accordance with any adjustments made by the WRCOG Executive Committee; and

WHEREAS, on April 7, 2008, the WRCOG Executive Committee recommended that member agencies not adjust their applicable TUMF to reflect increases in the construction cost index as a result of the current economic climate; and

WHEREAS, the fees collected pursuant to this Resolution shall be used to finance the public facilities described or identified in the Nexus Study; and

WHEREAS, the levying of TUMF has been reviewed by the City Council and staff in accordance with the California Environmental Quality Act ("CEQA") and the CEQA Guidelines and it has been determined that the adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

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

SECTION 1. Findings. The recitals set forth above are hereby adopted as findings in support of this Resolution. In addition, the City Council re-adopts the findings contained in Section 22E-6.1 in support of the adjusted TUMF contained herein.

SECTION 2. TUMF Fee Schedule. In accordance with Section 22E-6.3 of the TUMF Ordinance, the following fee schedule is hereby adopted for the TUMF.

Single Family Residential	\$10,046/unit
Multi Family Residential	\$7,054/unit
Industrial	\$2.09/ sq. ft.
Retail	\$11.46/ sq. ft.
Service	\$6.14/ sq. ft.
Class A & B Office	\$2.19/sq. ft

SECTION 3. CEQA Findings. The City Council hereby finds that in accordance with the California Environmental Quality Act ("CEQA") and the CEQA Guidelines the adoption of this Resolution is exempt from CEQA pursuant to Section 15061(b)(3).

SECTION 4. Effective Date. This Resolution shall become effective immediately.

PASSED, APPROVED AND ADOPTED this 24th 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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2008-78, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 24th day of June 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: June 24, 2008

TO: Honorable Mayor and City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2008-81, "Awarding the Construction Contract for Project No. 2008-06, 'Replacement of Flooring at the Banning Community Center and Senior Center'"

RECOMMENDATION: Adopt Resolution No. 2008-81, "Awarding the Construction Contract for Project No. 2008-06, 'Replacement of Flooring at the Banning Community Center and Senior Center,'" to KV's Paint and Decorating Center, Inc. of Beaumont, California for an amount "Not to Exceed" \$36,000.00, which includes an approximate 10% contingency.

JUSTIFICATION: KV's Paint and Decorating Center, Inc. is the only contractor to submit a bid for this project at the June 9, 2008 bid opening. They have been deemed a responsive and responsible bidder.

BACKGROUND: Staff has determined that the existing floors at the Banning Community Center and the Senior Center are in a major state of disrepair and has recommended that they be replaced.

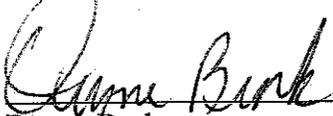
The scope of work for the Banning Community Center, located at 789 N. San Geronio Ave., includes removal and replacement of Vinyl Composition Tile (VCT) flooring in hallways, the large meeting room, and the restrooms. The scope of work for the Senior Center, located at 769 N. San Geronio Ave., includes removal and replacement of VCT flooring in the large meeting room and restrooms, and removal of VCT flooring and replacement with sheet vinyl in the commercial kitchen.

The project was advertised in a local newspaper on May 30, 2008, and KV's Paint and Decorating Center, Inc. was the only contractor to attend the June 4, 2008 non-mandatory, pre-bid inspection and the only contractor to submit a bid for the project, in the amount of \$32,591.26. The bid advertisement and bid summary sheets are attached as Exhibits "A" and "B", respectively.

The Engineer's Estimate for the project is \$35,000.00. If approved, it is anticipated that the project will be completed by July of 2008.

FISCAL DATA: An appropriation of funds from the BUA bond proceeds to the Capital Improvement Fund, Account No. 470-4000-413.90-15, Fiscal Year 2008/09, is necessary to fund this project. Balance of BUA proceeds for the Community Center are approximately \$217,000.00.

RECOMMENDED BY:



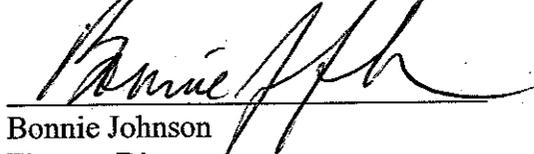
Duane Burk
Director of Public Works

REVIEWED BY:



Brian Nakamura
City Manager

REVIEWED BY:



Bonnie Johnson
Finance Director

RESOLUTION NO. 2008-81

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AWARDING THE CONSTRUCTION CONTRACT FOR PROJECT NO. 2008-06, "REPLACEMENT OF FLOORING AT THE BANNING COMMUNITY CENTER AND SENIOR CENTER"

WHEREAS, staff has determined that the existing floors at the Banning Community Center and Senior Center are in a major state of disrepair and need to be replaced; and

WHEREAS, the scope of work for the Banning Community Center, at 789 N. San Geronio Ave., includes removal and replacement of Vinyl Composition Tile (VCT) flooring in hallways, the large meeting room, and the restrooms, and the scope of work for the Senior Center, at 769 N. San Geronio Ave., includes removal and replacement of VCT flooring in the large meeting room and restrooms, and the removal of VCT and replacement with sheet vinyl in the commercial kitchen; and

WHEREAS, the project was advertised for bids on May 30, 2008 and the only bid received and opened on June 9, 2008 was from KV's Paint and Decorating Center, Inc.; and

WHEREAS, funding is available in the Capital Improvement Fund, Account No. 001-4000-461.90-15, for Fiscal Year 2008/09.

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

Section I. Award the construction contract for Project No. 2008-06, "Replacement of Flooring at the Banning Community Center and Senior Center," to KV's Paint and Decorating Center, Inc. of Beaumont, California, for an amount "Not to Exceed" \$36,000.00, which includes an approximate 10% contingency, and all other bids are hereby rejected.

Section II. Authorize the appropriation of funds from the BUA bond proceeds to the Capital Improvement Fund, Account No. 470-4000-413.90-15, and authorize the Director of Finance to make the necessary budget adjustments related to these funds.

Section III. Authorize the Mayor to execute the Construction Contract agreement with KV's Paint and Decorating Center, Inc. of Beaumont, California for Project No. 2008-06, "Replacement of Flooring at the Banning Community Center and Senior Center." This authorization will be rescinded if the contract agreement is not executed by both parties within fifteen (15) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 24th 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. 2008-81 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 24th day of June, 2008.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

40

EXHIBIT "A"

**NOTICE INVITING TO BID
PROJECT NO. 2008-06, "REPLACEMENT OF
FLOORING AT THE BANNING COMMUNITY
CENTER AND SENIOR CENTER"**

**RECORD-GAZETTE
MAY 30, 2008**

Record Gazette

PUBLIC NOTICES

Friday, May 30, 2008

**NOTICE INVITING
TO BID
PROJECT NO. 2008-06,
"REPLACEMENT OF
FLOORING AT THE
BANNING**

**COMMUNITY CENTER
AND SENIOR CENTER"**

OWNER: City of Banning

PROJECT DESCRIPTION:

The scope of work for the Banning Community Center, 789 N. San Geronio Ave., includes removal and replacement of VCT flooring in hallways, large meeting room, and restrooms. The scope of work for the Senior Center, 769 N. San Geronio Ave., includes removal and replacement of VCT flooring in the large meet-

ing room and restrooms, and removal of VCT and replacement of sheet vinyl in the commercial kitchen. Material preferences will be provided at the non-mandatory job inspection listed below, or by contacting Steve Parker, Building Maintenance Manager, at (951) 538-9401.

NON-MANDATORY PRE-BID INSPECTION: June 4, 2008 at 10 a.m., at the Banning Community Center, 789 N. San Geronio Ave., Banning.

REQUIREMENTS: Prevailing Wage, Certified Payroll, Bid Bond, Payment and Performance Bond, Insurance, and City Business License. Pursuant to the provisions of Public Contract Code Sec-

tion 9300, the City has determined that the Contractor shall possess a valid Class B license at the time that the Contract is awarded. Failure to possess the specified license shall render the bid as not responsible and/or non-responsive and shall act as a bar to award the Contract to any bidder not possessing said license at the time of award. Pursuant to the provisions of Public Contract Code Section 22300, Contractor may substitute certain securities for funds withheld by City to ensure his performance under the contract. At the request and expense of Contractor, securities equivalent to any amount withheld shall

be deposited at the discretion of City, with either City or a state or federally chartered bank, as the escrow agent, who shall then pay any funds otherwise subject to retention to Contractor. Upon satisfactory completion of the contract, the securities shall be returned to Contractor.

SEALED BIDS DUE:
June 9, 2008 and Opened Publicly @ 2 p.m., local time, City Hall, 99 E. Ramsey St., Banning, CA 92220, Attn: City Clerk.
Dated: 5-27-08
Marie A. Calderon
City Clerk
Publish the Record Gazette
No. 1793

5/30, 2008

41

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: June 24, 2008

TO: Honorable Mayor and City Council Members

FROM: Bonnie Johnson, Finance Director

SUBJECT: Resolution No 2008-84 Approving the Execution and Submittal of a Grant Application for the FY 07-08 California Transit Security Grant Program from the Governor's Office of Homeland Security

RECOMMENDATION: Council adopt Resolution No 2008-84 approving the Execution and Submittal of a Grant Application for the FY 07-08 California Transit Security Grant Program from the Governor's Office of Homeland Security.

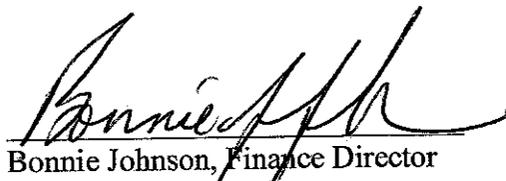
JUSTIFICATION: The State of California Governor's Office of Homeland Security has allocated \$1,182, based on population, of nondiscretionary funds to the City of Banning Transit Agency to be used to purchase physical security enhancement equipment. The Office of Homeland Security requires that the grant application be accompanied by a Council resolution that includes the appointment of authorized agents.

BACKGROUND/ANALYSIS: The Transit Department desires to have video surveillance cameras on all City buses. Currently the buses have camera systems that are of an older, less reliable technology. The plan is to upgrade these cameras in all buses and add a monitoring station to enable viewing of recorded data from the buses in the dispatch office. These cameras will not only enhance the physical security and safety of all passengers, but it also allows us to have documentation of incidents that occur during the buses' hours of operation. The cameras would enhance passenger safety, monitor boarding and exiting operations, deter vandalism and reduce fraudulent insurance related claims. Recorded footage will also serve as a driver training aid.

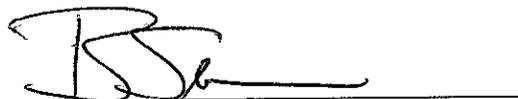
The video surveillance cameras meet the grant requirements of physical security enhancement equipment.

FISCAL DATA: We have been allotted \$1,182 from the FY 07-08 California Transit Security Grant Program and have requested an additional \$48,818 from the Riverside County Transportation Commission (RCTC) as part of our annual Short Range Transit Plan. This gives us a total of \$50,000 for the purchase of a viewing station to monitor recorded activity from the buses, and upgrade the security cameras on the buses.

RECOMMENDED BY:


Bonnie Johnson, Finance Director

APPROVED BY:


Brian Nakamura, City Manager

43

RESOLUTION NO. 2008-84

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING THE EXECUTION AND SUBMITTAL OF A GRANT APPLICATION FOR THE FY 07-08 CALIFORNIA TRANSIT SECURITY GRANT PROGRAM FROM THE GOVERNOR'S OFFICE OF HOMELAND SECURITY

WHEREAS, the State of California Governor's Office of Homeland Security has allocated \$1,182, based on population, of nondiscretionary funds to the City of Banning Transit Agency to be used to purchase physical security enhancement equipment; and

WHEREAS, the Banning Transit Agency desires to purchase a video monitoring station and upgrade the existing video surveillance cameras in all of the City buses; and

WHEREAS, the required matching funds have been requested from the Riverside County Transportation Commission in the 2008-09 short Range Transit Plan; and

WHEREAS, the Office of Homeland Security requires that the grant application be accompanied by a Council resolution that includes the appointment of authorized agents,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BANNING as follows:

Section I. The City of Banning, Transit Department is authorized to submit a grant application for the FY 07-08 California Transit Security Grant Program, administered by the Governor's Office of Homeland Security in the amount of \$1,182.

Section II. The City Manager and/or the Finance Director are hereby authorized to execute for and on behalf of the City of Banning, a public agency established under the laws of the State of California, any actions necessary for the purpose of obtaining financial assistance provided by the Governor's Office of Homeland Security.

PASSED, APPROVED, AND ADOPTED this 24th day of June 2008.

Brenda Salas, Mayor
City of Banning

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

Burke, Williams & Sorensen, LLP
City Attorney

44

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. 2008-84 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 24th 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
PUBLIC HEARING**

DATE: June 24, 2008

TO: Honorable Mayor and City Council

FROM:  Matthew Bassi, Interim Community Development Director

SUBJECT: Tentative Tract Map (TTM) 32370 Time Extension
Located generally in the northern portion of the City, 1500 feet north
of Wilson Street, west of Mountain Avenue.
APN: 535-030-038

RECOMMENDATION: That the City Council adopt Resolution No. 2008-75 (Exhibit 1) approving a one-year extension of time to July 12, 2009 for Tentative Tract Map No. 32370.

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 32370 on July 12, 2005, by adoption of Resolution No. 2005-74. Further, the City Council approved the first extension of time on July 10, 2007, by adoption of Resolution No. 2007-70. On May 5, 2008, the subdivider submitted an application for a second extension of time in accordance with Section 66452.6(e) of the Subdivision Map Act (SMA). The SMA allows a tentative map to be extended for periods not exceeding a total of five years.

Project Location:

The project site is located in the northern portion of the City, 1500 feet north of Wilson Street, west of Mountain Avenue. The site is vacant and has been used for agricultural purposes in the past. The area surrounding the project site consists of an existing church to the north; existing Mobile Home Park to the south, vacant lands/approved Tentative Tract Map 30906 to the west, and Mountain Avenue and single-family homes to the east.

Project History:

The Tentative Tract Map proposes the subdivision of a 6.3-acre parcel into 19 single-family lots with lots ranging in size from 10,510 square feet to 12,021 square feet. Access to the area will be provided by Mountain Avenue via Street "A". An 11,851 square foot detention basin, which is part of the storm drain approved for Tract 30906 (to the west) and the City of Banning's Storm Drain Master Plan, will be located at the southwest corner of the project site. At this time, the developer is proceeding with rough grading operations, construction of street improvements along with underground facilities.

46

Environmental/CEQA:

A Mitigated Negative Declaration and Mitigation Monitoring Program prepared for the project was approved on July 12, 2005, by City Council (Resolution No. 2005-73). 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. 2005-74 (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 they have not completed the public improvements in order to record the final map.

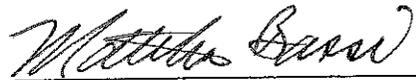
The request for time extension was routed to the same agencies and departments that previously reviewed the tentative tract map. The reviewing agencies did not identify any change in circumstances and did not express concerns with the proposed request for extension of time. Therefore, staff believes the second 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 July 12, 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.

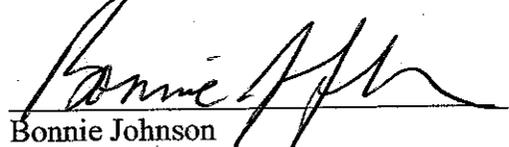
PREPARED BY:


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. 2008-75
2. Copy of Resolution No. 2005-74 (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. 2008-75

RESOLUTION NO. 2008-75

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING A ONE-YEAR EXTENSION OF TIME FOR TENTATIVE TRACT MAP 32370 (TTM 32370) PREVIOUSLY APPROVED BY CITY COUNCIL ON JULY 12, 2005, BY RESOLUTION NO. 2005-74

WHEREAS, an application for time extension for Tentative Tract Map No. 32370 has been duly filed by:

Applicant / Owner: **George and Dora Nordquist**
Project Location: **Generally, 1500 feet north of Wilson Street, west of Mountain Avenue.**
APN Number: **535-030-038.**
Project Area: **6.3 Acres**
Application Complete: **May 3, 2008**

WHEREAS, the City Council of the City of Banning, on July 12, 2005, approved Tentative Tract Map 32370, to allow the subdivision of approximately 6.3-acre site into 19 single family lots ranging in size from 10,510 square feet to 12,021 square feet; and

WHEREAS, a tentative map expires 24 months after its initial approval unless extensions are granted by the legislative body; and

WHEREAS, the City Council granted the first extension of time on July 10, 2007; and

WHEREAS, George and Dora Nordquist submitted a request for a second extension of time for Tentative Tract Map 32370 in accordance with Section 66452.6(e) of the Subdivision Map Act; and

WHEREAS, On July 12, 2005, 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. 2005-73; therefore, a subsequent/supplemental environmental document is not required; and

WHEREAS, on June 13, 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 24, 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 24, 2008, the City Council of the City of Banning considered and heard public comments on approval of Extension of Time for TTM 32370.

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 32370 in accordance with Government Code Section 66452.6(e).

SECTION 2: Tentative Tract Map 32370 shall expire on July 12, 2009, unless said map has been recorded, or a request has been filed with the City for an extension of time in accordance with law.

PASSED, APPROVED AND ADOPTED this 24th 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

51

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-75, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 24th day of June 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Exhibit 2

Resolution No. 2005-74

(Approval July 12, 2005)

RESOLUTION NO. 2005-74

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING LOT SPLIT 04-4510 (TENTATIVE TRACT MAP 32370) FOR THE SUBDIVISION OF 6.3 ACRES INTO 19 SINGLE FAMILY LOTS AND COMMON AREA LOTS; LOCATED 1500 FEET NORTH OF WILSON STREET AND WEST OF MOUNTAIN AVENUE. APM: 535-030-038.

WHEREAS, an application for Lot Split 04-4510 (Tentative Tract Map 32370), a request to subdivide approximately 6.3 acres into 19 single family lots and common area lots, has been duly filed by:

Applicant/Owner: George Nordquist and Dora Nordquist
Project Location: 1,500 feet north of Wilson Street west of Mountain Avenue
APN Number: 535-030-038
Lot Area: 6.3 acres

WHEREAS, the Municipal Code allows for the subdivision of approximately 6.3 acres within the R-1-10,000 zone into 19 single family lots and a lot for a detention basin, subject to the approval of a Lot Split; 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 May 3, 2005, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Lot Split 04-4510 (Tentative Tract Map 32370); and,

WHEREAS, at this public hearing, the Planning Commission approved Resolution Nos. 05-07 and 05-08, recommending adoption of Lot Split 04-4510 (Tentative Tract Map 32370), for the project.

WHEREAS, on June 13, 2005 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 project would be considered; and

WHEREAS, at this public hearing on June 28 and July 12, 2005, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Mitigated Negative Declaration and Mitigation Monitoring Program for the project; and

WHEREAS, the City Council adopted Resolution No. 2005-73 certifying the Mitigated Negative Declaration and adopting the Mitigation Monitoring Program for the project.

WHEREAS, on June 28 and July 12, 2005, 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 Lot Split 04-4510 (Tentative Tract Map 32370).

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

SECTION 1: ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it including but not limited to the city's local CEQA Guidelines, the recommendation of the Community Development Director, and recommendation of the Planning Commission of the City of Banning, as provided in the Staff Report Dated July 12, 2005 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 July 12, 2005 at a duly noticed public hearing, the City Council of the City of Banning approved and adopted 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 East. Ramsey Street, Banning, California 92220.
2. **Wildlife Resources:** Pursuant to Title 14, California Code of Regulations Section 753.5(c), the City Council has determined, based on consideration of the whole record before it, that there is not 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 City Council 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 MSCHP criteria area and mitigation is provided through payment of the MSHCP Mitigation Fee.

55

SECTION 2: MAP ACT FINDINGS.

In accordance with Banning Municipal Code §2-9 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, Planning Commission resolutions, 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 32370 is consistent and compatible with the objectives, policies, and general land uses, and programs specified in the City's General Plan in that the General Plan land use designation for the site is Low Density Residential which allows project densities from 3 to 5 dwellings per acre. The proposed map will result in the development of 19 single-family residential dwelling units at a density of 3 dwelling units to the acre. This density is one third less than could occur on this site based upon the General Plan designation. The reduction in density is therefore expected to have less of an impact to the potential cumulative impacts associated with build out of the City.
2. The design and improvement of the subdivision proposed under Tentative Tract Map 32370 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 which 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 32370, in that the site is generally flat and rectangular and consists of 6.3 acres. The site is not located within a flood plain and no major geologic hazards have been reported on the site or other limited conditions that would render it unsuitable for residential development.
4. The site is physically suitable for the density of development proposed under Tentative Tract map 32370, in that the site is generally regular and flat and consist of 6.3 acres. The subdivision has been designed to accommodate the development of 19 single-family residential dwellings and a detention basin considering the shape and topography of the site. The project as proposed has a density of 3 units per acre. According to the density ranges provided in the Land Use Element of the city's General Plan for the Low Density land use designation and in the city's Zoning Ordinance for the R-1-10,000 zone, a density of 3 units per acre is appropriate for a site of this size and configuration.

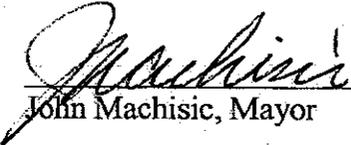
5. The design of the subdivision and improvements proposed under Tentative Tract map 32370, is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat in that, the site is currently vacant and does not contain any significant vegetation or habitat for wildlife. There is no evidence that any endangered, threatened or listed species of plant or animal, or its habitat, is located on the site. There is no evidence that vernal pool complex; similar bodies of water or conditions suitable for forming such bodies of water exist on site. This determination is based on the Habitat Assessment and MSHCP Consistency Analysis conducted by Marnie McKernan of Michael Brandman Associates on March 24, 2005. 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 for the subdivision and improvements proposed under Tentative Tract 32370, 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 stormwater runoff management and controls. In addition, the design and construction of all improvements for the subdivision have 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 through the subdivision will improve emergency vehicular access and in the immediate neighborhood.
7. The design of the subdivision and improvements proposed under Tentative Tract Map 32370, 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 easement 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 or any such easements.
8. The design of the subdivision proposed Tentative Tract Map 32370, 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 prevailing breezes.

SECTION 3: CITY COUNCIL ACTIONS.

The City Council hereby takes the following actions:

1. **Approval of Tentative Tract Map.** Tentative Tract Map 32370 is hereby approved by the City Council of the City of Banning subject to the Conditions of Approval attached hereto and incorporated here in by reference as Exhibit "1".

PASSED, APPROVED AND ADOPTED this 12th day of July, 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 the foregoing Resolution No. 2005-74 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of July, 2005 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

**CONDITIONS OF APPROVAL
TENTATIVE TRACT MAP 32370**

PLANNING DEPARTMENT:

1. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, lawsuits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.
2. The Approval of Tentative Tract Map 32370 shall be for a period of two (2) years from the date of City Council Approval; the expiration date is June 28, 2007. 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 19 lots as illustrated by Tentative Tract map 32370. The design of all lots within the subdivision shall meet the minimum property development requirements of the R-1-10,000 Zone District outlined in the City's Municipal Code.
4. Prior to the issuance of any building permits, "typical" building elevations shall be submitted to the Planning Department for design review and approval, in accordance with the provisions and requirements of Article 16E of the Banning Ordinance code. All dwellings shall have the front, side and rear elevations upgraded with architectural treatment, detailing and increased delineation of surface treatment. A minimum of two facades per elevation shall be required.

Submittal and approval of Design Review application and related materials is required prior to the issuance of building permits.

5. The applicant shall install slate, concrete, tile, clay tile, or equal roofing material approved by the Planning and Fire Departments on all units within the subject property.
6. A detailed landscape and irrigation plan, including model home landscaping in the case of residential development, shall be prepared by a licensed landscape architect and submitted to the Planning Department. Landscaping and irrigation shall be designed to conserve water through the principles of Xeriscape.
7. Prior to the issuance of a Certificate of Occupancy for any single-family residence constructed within TTM 32370 the applicant shall submit to the City for review and approval a detailed landscape and irrigation plan (comprised of xeriscape plant material) indicating type, species and location of the following 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).
 - a. Interior lot – 2 trees; one 24” box, one 15-gallon.
 - b. Corner lot – 3 trees; two 24” box, and one 15-gallon.
8. 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 single-family residence constructed within TTM 32370. (Submit landscape and irrigation plans as soon as possible to allow sufficient time for a Landscape Architect to review.)
9. 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, and Development Code regulations.
10. 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.
11. 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.
12. 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.

13. 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.
14. All building numbers and individual units shall be identified in a clear and concise manner, including proper illumination.
15. Six-foot decorative block walls with decorative trim cap, and minimum 16-inch by 16-inch columns spaced at regular intervals 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.
16. A six (6) foot chain link fence must be maintained around the perimeter of the site during all phases of construction.
17. Applicant shall pay all development fees adopted by the City in effect at the time of issuance of any building permits, which shall include but not be limited to: police and fire safety developer fees, water and sewer fees, park land dedication fees, and electric meter installation fees. Project proponent shall provide to the City that school mitigation fees have been paid or other arrangements acceptable to the Banning Unified School District have been met.
18. Prior to the issuance of any Building Permits, the project proponent may be required to submit to the City's Building Department completed hydrology and seismic study conducted by a registered Engineering Geologist.
19. Developer shall meet all requirements of responsible agencies, including but not limited to: Southern California Gas Company, and Southern California Edison Company.

ENGINEERING DIVISION:

A. STREET IMPROVEMENTS

1. Dedicate the necessary right-of-way along the entire Mountain Avenue fronting the proposed subdivision to the City of Banning, making a half-street width of 50', measured west of the Mountain Avenue centerline to the right-of-way.

61

2. Submit Street Improvement Plans, prepared by a licensed professional engineer, to the Engineering Division for review and approval. Design and construct street improvements along Mountain Avenue, consisting of new A.C. pavement, five foot wide sidewalk, landscaped parkway between the curb and Tract boundary and complete landscaping in any open spaces, curb, gutter, handicap access ramps, streetlights, traffic signs, striping and street name signs. Curb returns shall have a 35' radius on Mountain Avenue. The Geotechnical Engineer shall determine the traffic index and R values for pavement design on Mountain Avenue, and on the interior street. The curb, gutter, and sidewalk improvements shall extend from the northern boundary of the proposed tract to connect into the existing curb and gutter located south of the proposed tract.
3. A boundary wall shall be constructed along the entire northern, southern and eastern tract boundary (Mountain Avenue) at the right-of-way line. Submit landscape drawings, prepared by a licensed architect, to the Engineering Division. Direct vehicular access from individual lots to Mountain Avenue at the right-of-way line shall be prohibited.
4. Automatic sprinkler systems shall be installed within the landscaped open space area (parkway) between the curb and gutter and Tract boundary, retention basin and any open space areas within the Tract and along Mountain Avenue.
5. Streetlights along Mountain Avenue shall be installed offset of the existing streetlights, and those already surrounding the proposed development, per the approved Street Improvement Plans.
6. Street "A" shall be designed and constructed as a 60' total right-of-way street that extends from Mountain Avenue and connects to Street "O" of Tentative Tract Map No. 30906. In the event that Tentative Tract Map No. 30906 has not been constructed prior to the development of this project, the design of Street "A" shall be revised per the City's Traffic Engineer's recommendations.
7. Construct street improvements of the interior street (with 60' right-of-way), consisting of curb, gutter, 5' wide sidewalk, A.C. pavement, driveway approaches, handicap access ramps, streetlights, street name signs, traffic signs, and roadway striping, etc., as per the approved Street Improvement Plans and City of Banning Public Works Specifications. Curb returns shall have a radius of 35'.
8. The Developer shall participate in the City's Landscape Maintenance District No. 1 to be established by the City of Banning for the maintenance of landscape within the public right-of-way and the open space areas, including the detention basin, within the development's boundary.

9. The Developer shall contact the City of Banning, Electric Division to obtain comments, at (951) 922-3260, and will submit all necessary plans for their approval.
10. Obtain the required Offsite Slope Grading Easement from the property owner of Mountain Air Mobile Home Estates, record it, and submit an official copy to the Engineering Division prior to construction.

B. WATER

1. Submit Water Improvement Plans to the City Engineer for review and approval. Design and construct 8" waterline on Street "A", tying into the existing 12" waterline on Mountain Avenue and then across the Tract to Foothill Drive to the west.
2. Fire hydrants shall be installed as per the approved plans, and at a 300' maximum spacing.
3. All dead end water mains shall be provided with 4-inch blow off valves.
4. All water lines shall be a minimum of 8" diameter, and fittings shall be 10-gauge steel pipes, cement-lined and wrapped. Water line easements shall be a minimum of 20' wide.
5. A backflow device must be installed for each irrigation water connection and in compliance with the State of California Department of Health Regulations. Contact the City of Banning, Water Operations Division, prior to the installation.

C. SEWER

1. Submit Sewer Improvement Plans to the City Engineer for review and approval. Design and construct sewer line on Street "A" from Mountain Avenue to sewer line in Tentative Tract No. 30906.
2. All sewer lines shall be extra strength Vitrified Clay Pipes constructed to and across the property boundaries of the tract, and the sewer main shall be a minimum of 8" diameter. Sewer line easements shall be a minimum of 20' 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.

D. DRAINAGE

1. Submit drainage/hydrology study calculations and a hydraulic analysis, for both developed and undeveloped conditions, to the City of Banning, for review and approval. All of the drainage from each individual lot shall drain into the public right-of-way and not impact surrounding properties, or a drainage easement acceptance letter from the adjacent landowner must be obtained. The design shall incorporate the drainage from the existing Mountain Avenue Baptist Church.
2. The Storm Drain Plan for the proposed subdivision shall be accompanied by a hydrology and hydraulic analysis, for both developed and undeveloped conditions, prepared by a licensed engineer and shall be designed per the RCFC&WCD Hydrology Manual. All of the sheet flow shall be collected onsite in a retention basin within the development. The retention basin and open space areas shall be landscaped and maintained by the Developer, until the City fully accepts the areas to be included in Landscape Maintenance District No. 1, and then for one year past the City's Acceptance date.
3. The property's street and lot grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage area, outlet points and outlet conditions; otherwise, a drainage easement shall be obtained from the affected property owners for the release of concentrated or diverted storm flows.
4. The 10-year storm flow shall be contained within the curb and the 100-year storm flow shall be contained within the street right-of-way. When either of these criteria is exceeded, additional drainage facilities shall be installed.
5. File a Notice of Intent, prepare a Storm Water Pollution Prevention Plan (SWPPP), obtain a NPDES Construction Activity General Permit from the State Regional Water Quality Control Board and submit a copy of each to the Engineering Division prior to obtaining the Grading Permit. Ensure that Best Management Practices (BMPs) are followed, per NPDES requirements to reduce storm water runoff, during construction and thereafter. Temporary erosion control measures shall be implemented immediately following rough grading to prevent deposition of debris into downstream properties or drainage facilities.

E. BONDINGS

1. Amount of bonding of public improvements shall be as follows:

Faithful Performance Bond.....	100% of Estimated Cost
Labor & Material Bond.....	100% of Estimated Cost
Monumentation Bond	\$5,000.00

The amounts shall be on file in the City Clerk's Office prior to the Final Map going to City Council for approval.

2. Unit prices for bonding estimates shall be those specified or approved by the City Engineer.

F. FEES

1. A Plan Check fee for Final Map review and all reports and Improvement Plans for the proposed subdivision shall be paid prior to plan checking proceedings in accordance with the Fee schedule in effect at the time the fees are paid.
2. Public Works Inspection fee shall be paid prior to the Final Map going to the City Council for approval in accordance with the Fee schedule in effect at the time the fees are paid. Public Works permits are required prior to construction within the public right-of-way.
3. Water connection fees will be based upon the Agreement with the purchase of the Mountain Water Company. Otherwise, the Water and Sewer Connection Fees and Water Meter Installation charges shall be paid on a per lot basis, 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, including any Reimbursement Agreement fees, if applicable, and in accordance with the Fee schedule in effect at the time the fees are submitted, prior to plan checking proceedings.
4. A Plan Storage fee shall be paid prior to approval of Final Maps and improvement plans in accordance with the Fee schedule in effect at the time the fee is paid.
5. A Traffic Signal Mitigation fee or any other applicable fees (TUMF, MSHCP, etc.) shall be paid on a per lot basis, at the time of issuance of building permits, for each lot within this subdivision.

G. IMPROVEMENT PLANS AND FINAL MAP

1. Improvement Plans for the proposed subdivision shall be prepared as a separate set of drawings for each of the following categories:
 - a) Rough Grading
 - b) Street
 - c) Drainage/Storm Drain
 - d) Water and Sewer
 - e) Precise Grading and Plot

- f) Electrical
 - g) Striping
 - h) Landscaping
2. Construct all proposed improvements in accordance with the approved Improvement Plans and the City of Banning Standard Specifications for the proposed tract.
 3. Street Improvement Plans for the proposed subdivision shall be supplemented with a soil and geology report prepared by a licensed engineer for street structural section design.
 4. Submit a Rough and Precise Grading Plan to the City for review and approval. All of the grading shall conform to the latest edition of the Uniform Building Code (U.B.C.) and the grading permit must be obtained prior to the commencement of any grading activity. Submit a soil analysis report prepared by a licensed engineer, along with a grading plan.
 5. The Developer shall remove and replace any areas of existing improvements that are or may become damaged during any phase of construction, as determined by the City's Public Works Inspector. A Public Works Permit shall be obtained prior to the commencement of any work within the City right-of-way. The contractor working within the right-of-way must submit proof of a Class "A" State Contractor's License, City of Banning Business License and liability insurance.
 6. All street centerline monument ties shall be submitted to the Engineering Division.
 7. Submit a copy of the Title Report to the Engineering Division.
 8. All plans, including grading plans, shall be drawn on 24" x 36" Mylar.
 9. Closure calculations, vesting deeds and title report and record maps of adjoining properties shall accompany the Final Map.
 10. The original drawings shall be revised to reflect As-Built conditions by the Design Engineer prior to final acceptance of the work by the City. Water service lines, water meters, sewer laterals and electric, irrigation lines, etc., within the street right-of-way and 5' outside of the street right-of-way shall be shown on the As-Built Water/Sewer Plans. Construction plans for gas, telephone, electric and cable TV etc., shall be submitted to the City for records.
 11. A small index map shall be included on the title sheet of each set of plans, showing the overall layout of the public improvements.

12. A map of the proposed subdivision drawn to scale 1" = 200', showing the outline of streets and street names, shall be submitted to the City to update the City wall atlas map.
13. An original Mylar of the Final Map (after it is recorded) shall be provided to the City for the City's map files.
14. If applicable, the street name signs and traffic control devices shall be relocated or installed as required per the approved plans and City of Banning Standard Specifications.
15. Submit improvement plans to all affected utilities including the Gas Company, Time Warner, Verizon, etc. Provide copies of all such correspondence to the Engineering Division.
16. Construct all improvements as per the Electrical Improvement Plans approved by the Electric Division.
17. The Developer shall participate in the City's Landscape Maintenance District No. 1 ("the District"), for the maintenance of landscape within the public right-of-way and the open space areas (including the retention basin) within the development's boundaries and pay all fees, including the annexation fee, and annual assessments associated with the maintenance cost of said Landscape Maintenance District. The Developer shall ensure that all property owners sign a statement acknowledging the fact that they will be assessed upon this Tract joining the District. Copies of these disclosures shall be submitted to the Engineering Division.

H. CONSTRUCTION AND MAINTENANCE OF PUBLIC IMPROVEMENTS

1. All required water lines and fire hydrants shall be installed and made operable before any building permits for framing are issued. This may be done in phases if the construction work is in progress for emergency vehicles.
2. Vehicular access shall be maintained at all times to all parts of the proposed subdivision, where construction work is in progress, for emergency vehicles.
3. All precautions shall be taken to prevent washouts, under mining and subsurface ponding, caused by rain or runoff to all surface structures (curbs, gutters, sidewalks, paving, etc.). The Engineering Division may order repair, removal and replacement, extra compaction tests, load tests, etc. or any combination thereof for any such structure that was damaged or appears to have been damaged. All of the additional work, testing, etc., shall be at the expense of the Developer.

4. All required public improvements for each tract shall be completed, tested and approved by the Engineering Division prior to the issuance of any Certificate of Occupancy for such tract.
5. Individual property owners, in accordance with the existing City policy, shall maintain sewer laterals.
6. A standard agreement for Construction of Public Improvements for the proposed subdivision shall be executed prior to Final Map approval.

FIRE DEPARTMENT:

1. 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 - \$ 42.00 per unit

*Exception, Sprinkler and Alarm System Plan Check
See Number (7) for Fee Schedule.

2. CITY OF BANNING BUSINESS LICENSE AND PROOF OF INSURANCE:

All contractors, subcontractors etc. are required to obtain a City of Banning Business license prior to submitting plans or starting construction.

3. CODE COMPLIANCE:

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.

4. PLAN SUBMITTAL:

Five (5) Sets of Plans and Specifications shall be submitted for review prior to obtaining a permit. This requirement applies to all work regardless of the size of the job; new construction or remodel.

5. SPRINKLER SYSTEMS REQUIRED:

Fire Sprinkler Systems shall be installed as required by the UFC or in any and all structures that are ten thousand (10,000) sq. ft. or more, or that are at or beyond the

Fire Department's response time of ten (10) minutes beginning at the time the call is received at Dispatch. (See Item #14).

6. SPRINKLER AND ALARM SYSTEMS:

Three (3) sets of plans and calculations, including three (3) sets of manufacturer's hardware specifications, shall be submitted to a State Certified Fire Protection Engineering Firm, designated by the Fire Marshal, for review for compliance with recognized codes and standards.

Alarm monitoring stations must be located within 100 miles of the City of Banning or approved by the Fire Marshal.

7. SPRINKLER AND ALARM SYSTEM FEE SCHEDULE:

Inspections - Fire Department: \$42.00 per hour, per person. (One-hour minimum)
Additional fees as charged by the designated Fire Protection Engineering Firm.

Plan Checks - Established by the Fire Protection Engineering firm designated.

8. FIRE HYDRANTS:

Prior to construction or renovation, fire hydrants shall be provided when any portion of any structure exceeds 150 feet from a water supply on a public street.

All hydrants must be installed, working and inspected by the Public Works Department before any combustible materials can be placed at the worksite.

Spacing of fire hydrants shall comply with UFC Appendix III B and the City of Banning Public Works Standards (maximum 300 feet between hydrants).

Minimum 6-inch riser, street valve, approved shear valve and blue dot identification marker shall be provided for each fire hydrant.

The City standard fire hydrant is the Residential, James Jones #J3700, or an equivalent approved by the Fire Marshal.

Fire Hydrants are to be painted by the developer, contractor, etc., prior to the final inspection. (EOS Standard W714) Rustoleum Red, damp proof #769 and two (2) coats of Rustoleum semi-gloss yellow #659, or an approved equivalent.

10. WATER SUPPLY:

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. (1000 gallons/minute for 2 hours)

69

11. FIRE DEPARTMENT ACCESS:

Shall be required when any portion of the first story of any structure is more than 150 feet from Fire Department apparatus access.

Minimum clearances or widths may be increased when the minimum standards are not adequate for Fire Department access.

Surfaces shall be designed and maintained to support the imposed loads of fire apparatus (65,000gvw). Surfaces shall have all-weather driving capabilities, including bridges. All roads must be in place and meet the above standard before any combustible materials can be delivered to the site.

Minimum unobstructed width shall be 20 feet.

Minimum unobstructed vertical clearance shall not be less than 13 feet 6 inches.

Minimum turning radius shall be 42 feet.

All dead-end access roads in excess of 150 feet shall have approved provisions for turning around of fire apparatus.

Maximum grade shall be established by the Fire Department.

Vehicles shall not be parked or otherwise obstruct the required width of any fire apparatus access.

Two means of ingress/egress shall be provided for emergency vehicles and fire apparatus.

The requirements for this segment are covered in UFC Article 9.

12. PREMISES IDENTIFICATION:

Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background.

Residential - 3-1/2" mm. Size

13. SPARK ARRESTORS:

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.

14. OTHER REQUIREMENTS:

Fire Sprinkler Systems – A requirement for residential fire sprinkler systems may be in effect by January 2005.

Exhibit 3

Reduction of TTM 32370

IN THE CITY OF BANNING TENTATIVE TRACT NO. 32370

TENTATIVE TRACT 30908

REVISIONS		
NO.	DATE	DESCRIPTION
1		
2		
3		

PROJECT NOTES:

APPLICANT/REPRESENTATIVE
 NAME AND ADDRESS
 4133 W. BANNING ST.
 BANNING, CA. 92408
 (951) 844-7647 / (951) 844-3488

LEGAL DESCRIPTION
 PARCEL NO. 5 OF PARCEL MAP NO. 79-4
 PREPARED BY THE CITY OF BANNING, MAP BOOK 64
 SECTION 35, TOWNSHIP 33N, RANGE 12E, S.W. 1/4

ASSESSOR'S PARCEL NUMBER
 A.P.N. 536-033-000

PROJECT SITE
 WEST OF MOUNTAIN AVE.
 EAST FOOT HILL OF MOUNTAIN STREET

THOMAS BROTHERS MAP
 PLAT NO. 1000 1-4

FLOOD CONTROL
 BANNING WATER TREATMENT PLANT UNIT "C"

ZONING
 EXTENSIVE AND PROTECTED ZONING S. 10000

LAND USE
 PROPOSED: 10-10' WIDE OF MOUNTAIN SIDE LOTS
 REPROPOSED: 10-10' WIDE OF MOUNTAIN SIDE LOTS

TOPOGRAPHY
 EXTENSIVE CONTOUR LINES ARE SHOWN ON THE FOLLOWING
 TOPOGRAPHIC MAP

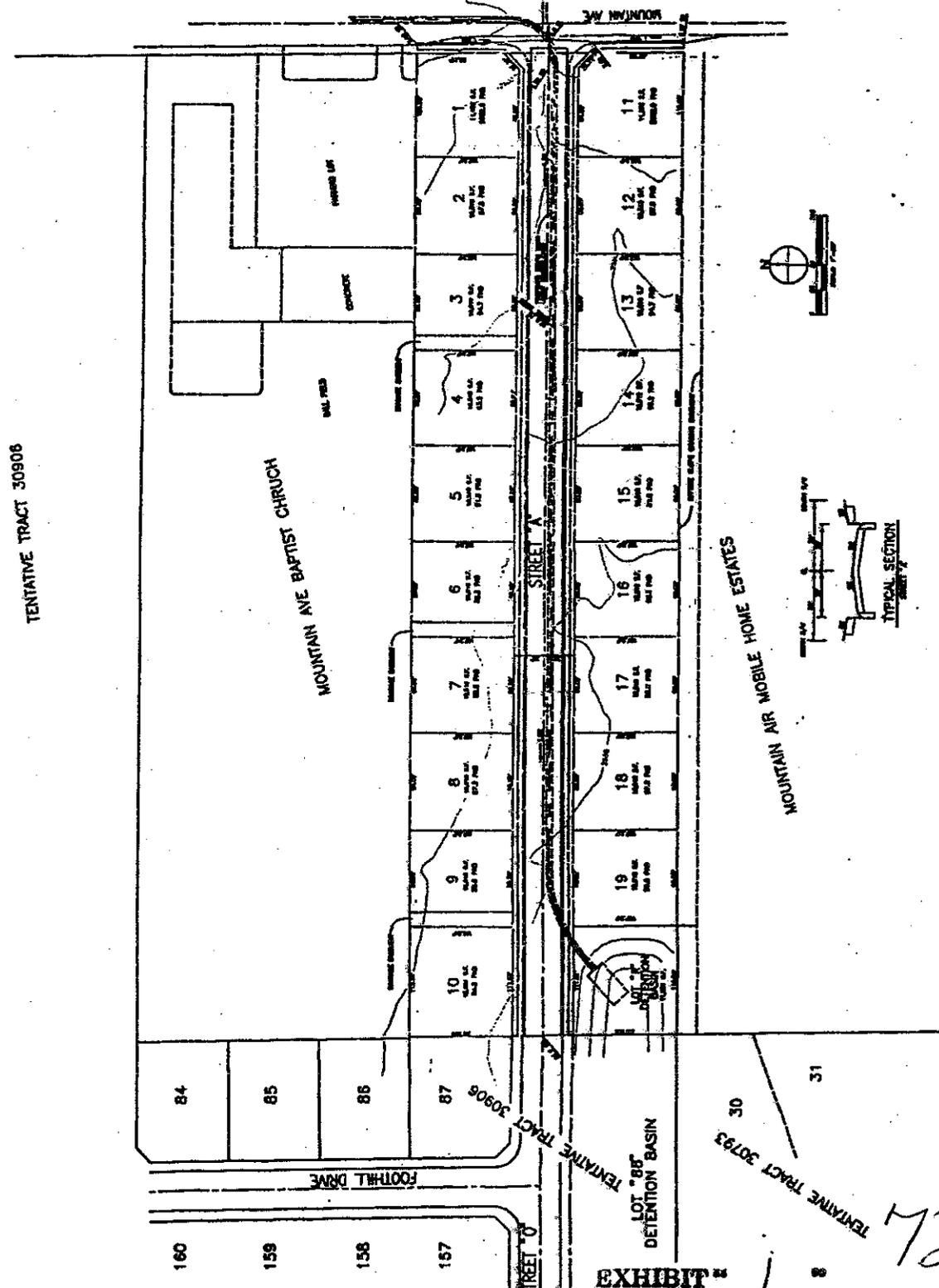
ACREAGE
 1.30 ACRES (947)

UTILITIES
 CITY OF BANNING
 ELECTRIC
 GAS
 WATER
 TELEPHONE
 CABLE

SPECIFIC PLAN STATUS:
 COMMUNITY SERVICES DISTRICTS:
 SCHOOL
 FIRE
 POLICE

CONTIGUOUS OWNERSHIP STATEMENT
 THIS TRACT AND LOT 88 ARE NOT SEPARABLE
 AND SHALL REMAIN TOGETHER
 AND SHALL CONTINUE TOGETHER

NO OTHER OR BETTER SURVEY AVAILABLE
 GEOLOGIC HAZARD
 THIS IS NOT SUBJECT TO INVESTIGATION OR OTHER GELOGIC HAZARD
 MAP IS WITHIN A DESIGN OTHER THAN



IN THE CITY OF BANNING
TENTATIVE TRACT NO. 32370

M MARSHALL & ASSOCIATES
 1111 N. 1ST ST.
 BANNING, CA. 92408
 TEL: 951.844.3488

EXHIBIT 2

73

Exhibit 4

Copy of letter from applicant



Mountain Air

MOBILE HOME ESTATES

4133 WEST WILSON STREET
BANNING, CALIFORNIA 92220

(951) 849-7953
FAX (951) 849-3485

April 29th, 2008

CITY OF BANNING
Department of Planning
P. O. Box 998
Banning, CA 92220

Subject: Request for Extension of Time for
Tentative Tract No. 32370

Dear Planning Department Staff:

On July 12th, 2005, we received approval of the above listed tract. (See copy of approval letter attached from the City of Banning Planning Department dated July 13th, 2005.)

We requested and received a one-year time extension in July of 2007. (See copy of letter attached from the City of Banning Planning Department dated May 30th, 2007.)

Although ongoing construction work is presently being performed on this project, all work has not yet been completed. To date we have spent more than \$926,000.00 in the construction phases completed, not including land cost. We are requesting a second extension of time.

Thankyou,

George A. Nordquist

Dora J. Nordquist

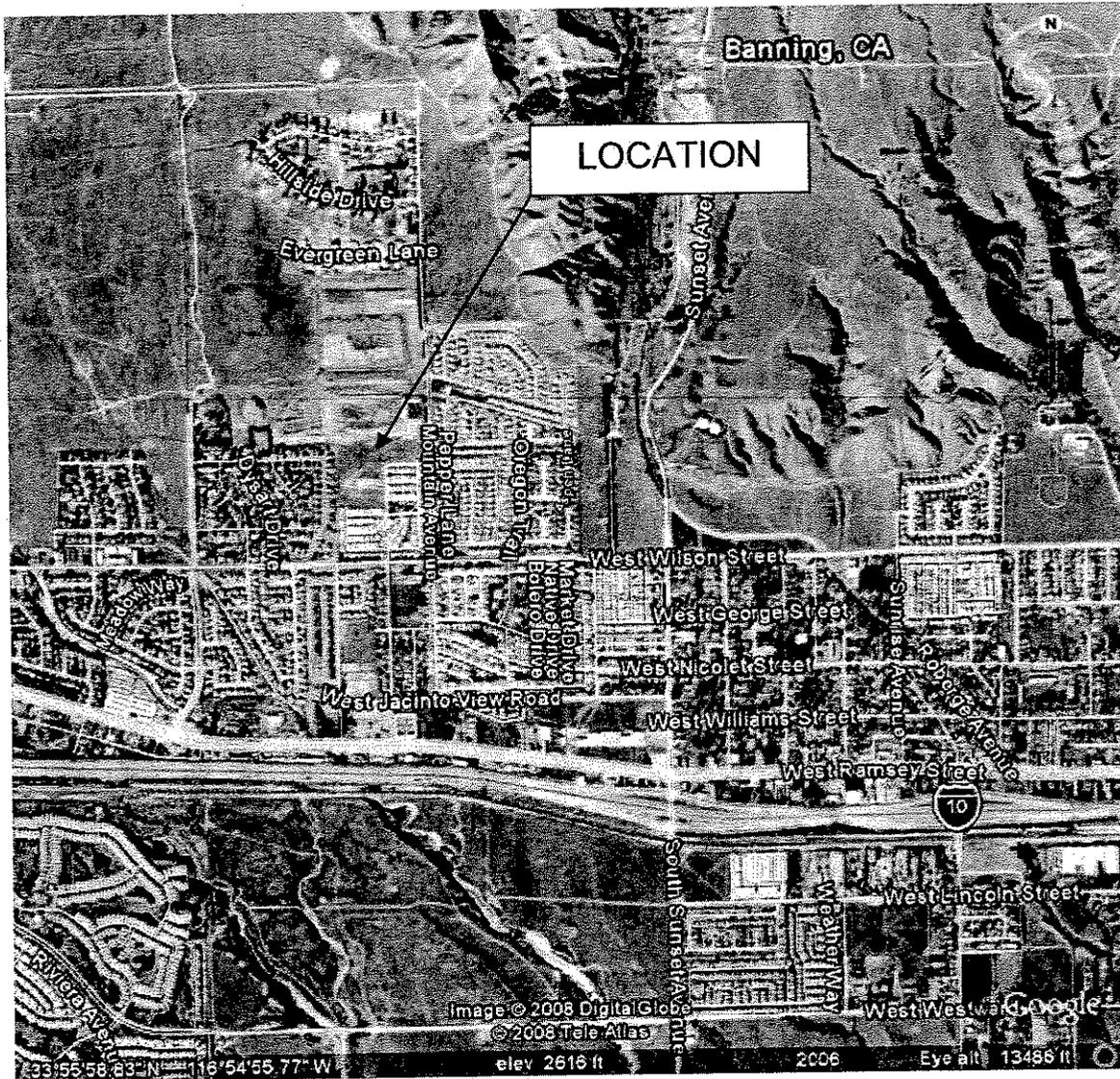
Enclosures

MAY - 2 2008

75

Exhibit 5

Vicinity map



VICINITY MAP

TTM 32370

NOT TO SCALE

77

**CITY COUNCIL AGENDA
PUBLIC HEARING**

DATE: June 24, 2008

TO: Honorable Mayor and City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2008-77, "Approving the Consumer Price Index (CPI) Increase for the Service Charges for the Collection, Transportation and Disposal of Solid Waste"

RECOMMENDATION: The City Council adopt Resolution No. 2008-77, "Approving the Consumer Price Index (CPI) Increase for the Service Charges for the Collection, Transportation and Disposal of Solid Waste," as set forth in the City of Banning's Franchise Agreement with Waste Management of the Inland Empire.

JUSTIFICATION: It is essential to adjust the rate annually for the service charges for the collection, transportation and disposal of solid waste as per the provisions of the Franchise Agreement.

BACKGROUND: The City entered into a Franchise Agreement for refuse collection and disposal with Waste Management of the Inland Empire in 1993. Subsequently, the contract was amended in May of 2002, extending the contract to June 30, 2011.

Per Section 18 of the Franchise Agreement, the refuse collection rate can be adjusted annually based on the Consumer Price Index (CPI) for the Los Angeles-Anaheim area, the increase/decrease of the collected tonnage of waste or the increase/decrease of the Tipping Fee charged by the landfill operator, and extraordinary change in cost of collection.

This year, the Tipping Fee charge is \$34.33/ton, an increase of approximately 4%, while the number of customers has remained consistent. Due to the increase, and per section 18 of the Franchise Agreement, the rate needs to be adjusted accordingly. The change in the CPI for the effective twelve-month period was 3.12% and the request of adjustment is 2.964%, which is 95% of 3.12%, as allowed by the Franchise Agreement.

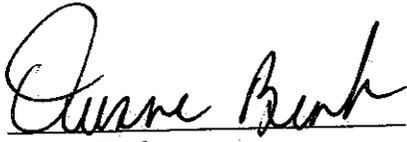
Further, proposed adjustments have been incorporated to compensate for the extraordinary increase in fuel costs and to include residential greenwaste disposal pass through costs. Lastly, a proposed fee increase for rolloff compactor services has been included along with two new proposed fees consisting of a fee for an additional recycling container and a fee for a temporary rolloff box. All of the abovementioned fees are reflected in the attached rate sheets. If approved, the new rate will be effective on July 1, 2008. The Notice of Public Hearing was advertised on June 13, 2008, as shown as Attachment "A".

FISCAL DATA: The current rate for the refuse collection is \$15.46 per month, per household, and if approved, the rate will be \$17.02 and the commercial rate has been adjusted accordingly, as shown on the attached Exhibit "A".

SIGNATURES NEXT PAGE

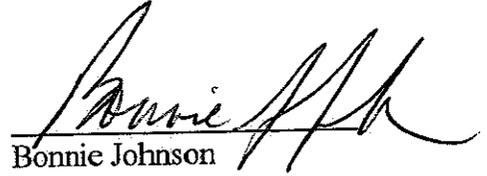
78

RECOMMENDED BY:



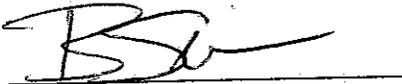
Duane Burk
Director of Public Works

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

RESOLUTION NO. 2008-77

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE INCREASE FOR THE SERVICE CHARGES FOR COLLECTION, TRANSPORTATION AND DISPOSAL OF SOLID WASTE.

WHEREAS, the City of Banning entered into a Franchise Agreement with Waste Management of the Inland Empire in July of 1993; and

WHEREAS, on May 28, 2002, during the regularly held City Council Meeting, the Franchise Agreement was extended until June 30, 2011; and

WHEREAS, Section 18 of the Franchise Agreement requires annual adjustment of service charges for the collection, transportation and disposal of solid waste, based on the changes of the Consumer Price Index (CPI), annual tonnage increase/decrease and the tipping fee, and extraordinary change in cost of collection; and

WHEREAS, it is essential that the City Council adopt Resolution No. 2008-77, so that the City can implement the collection of the new solid waste rates.

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

The City Council of the City of Banning hereby approves the increase for the Service Charges for the Collection, Transportation and Disposal of Solid Waste Effective July 1, 2008, attached herein as Exhibit "A".

PASSED, APPROVED and ADOPTED this 24th 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. 2008-77, was adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 24th day of June, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

81

Exhibit "A"

**CITY OF BANNING
RATE SCHEDULE SUMMARY**

EFFECTIVE JULY 1, 2008

Type of Service	Existing Rate	Proposed Rate
Residential Household	\$15.46	\$17.02
Commercial Can Service	\$17.49	\$18.61
Commercial Bin Service		
One Pick-up per Week:		
-2 cubic yard	\$76.27	\$80.39
- 3 cubic yard	\$100.69	\$105.84
-4 cubic yard	\$134.69	\$141.60

82

**City of Banning
Rate Components
As of July 1, 2008**

Total Rates

RESIDENTIAL	\$ 17.02
Single Family Refuse Rate	

Additional Containers:	Trash - 96 gallon	\$ 7.20
	Trash - 64 gallon	\$ 5.77
	Trash - 35 gallon	\$ 4.33
	Recycling*	\$ 1.85
	Green Waste	\$ 4.31
Exchanges due to size change or customer misuse (as examples) In excess of one time per year		\$ 21.65

COMMERCIAL CAN SERVICE	\$ 18.61
Refuse Service With Recycling Program A:	

TEMPORARY COMMERCIAL SERVICE	\$ 112.33
Temporary Bin (up to 7 Days)	\$ 183.27
Temporary Bin (30 Days)	

COMMERCIAL BIN SERVICE			ONE	TWO	THREE	FOUR	FIVE	SIX
SIZE	QTY							
2 Yard	1	\$	80.39	\$ 160.79	\$ 235.27	\$ 311.23	\$ 385.73	\$ 460.21
3 Yard	1	\$	105.84	\$ 211.69	\$ 310.13	\$ 408.58	\$ 507.02	\$ 605.48
4 Yard	1	\$	141.60	\$ 283.20	\$ 414.48	\$ 547.22	\$ 678.50	\$ 809.78
6 Yard	1	\$	199.86	\$ 399.72	\$ 586.31	\$ 771.42	\$ 958.02	\$ 1,143.11
2 Yard	2	\$	160.79	\$ 321.58	\$ 470.54	\$ 622.46	\$ 771.45	\$ 920.42
3 Yard	2	\$	211.69	\$ 423.38	\$ 620.25	\$ 817.16	\$ 1,014.04	\$ 1,210.97
4 Yard	2	\$	283.20	\$ 566.40	\$ 828.96	\$ 1,094.45	\$ 1,357.00	\$ 1,619.56
6 Yard	2	\$	399.72	\$ 799.45	\$ 1,172.62	\$ 1,542.83	\$ 1,916.03	\$ 2,286.22
2 Yard	3	\$	241.18	\$ 482.37	\$ 705.81	\$ 933.69	\$ 1,157.18	\$ 1,380.62
3 Yard	3	\$	317.53	\$ 635.07	\$ 930.38	\$ 1,225.74	\$ 1,521.05	\$ 1,816.45
4 Yard	3	\$	424.80	\$ 849.60	\$ 1,243.44	\$ 1,641.67	\$ 2,035.51	\$ 2,429.35
6 Yard	3	\$	599.59	\$ 1,199.17	\$ 1,758.93	\$ 2,314.25	\$ 2,874.05	\$ 3,429.32
2 Yard	4	\$	321.58	\$ 643.16	\$ 941.08	\$ 1,244.92	\$ 1,542.91	\$ 1,840.83
3 Yard	4	\$	423.38	\$ 846.76	\$ 1,240.51	\$ 1,634.32	\$ 2,028.07	\$ 2,421.94
4 Yard	4	\$	566.40	\$ 1,132.80	\$ 1,657.92	\$ 2,188.89	\$ 2,714.01	\$ 3,239.13
6 Yard	4	\$	799.45	\$ 1,598.90	\$ 2,345.24	\$ 3,085.66	\$ 3,832.06	\$ 4,572.43
2 Yard	5	\$	401.97	\$ 803.95	\$ 1,176.36	\$ 1,556.15	\$ 1,928.63	\$ 2,301.04
3 Yard	5	\$	529.22	\$ 1,058.44	\$ 1,550.64	\$ 2,042.90	\$ 2,535.09	\$ 3,027.42
4 Yard	5	\$	708.00	\$ 1,416.00	\$ 2,072.39	\$ 2,736.11	\$ 3,392.51	\$ 4,048.91
6 Yard	5	\$	999.31	\$ 1,998.62	\$ 2,931.55	\$ 3,857.08	\$ 4,790.08	\$ 5,715.54
2 Yard	6	\$	482.37	\$ 964.74	\$ 1,411.63	\$ 1,867.39	\$ 2,314.36	\$ 2,761.25
3 Yard	6	\$	635.07	\$ 1,270.13	\$ 1,860.76	\$ 2,451.48	\$ 3,042.11	\$ 3,632.91
4 Yard	6	\$	849.60	\$ 1,699.20	\$ 2,486.87	\$ 3,283.34	\$ 4,071.01	\$ 4,858.69
6 Yard	6	\$	1,199.17	\$ 2,398.34	\$ 3,517.85	\$ 4,628.50	\$ 5,748.09	\$ 6,858.65

83

**City of Banning
Rate Components
As of July 1, 2008**

COMMERCIAL RECYCLING SERVICE					
<u>SIZE</u>	<u>Pick-ups per week</u>		<u>ONE</u>		<u>TWO</u>
	<u>QTY</u>				
2.0 Cubic Yard	One	\$	72.21	\$	144.42
3.0 Cubic Yard	One	\$	92.43	\$	184.87
4.0 Cubic Yard	One	\$	122.78	\$	245.55
6.0 Cubic Yard	One	\$	158.88	\$	317.76
3.0 Cubic Yard*	One	\$	60.25	\$	120.49

*Banning Unified School District within city limits only

ROLLOFF SERVICES			
40 Cubic Yard Container	\$	185.91	+ landfill fees
10 Cubic Yard Container	\$	185.91	+ landfill fees
Monthly Minimum Pull	\$	185.91	
40 Cubic Yard Compactor**	\$	240.00	+landfill
40 Cubic Yard Temporary Container*	\$	338.48	includes 4 tons
Relocation/Trip/Delivery Fee	\$	67.86	

OTHER SERVICES			
Bin exchange in excess of one time per year	\$	67.24	
Lost or Stolen Bin:	\$	273.02	
Burned Bin:	\$	152.89	
Extra bin dump while on site	\$	53.59	
Overage Fee	\$	41.68	
Locking Lids: (per month times service frequency)	\$	13.11	
Replacement Lock	\$	27.30	
Replacement Key	\$	5.46	
Residential Set Up Fee	\$	9.46	
Commercial Set Up Fee	\$	15.77	
Industrial Set Up Fee	\$	15.77	
Additional Bulky Waste - E Waste	\$	16.46	per item

* Denotes New Service

** Denotes Increase greater than CPI

84

**City of Banning
Rate Components
As of July 1, 2008**

		COMPACTOR SERVICE RATES						
		(COMPACTION RATIO = 3:1)						
SIZE	QTY		ONE	TWO	THREE	FOUR	FIVE	SIX
2 Yard	One	\$	116.46	\$ 232.91	\$ 343.45	\$ 455.48	\$ 566.03	\$ 676.57
3 Yard	One	\$	159.94	\$ 319.87	\$ 472.40	\$ 624.95	\$ 777.48	\$ 930.03
4 Yard	One	\$	213.72	\$ 427.44	\$ 630.85	\$ 835.71	\$ 1,039.11	\$ 1,242.51
6 Yard	One	\$	308.05	\$ 616.09	\$ 910.86	\$ 1,204.15	\$ 1,498.93	\$ 1,792.21
2 Yard	Two	\$	232.91	\$ 465.82	\$ 686.91	\$ 910.95	\$ 1,132.06	\$ 1,353.15
3 Yard	Two	\$	319.87	\$ 639.74	\$ 944.80	\$ 1,249.89	\$ 1,554.95	\$ 1,860.07
4 Yard	Two	\$	427.44	\$ 854.89	\$ 1,261.69	\$ 1,671.42	\$ 2,078.23	\$ 2,485.03
6 Yard	Two	\$	616.09	\$ 1,232.18	\$ 1,821.72	\$ 2,408.30	\$ 2,997.86	\$ 3,584.41
2 Yard	Three	\$	349.37	\$ 698.74	\$ 1,030.36	\$ 1,366.43	\$ 1,698.10	\$ 2,029.72
3 Yard	Three	\$	479.81	\$ 959.62	\$ 1,417.21	\$ 1,874.84	\$ 2,332.43	\$ 2,790.10
4 Yard	Three	\$	641.16	\$ 1,282.33	\$ 1,892.54	\$ 2,507.13	\$ 3,117.34	\$ 3,727.54
6 Yard	Three	\$	924.14	\$ 1,848.27	\$ 2,732.58	\$ 3,612.44	\$ 4,496.79	\$ 5,376.62
2 Yard	Four	\$	465.82	\$ 931.65	\$ 1,373.82	\$ 1,821.90	\$ 2,264.13	\$ 2,706.30
3 Yard	Four	\$	639.74	\$ 1,279.49	\$ 1,889.61	\$ 2,499.78	\$ 3,109.90	\$ 3,720.14
4 Yard	Four	\$	854.89	\$ 1,709.77	\$ 2,523.38	\$ 3,342.84	\$ 4,156.45	\$ 4,970.06
6 Yard	Four	\$	1,232.18	\$ 2,464.36	\$ 3,643.43	\$ 4,816.59	\$ 5,995.72	\$ 7,168.83
2 Yard	Five	\$	582.28	\$ 1,164.56	\$ 1,717.27	\$ 2,277.38	\$ 2,830.16	\$ 3,382.87
3 Yard	Five	\$	799.68	\$ 1,599.36	\$ 2,362.01	\$ 3,124.73	\$ 3,887.38	\$ 4,650.17
4 Yard	Five	\$	1,068.61	\$ 2,137.22	\$ 3,154.23	\$ 4,178.55	\$ 5,195.56	\$ 6,212.57
6 Yard	Five	\$	1,540.23	\$ 3,080.45	\$ 4,554.29	\$ 6,020.74	\$ 7,494.66	\$ 8,961.03
2 Yard	Six	\$	698.74	\$ 1,397.47	\$ 2,060.73	\$ 2,732.85	\$ 3,396.19	\$ 4,059.45
3 Yard	Six	\$	959.62	\$ 1,919.23	\$ 2,834.41	\$ 3,749.68	\$ 4,664.85	\$ 5,580.21
4 Yard	Six	\$	1,282.33	\$ 2,564.66	\$ 3,785.07	\$ 5,014.26	\$ 6,234.68	\$ 7,455.09
6 Yard	Six	\$	1,848.27	\$ 3,696.54	\$ 5,465.15	\$ 7,224.89	\$ 8,993.59	\$ 10,753.24

85

**City of Banning
Rate Components
As of July 1, 2008**

Service Components

RESIDENTIAL	
Single Family Service Rates:	\$ 12.90

COMMERCIAL CAN SERVICE	
Refuse Service With Recycling program A:	\$ 12.97

COMMERCIAL BIN SERVICE			ONE	TWO	THREE	FOUR	FIVE	SIX
2 Yard	One	\$	62.36	\$ 124.73	\$ 181.18	\$ 239.11	\$ 295.57	\$ 352.03
3 Yard	One	\$	78.80	\$ 157.60	\$ 228.99	\$ 300.40	\$ 371.79	\$ 443.21
4 Yard	One	\$	105.54	\$ 211.08	\$ 306.30	\$ 402.98	\$ 498.20	\$ 593.42
6 Yard	One	\$	145.77	\$ 291.54	\$ 424.03	\$ 555.05	\$ 687.56	\$ 818.56
2 Yard	Two	\$	124.73	\$ 249.46	\$ 362.36	\$ 478.22	\$ 591.15	\$ 704.05
3 Yard	Two	\$	157.60	\$ 315.19	\$ 457.98	\$ 600.79	\$ 743.58	\$ 886.42
4 Yard	Two	\$	211.08	\$ 422.15	\$ 612.59	\$ 805.96	\$ 996.39	\$ 1,186.83
6 Yard	Two	\$	291.54	\$ 583.08	\$ 848.07	\$ 1,110.10	\$ 1,375.12	\$ 1,637.12
2 Yard	Three	\$	187.09	\$ 374.19	\$ 543.54	\$ 717.33	\$ 886.72	\$ 1,056.08
3 Yard	Three	\$	236.40	\$ 472.79	\$ 686.97	\$ 901.19	\$ 1,115.37	\$ 1,329.63
4 Yard	Three	\$	316.62	\$ 633.23	\$ 918.89	\$ 1,208.94	\$ 1,494.59	\$ 1,780.25
6 Yard	Three	\$	437.31	\$ 874.62	\$ 1,272.10	\$ 1,665.15	\$ 2,062.67	\$ 2,455.68
2 Yard	Four	\$	249.46	\$ 498.92	\$ 724.72	\$ 956.44	\$ 1,182.30	\$ 1,408.10
3 Yard	Four	\$	315.19	\$ 630.39	\$ 915.96	\$ 1,201.59	\$ 1,487.16	\$ 1,772.84
4 Yard	Four	\$	422.15	\$ 844.31	\$ 1,225.18	\$ 1,611.91	\$ 1,992.79	\$ 2,373.66
6 Yard	Four	\$	583.08	\$ 1,166.16	\$ 1,696.14	\$ 2,220.20	\$ 2,750.23	\$ 3,274.24
2 Yard	Five	\$	311.82	\$ 623.64	\$ 905.90	\$ 1,195.54	\$ 1,477.87	\$ 1,760.13
3 Yard	Five	\$	393.99	\$ 787.99	\$ 1,144.95	\$ 1,501.98	\$ 1,858.95	\$ 2,216.05
4 Yard	Five	\$	527.69	\$ 1,055.39	\$ 1,531.48	\$ 2,014.89	\$ 2,490.99	\$ 2,967.08
6 Yard	Five	\$	728.85	\$ 1,457.70	\$ 2,120.17	\$ 2,775.25	\$ 3,437.79	\$ 4,092.80
2 Yard	Six	\$	374.19	\$ 748.37	\$ 1,087.08	\$ 1,434.65	\$ 1,773.44	\$ 2,112.15
3 Yard	Six	\$	472.79	\$ 945.58	\$ 1,373.94	\$ 1,802.38	\$ 2,230.74	\$ 2,659.26
4 Yard	Six	\$	633.23	\$ 1,266.46	\$ 1,837.78	\$ 2,417.87	\$ 2,989.18	\$ 3,560.50
6 Yard	Six	\$	874.62	\$ 1,749.24	\$ 2,544.21	\$ 3,330.30	\$ 4,125.35	\$ 4,911.35

86

**City of Banning
Rate Components
As of July 1, 2008**

Disposal Components

RESIDENTIAL TRASH	Pounds per household per week						31.98	
	Pounds-to-tons factor			divide by			2,000	
	Monthly factor			x			4.33	
	Riverside County landfill rate			x		\$	34.33	
	Franchise Fee factor			divide by			0.79	
	Monthly Disposal Component for one Residential Household					\$	3.01	
RESIDENTIAL GREENWASTE	Pounds per household per week						15.91	
	Pounds-to-tons factor			divide by			2,000	
	Monthly factor			x			4.33	
	BP John Processing Charge			x		\$	25.40	
	Franchise Fee factor			divide by			0.79	
	Monthly Disposal Component for one Residential Household					\$	1.11	
COMMERCIAL CAN	Pounds per customer per week						60.00	
	Pounds-to-tons factor			divide by			2,000	
	Monthly factor			x			4.33	
	Riverside County landfill rate			x		\$	34.33	
	Franchise Fee factor			divide by			0.79	
	Monthly Disposal Component for one Commercial Can Customer					\$	5.64	
COMMERCIAL REFUSE	Pounds per yard						95.82	
	Pounds-to-tons factor			divide by			2,000	
	Monthly factor			x			4.33	
	Riverside County landfill rate			x		\$	34.33	
	Franchise Fee factor			divide by			0.79	
	Monthly Disposal Component for One Cubic Yard					\$	9.02	
SIZE	QTY		ONE	TWO	THREE	FOUR	FIVE	SIX
2 Yard	1	\$	18.03	\$ 36.06	\$ 54.09	\$ 72.12	\$ 90.15	\$ 108.18
3 Yard	1	\$	27.05	\$ 54.09	\$ 81.14	\$ 108.18	\$ 135.23	\$ 162.27
4 Yard	1	\$	36.06	\$ 72.12	\$ 108.18	\$ 144.24	\$ 180.31	\$ 216.37
6 Yard	1	\$	54.09	\$ 108.18	\$ 162.27	\$ 216.37	\$ 270.46	\$ 324.55
2 Yard	2	\$	36.06	\$ 72.12	\$ 108.18	\$ 144.24	\$ 180.31	\$ 216.37
3 Yard	2	\$	54.09	\$ 108.18	\$ 162.27	\$ 216.37	\$ 270.46	\$ 324.55
4 Yard	2	\$	72.12	\$ 144.24	\$ 216.37	\$ 288.49	\$ 360.61	\$ 432.73
6 Yard	2	\$	108.18	\$ 216.37	\$ 324.55	\$ 432.73	\$ 540.92	\$ 649.10
SIZE	QTY		ONE	TWO	THREE	FOUR	FIVE	SIX
2 Yard	3	\$	54.09	\$ 108.18	\$ 162.27	\$ 216.37	\$ 270.46	\$ 324.55
3 Yard	3	\$	81.14	\$ 162.27	\$ 243.41	\$ 324.55	\$ 405.69	\$ 486.82
4 Yard	3	\$	108.18	\$ 216.37	\$ 324.55	\$ 432.73	\$ 540.92	\$ 649.10
6 Yard	3	\$	162.27	\$ 324.55	\$ 486.82	\$ 649.10	\$ 811.37	\$ 973.65
2 Yard	4	\$	72.12	\$ 144.24	\$ 216.37	\$ 288.49	\$ 360.61	\$ 432.73
3 Yard	4	\$	108.18	\$ 216.37	\$ 324.55	\$ 432.73	\$ 540.92	\$ 649.10
4 Yard	4	\$	144.24	\$ 288.49	\$ 432.73	\$ 576.98	\$ 721.22	\$ 865.46
6 Yard	4	\$	216.37	\$ 432.73	\$ 649.10	\$ 865.46	\$ 1,081.83	\$ 1,298.20
2 Yard	5	\$	90.15	\$ 180.31	\$ 270.46	\$ 360.61	\$ 450.76	\$ 540.92
3 Yard	5	\$	135.23	\$ 270.46	\$ 405.69	\$ 540.92	\$ 676.14	\$ 811.37
4 Yard	5	\$	180.31	\$ 360.61	\$ 540.92	\$ 721.22	\$ 901.53	\$ 1,081.83
6 Yard	5	\$	270.46	\$ 540.92	\$ 811.37	\$ 1,081.83	\$ 1,352.29	\$ 1,622.75
2 Yard	6	\$	108.18	\$ 216.37	\$ 324.55	\$ 432.73	\$ 540.92	\$ 649.10
3 Yard	6	\$	162.27	\$ 324.55	\$ 486.82	\$ 649.10	\$ 811.37	\$ 973.65
4 Yard	6	\$	216.37	\$ 432.73	\$ 649.10	\$ 865.46	\$ 1,081.83	\$ 1,298.20
6 Yard	6	\$	324.55	\$ 649.10	\$ 973.65	\$ 1,298.20	\$ 1,622.75	\$ 1,947.30

87

ATTACHMENT "A"

RECORD GAZETTE
JUNE 13, 2008

Friday, June 13, 2008

PUBLIC NOTICES

NOTICE OF PUBLIC HEARING

PURSUANT TO LAW, notice is hereby given of a Public Hearing before the City Council of the City of Banning, to be heard June 24, 2008 at 6:30 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey St., Banning, California, to consider "Adopting Resolution No. 2008-77, Approving the Consumer Price Index (CPI) Increase for the Service Charges for Collection, Transportation, and Disposal of Solid Waste."

ALL INTERESTED PARTIES are invited to attend said hearing and present oral or written testimony on the matter or to send written comments to the City Clerk, P.O. Box 998, Banning, CA 92220. Data relevant to these fees is available for public review at the office of the City Clerk or at the Engineering Division of the Public Works Department, at 99 E. Ramsey St., for the period of 10 days prior to the Public Hearing.

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

Date: June 10, 2008
Publish: Record Gazette
June 13, 2008

Marie A. Calderon
City Clerk
Publish the Record
Gazette
No. 1875

6/13/2008

88

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:

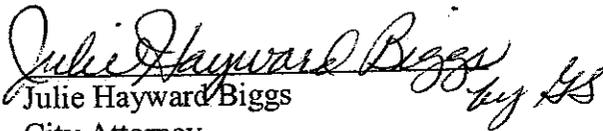
- (1) Set aside and vacate the adoption of Resolution No. 2006-128 certifying the Final Environmental Impact Report (SCH No. 2004111024), adopting a Statement of Overriding Considerations and Mitigation Monitoring Program.
- (2) Set aside and vacate the adoption of Resolution No. 2006-129 approving General 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

92

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, the City further desires to vacate and set aside the adoption of Resolution No. 2006-128 to limit the costs and expenses associated with these matters, including attorney fees, because SCC/Black Bench LLC is in actual and anticipatory breach of its contractual obligation to indemnify the City in these matters and reimburse the City for its actual costs and expenses incurred in the course of its defense; and

WHEREAS, on May 30, 2008, 2008, the City gave public notice by advertising in 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 hearings held on June 10, 2008 and June 24, 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.

3. Condition of Approval A.1 to the Tentative Tract Map for Black Bench project requires the Sun Cal Companies, including SCC/Black Bench LLC to

"indemnify, protect, defend, and hold harmless, the City . . . from any and all claims, demands, lawsuits, writs of mandamus . . . brought against the City . . . that challenge, attack, or seek to modify, set aside, void, or annul, the action of, or any permit or approval issued by, 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 applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense."

4. SCC/Black Bench LLC is in actual and anticipatory breach of this obligation to indemnify, protect, defend, and hold harmless the City in these litigation matters, and its obligation to reimburse the City for the costs and expenses it has incurred in the course of its defense in these matters. . The City's attorney fees and costs in defending these matters through April 2008 is \$130,284.10, and has incurred approximately \$15,000 more in attorneys fees and costs in these matters since then, and the claimed legal fees for opposing counsel total \$722,000. Vacating the adoption of Resolution 2006-128 is necessary to limit the City's costs and expenses associated with these matters and to limit the potential attorney's fees incurred by the petitioners in these matters.

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 24th day of June, 2008.

Brenda Salas, Mayor

ATTEST:

Marie Calderon, City Clerk

APPROVED AS TO FORM:

Burke, Williams and 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. 2008-69 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 24th 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"

Judgment and Peremptory Writ of Mandate

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

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

6 Attorneys for SCC/BLACK BENCH, LLC

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF RIVERSIDE
10

11 HIGHLAND SPRINGS CONFERENCE AND
TRAINING CENTER,

12 Petitioner,

13 v.

14 CITY OF BANNING,

15 Respondent.

16
17 SCC/BLACK BENCH, LLC,
and DOES 1 through 10,

18 Real Parties in Interest.
19

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

20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

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

25 DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

26
27 Shiraz D. Tangri
Attorneys for Real Party in Interest
28 SCC/Black Bench, LLC

98

Exhibit 1

99

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



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

100

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

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
8

9 Hon. Thomas H. Cahraman
10 JUDGE OF THE SUPERIOR COURT
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

103

Exhibit 2

104

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

HR

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

105

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 _____
24 Hon. Thomas H. Cahraman
25 JUDGE OF THE SUPERIOR COURT
26

106

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

107

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
13 Santa Monica, CA 90405
14 Tel: (310) 314-8040
15 Fax: (310) 314-8050

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

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

Attorneys for Respondent
CITY OF BANNING

22 Stephen R. Onstot
23 Amy E. Morgan
24 **BURKE, WILLIAMS & SORENSEN, LLP**
25 2800 Market Street, Suite 300
26 Riverside, CA 92501
27 Tel: (951) 788-0100
28 Fax: (951) 788-5785

108

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

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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

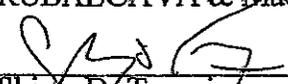
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

109

Exhibit 1

110

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

112

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~~ *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 
Honorable Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

114

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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)

SCC/BLACK BENCH, LLC, *et al.*,
Real Parties in Interest.

Action Filed: November 22, 2006

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.

115

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

116

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

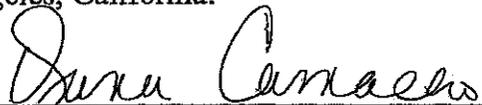
I, Dana Camacho, declare:

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

117

1 Banning Bench Community of Interest Association, Inc. v. City of Banning, et al.
2 Case No. RIC 461069

3
4 SERVICE LIST

5
6
7 John G. McClendon
8 Alisha M. Santana
9 **LEIBOLD, McCLENDON & MANN LLP**
10 23422 Mill Creek Drive, Suite 105
11 Laguna Hills, CA 92653
12 Tel: (949) 457-6300
13 Fax: (949) 457-6305

Attorneys for Petitioner and Plaintiff
**BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC.**

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

Attorneys for Respondents and Defendants
**CITY OF BANNING and
CITY COUNCIL OF THE CITY
OF BANNING**

20 Stephen R. Onstot
21 Amy E. Morgan
22 **BURKE, WILLIAMS & SORENSEN, LLP**
23 2800 Market Street, Suite 300
24 Riverside, CA 92501
25 Tel: (951) 788-0100
26 Fax: (951) 788-5785
27
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

6 Attorneys for SCC/BLACK BENCH, LLC

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

10 CENTER FOR BIOLOGICAL DIVERSITY,

11 Petitioner,

12 v.

13 CITY OF BANNING, CITY COUNCIL OF
14 THE CITY OF BANNING,
and Does 1-20,

15 Respondents.

16 SCC/BLACK BENCH, LLC,
17 and DOES 21 through 50, Inclusive,

18 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

19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

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

24 DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

26
27 Shiraz D. Tangri
Attorneys for Real Party in Interest
28 SCC/Black Bench, LLC

119

Exhibit 1

120

1 Matthew D. Vespa (SBN 222265)
2 CENTER FOR BIOLOGICAL DIVERSITY
3 1095 Market Street, Suite 511
4 San Francisco, CA 94103
5 Tel: (415) 436-9682 x 309
6 Fax: (415) 436-9683
7 Email: mvespa@biologicaldiversity.org

8 John Buse (SBN 163156)
9 CENTER FOR BIOLOGICAL DIVERSITY
10 5656 S. Dorchester Ave., No. 3
11 Chicago, IL 60637
12 Telephone: (312) 237-1443
13 Email: jbuse@biologicaldiversity.org

14 Attorneys for Petitioner
15 CENTER FOR BIOLOGICAL DIVERSITY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 IN AND FOR THE COUNTY OF RIVERSIDE

460950 MF

18 CENTER FOR BIOLOGICAL	)	Case No. RIC 460967
19 DIVERSITY,)	
20 Petitioner,	)	Case Filed Under the California Environmental
21 vs.	)	Quality Act (CEQA)
22)	
23 CITY OF BANNING,	)	PROPOSED JUDGMENT
24 CITY COUNCIL OF THE CITY OF)	
25 BANNING,	)	Original Date of Filing: November 21, 2006
26 and DOES 1-20,	)	Judge: Hon. Thomas H. Cahraman
27 Respondents.	)	Department: 42
28)	
29 SCC/BLACK BENCH, LLC)	
30 and DOES 21-50,)	
31)	
32 Real Parties in Interest.)	
33)	

[Proposed] Judgment

Case No. RIC 460967

121

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

122

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 \$~~
~~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. Cahran
JUDGE OF THE SUPERIOR COURT

Exhibit 2

124

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
JUDGE OF THE SUPERIOR COURT

27

126

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

127

Center for Biological Diversity v. City of Banning, et al.
Case No. RIC 460967

SERVICE LIST

Matthew Vespa
CENTER FOR BIOLOGICAL DIVERSITY
1095 Market Street, Suite 511
San Francisco, CA 94103
Tel: (415) 436-9682
Fax: (415) 436-9683

Attorneys for Petitioner
**CENTER FOR BIOLOGICAL
DIVERSITY**

John Buse
CENTER FOR BIOLOGICAL DIVERSITY
5656 S. Dorchester Ave., No. 3
Chicago, IL 60637
Tel: (312) 237-1443

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
**CITY OF BANNING and
CITY COUNCIL OF THE CITY
OF BANNING**

Amy E. Morgan
BURKE, WILLIAMS & SORENSEN, LLP
2800 Market Street, Suite 300
Riverside, CA 92501
Tel: (951) 788-0100
Fax: (951) 788-5785

128

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 & MacCUIISH 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

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

10 CHERRY VALLEY PASS ACRES AND
11 NEIGHBORS, a California Non-Profit
12 Corporation, and CHERRY VALLEY
13 ENVIRONMENTAL PLANNING GROUP, a
14 California Non-Profit Corporation,

15 Petitioners,

16 v.

17 CITY OF BANNING, a Municipal Corporation,

18 Respondent.

19 SCC/BLACK BENCH, LLC,
20 and DOES 1 through 100, Inclusive,

21 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

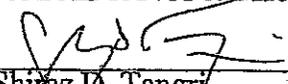
22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

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

27 DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUIISH LLP


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

129

Exhibit 1

130

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

HR

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

131

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

132

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.~~

Tsc

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*
25
26 Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

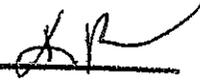
Exhibit 2

134

1 ROGERS JOSEPH O'DONNELL
ROBERT C. GOODMAN (State Bar No. 111554)
2 ANN M. BLESSING (State Bar No. 172573)
311 California Street
3 San Francisco, California 94104
Telephone: 415.956.2828
4 Facsimile: 415.956.6457
5 Attorneys for Petitioners Cherry Valley
Pass Acres and Neighbors and Cherry Valley
6 Environmental Planning Group

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 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,
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 -

135

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.

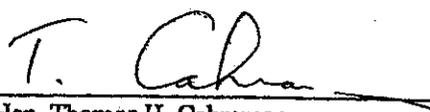
11 Under Public Resources Code section 21168.9(c), this Court does not direct
12 Respondent to exercise its lawful discretion in any particular way.

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 
23 Hon. Thomas H. Cahraman
24 JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

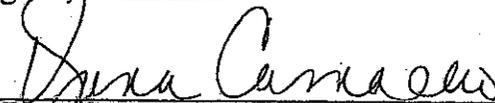
BY FEDERAL EXPRESS **UPS NEXT DAY AIR** **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by **FEDERAL EXPRESS** **UPS** **Overnight Delivery** [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of **FEDERAL 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 Cherry Valley Pass Acres And Neighbors, et al., v. City of Banning
2 Case No. RIC 461035

3
4 SERVICE LIST

5
6
7 Robert C. Goodman Attorney for Petitioners
8 Ann M. Blessing CHERRY VALLEY PASS ACRES
9 LAW OFFICES OF ROBERT C. GOODMAN AND NEIGHBORS, and CHERRY
10 311 California Street VALLEY ENVIRONMENTAL
11 San Francisco, CA 94104 PLANNING GROUP,
12 Tel: (415) 956-2828
13 Fax: (415) 956-6457

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

20 Stephen R. Onstot
21 Amy E. Morgan
22 BURKE, WILLIAMS & SORENSEN, LLP
23 2800 Market Street, Suite 300
24 Riverside, CA 92501
25 Tel: (951) 788-0100
26 Fax: (951) 788-5785
27
28

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,

140

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.

141

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.

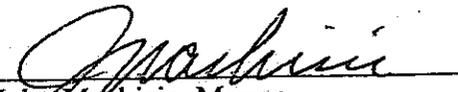
SECTION 3. CITY COUNCIL ACTION.

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

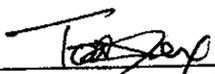
1. **Statement of Overriding Consideration:** The City Council adopt a Statement of Overriding Considerations for the unmitigated impacts associated with traffic and circulation and air quality. (Exhibit "A", under separate cover).

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.

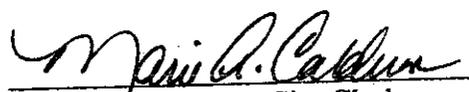
PASSED, APPROVED AND ADOPTED this 11th day of October, 2006.


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, the City further desires to vacate and set aside the adoption of Resolution No. 2006-128 to limit the costs and expenses associated with these matters, including attorney fees, because SCC/Black Bench LLC is in actual and anticipatory breach of its contractual obligation to indemnify the City in these matters and reimburse the City for its actual costs and expenses incurred in the course of its defense; 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 hearings held on June 10, 2008 and June 24, 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.

3. Condition of Approval A.1 to the Tentative Tract Map for Black Bench project requires the Sun Cal Companies, including SCC/Black Bench LLC to

“indemnify, protect, defend, and hold harmless, the City . . . from any and all claims, demands, lawsuits, writs of mandamus . . . brought against the City . . . that challenge, attack, or seek to modify, set aside, void, or annul, the action of, or any permit or approval issued by, 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 applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.”

4. SCC/Black Bench LLC is in actual and anticipatory breach of this obligation to indemnify, protect, defend, and hold harmless the City in these litigation matters, and its obligation to reimburse the City for the costs and expenses it has incurred in the course of its defense in these matters. . The City’s attorney fees and costs in defending these matters through April 2008 is \$130,284.10, and has incurred approximately \$15,000 more in attorneys fees and costs in these matters since then, and the claimed legal fees for opposing counsel total \$722,000. Vacating the adoption of Resolution 2006-128 is necessary to limit the City’s costs and expenses associated with these matters and to limit the potential attorney’s fees incurred by the petitioners in these matters.

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.

148

PASSED, APPROVED, AND ADOPTED this 24th day of June, 2008.

Brenda Salas, Mayor

ATTEST:

Marie Calderon, City Clerk

APPROVED AS TO FORM:

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. 2008-70 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 24th 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"

Judgment and Peremptory Writ of Mandate

150

Exhibit 1

152

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.
- 25
26

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-* (T.C.)
judgment procedures.

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

Exhibit 2

157

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

158

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
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

160

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
13 Santa Monica, CA 90405
14 Tel: (310) 314-8040
15 Fax: (310) 314-8050

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

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

Attorneys for Respondent
CITY OF BANNING

22
23
24
25
26
27
28
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

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

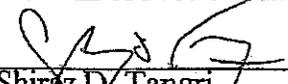
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

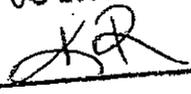

Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

162

Exhibit 1

163

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
APR 08 2008


**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").

164

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.

165

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~~ *as established by the appropriate*
~~Code of Civil Procedure section 1033.5~~ *post-judgment procedures.*

T.C.

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.~~

F.C.

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 T. Cahraman
28 Honorable Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

166

Exhibit 2

167

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



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.

168

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

169

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

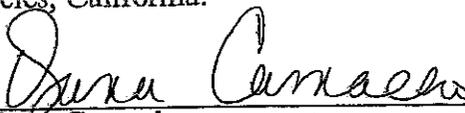
BY FEDERAL EXPRESS **UPS NEXT DAY AIR** **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by **FEDERAL EXPRESS** **UPS** **Overnight Delivery** [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of **FEDERAL 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

170

1 Banning Bench Community of Interest Association, Inc. v. City of Banning, et al.
2 Case No. RIC 461069

3
4 SERVICE LIST

5
6
7 John G. McClendon
8 Alisha M. Santana
9 **LEIBOLD, McCLENDON & MANN LLP**
10 23422 Mill Creek Drive, Suite 105
11 Laguna Hills, CA 92653
12 Tel: (949) 457-6300
13 Fax: (949) 457-6305

Attorneys for Petitioner and Plaintiff
**BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC.**

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

Attorneys for Respondents and Defendants
**CITY OF BANNING and
CITY COUNCIL OF THE CITY
OF BANNING**

20 Stephen R. Onstot
21 Amy E. Morgan
22 **BURKE, WILLIAMS & SORENSEN, LLP**
23 2800 Market Street, Suite 300
24 Riverside, CA 92501
25 Tel: (951) 788-0100
26 Fax: (951) 788-5785
27
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

11
12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF RIVERSIDE**

15 CENTER FOR BIOLOGICAL DIVERSITY,

16 Petitioner,

17 v.

18 CITY OF BANNING, CITY COUNCIL OF
19 THE CITY OF BANNING,
20 and Does 1-20,

21 Respondents.

22 SCC/BLACK BENCH, LLC,
23 and DOES 21 through 50, Inclusive,

24 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

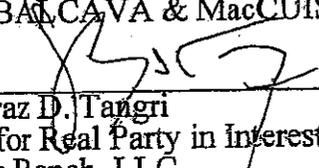
25 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

28 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

172

Exhibit 1

173

1 Matthew D. Vespa (SBN 222265)
2 CENTER FOR BIOLOGICAL DIVERSITY
3 1095 Market Street, Suite 511
4 San Francisco, CA 94103
5 Tel: (415) 436-9682 x 309
6 Fax: (415) 436-9683
7 Email: mvespa@biologicaldiversity.org

8 John Buse (SBN 163156)
9 CENTER FOR BIOLOGICAL DIVERSITY
10 5656 S. Dorchester Ave., No. 3
11 Chicago, IL 60637
12 Telephone: (312) 237-1443
13 Email: jbuse@biologicaldiversity.org

14 Attorneys for Petitioner
15 CENTER FOR BIOLOGICAL DIVERSITY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
APR 08 2008
KR

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.)

460950 MF
) 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

174

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

175

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*
appropriate post-judgment
procedures.

10 7. The Center, as prevailing party, is entitled to apply for attorney's fees and costs
11 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 the City to
16 exercise its lawful discretion, in any particular way. Nothing in the judgment or peremptory
17 writ should be construed as requiring the City or Real Party to go forward with the Black
18 Bench Project, or to reapprove the Black Bench Project, or to take any particular action other
19 than as specifically set forth herein.

20 The City shall file a return to the peremptory writ no later than 60 days after the date of
21 the issuance of the peremptory writ which shall state that it has complied with writ or that an
22 appeal from the judgment has or will be filed.

23
24
25 Dated: April 7, 2008

T. Cahraman

Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

176

Exhibit 2

177

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



1 Matthew D. Vespa (SBN 222265)
2 CENTER FOR BIOLOGICAL DIVERSITY
3 1095 Market Street, Suite 511
4 San Francisco, CA 94103
5 Tel: (415) 436-9682 x 309
6 Fax: (415) 436-9683
7 Email: mvespa@biologicaldiversity.org

8 John Buse (SBN 163156)
9 CENTER FOR BIOLOGICAL DIVERSITY
10 5656 S. Dorchester Ave., No. 3
11 Chicago, IL 60637
12 Telephone: (312) 237-1443
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.

) Case No. RIC 460967
) ^{460950 MF}
) 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

178

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.

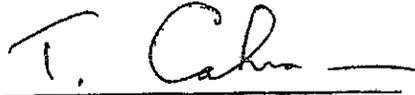
15
16 Pursuant to Public Resources Code section 21168.9(c), this Court does not direct
17 Respondent to exercise its lawful discretion in any particular way.

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

27

179

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

180

Center for Biological Diversity v. City of Banning, et al.
Case No. RIC 460967

SERVICE LIST

1
2
3
4
5
6
7 Matthew Vespa Attorneys for Petitioner
8 **CENTER FOR BIOLOGICAL DIVERSITY** **CENTER FOR BIOLOGICAL**
9 1095 Market Street, Suite 511 **DIVERSITY**
10 San Francisco, CA 94103
11 Tel: (415) 436-9682
12 Fax: (415) 436-9683

11 John Buse
12 **CENTER FOR BIOLOGICAL DIVERSITY**
13 5656 S. Dorchester Ave., No. 3
14 Chicago, IL 60637
15 Tel: (312) 237-1443

15 Julie H. Biggs, City Attorney Attorneys for Respondents
16 **CITY OF BANNING** **CITY OF BANNING** and
17 99 E. Ramsey St. **CITY COUNCIL OF THE CITY**
18 Banning, CA 92220 **OF BANNING**
19 Tel: (951) 922-3106
20 Fax: (951) 922-3161

20 Amy E. Morgan
21 **BURKE, WILLIAMS & SORENSEN, LLP**
22 2800 Market Street, Suite 300
23 Riverside, CA 92501
24 Tel: (951) 788-0100
25 Fax: (951) 788-5785
26
27
28

181

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

6 Attorneys for SCC/BLACK BENCH, LLC

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF RIVERSIDE

10 CHERRY VALLEY PASS ACRES AND
11 NEIGHBORS, a California Non-Profit
Corporation, and CHERRY VALLEY
12 ENVIRONMENTAL PLANNING GROUP, a
California Non-Profit Corporation,

13 Petitioners,

14 v.

15 CITY OF BANNING, a Municipal Corporation,

16 Respondent.

17 SCC/BLACK BENCH, LLC,
18 and DOES 1 through 100, Inclusive,

19 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

20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

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

25 DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

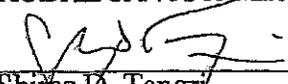
26
27 
Shiraz D. Tangri
Attorneys for Real Party in Interest
28 SCC/Black Bench, LLC

Exhibit 1

183

1 ROGERS JOSEPH O'DONNELL
ROBERT C. GOODMAN (State Bar No. 111554)
2 ANN M. BLESSING (State Bar No. 172573)
311 California Street
3 San Francisco, California 94104
Telephone: 415.956.2828
4 Facsimile: 415.956.6457

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
APR 08 2008
HR

5 Attorneys for Petitioners Cherry Valley
6 Pass Acres and Neighbors and Cherry Valley
Environmental Planning Group

7
8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 COUNTY OF RIVERSIDE - RIVERSIDE BRANCH

11 CHERRY VALLEY PASS ACRES AND)
12 NEIGHBORS, a California non-profit)
corporation; and CHERRY VALLEY)
13 ENVIRONMENTAL PLANNING GROUP, a)
California non-profit corporation,

14 Petitioners,

15 v.

16 CITY OF BANNING, a municipal corporation;)

17 Respondent.

18
19
20 SCC/BLACK BENCH, LLC; and ROES 1 to)
21 100; inclusive,)
Real Parties in Interest)
22
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

184

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

185

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*
10 ~~pursuant to Code of Civil Procedure Section 1033.5~~ *procedures.*

11 7. Petitioner CVPAN, as prevailing party, is entitled to apply for attorney's fees
12 and costs 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.~~

True

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

21 9. Respondent shall file a preliminary return to the peremptory writ no later than
22 60 days after the date of the issuance of the peremptory writ which shall state that an appeal from
23 the judgment has or will be filed or that it has complied with the order to set aside its approval of
24 the project.

25 Dated: *April 7, 2008*

T. Cahran

Hon. Thomas H. Cahranan
JUDGE OF THE SUPERIOR COURT

186

Exhibit 2

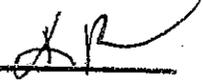
187

1 ROGERS JOSEPH O'DONNELL
ROBERT C. GOODMAN (State Bar No. 111554)
2 ANN M. BLESSING (State Bar No. 172573)
311 California Street
3 San Francisco, California 94104
Telephone: 415.956.2828
4 Facsimile: 415.956.6457

5 Attorneys for Petitioners Cherry Valley
Pass Acres and Neighbors and Cherry Valley
6 Environmental Planning Group

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 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,
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 -

188

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

20 
21 Hon. Thomas H. Cahraman
22 JUDGE OF THE SUPERIOR COURT

189

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

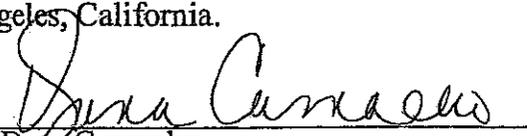
I, Dana Camacho, declare:

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 Cherry Valley Pass Acres And Neighbors, et al., v. City of Banning
2 Case No. RIC 461035

3
4 SERVICE LIST

5
6
7 Robert C. Goodman
8 Ann M. Blessing
9 **LAW OFFICES OF ROBERT C. GOODMAN**
10 311 California Street
11 San Francisco, CA 94104
12 Tel: (415) 956-2828
13 Fax: (415) 956-6457

Attorney for Petitioners
**CHERRY VALLEY PASS ACRES
AND NEIGHBORS, and CHERRY
VALLEY ENVIRONMENTAL
PLANNING GROUP,**

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

Attorneys for Respondent
CITY OF BANNING

20 Stephen R. Onstot
21 Amy E. Morgan
22 **BURKE, WILLIAMS & SORENSEN, LLP**
23 2800 Market Street, Suite 300
24 Riverside, CA 92501
25 Tel: (951) 788-0100
26 Fax: (951) 788-5785
27
28

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

193

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.

194

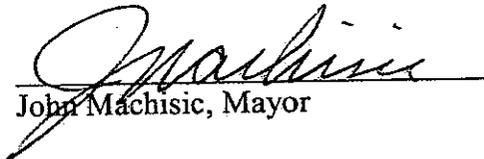
Further, this General Plan Amendment will not cause any internal inconsistencies with any other elements of the General Plan in that the portion of the General Plan Circulation Element for this street system was determined to be "flexible" in order to "allow changes to the street system in the future", as development occurred.

SECTION 3. CITY COUNCIL ACTIONS.

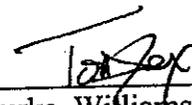
The City Council hereby takes the following action:

1. General Plan Amendment. The City Council approves General Plan Amendment #06-2502.

PASSED, APPROVED AND ADOPTED this 11th day of October, 2006.

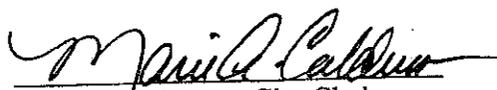

John Machisic, Mayor

APPROVED AS TO FORM AND
LEGAL CONTENT:



Burke, Williams & Sorensen LLP
City Attorney

ATTEST:



Marie A. Calderon, City Clerk

CERTIFICATION:

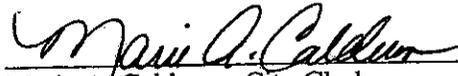
I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2006-129, was duly adopted by the City Council of the City of Banning, California, at a special meeting thereof held on the 11th day of October 2006, by the following vote, to wit:

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, the City further desires to vacate and set aside the adoption of Resolution No. 2006-128 to limit the costs and expenses associated with these matters, including attorney fees, because SCC/Black Bench LLC is in actual and anticipatory breach of its contractual obligation to indemnify the City in these matters and reimburse the City for its actual costs and expenses incurred in the course of its defense; 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 hearings held on June 10, 2008 and June 24, 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.

3. Condition of Approval A.1 to the Tentative Tract Map for Black Bench project requires the Sun Cal Companies, including SCC/Black Bench LLC to

"indemnify, protect, defend, and hold harmless, the City . . . from any and all claims, demands, lawsuits, writs of mandamus . . . brought against the City . . . that challenge, attack, or seek to modify, set aside, void, or annul, the action of, or any permit or approval issued by, 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 applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense."

4. SCC/Black Bench LLC is in actual and anticipatory breach of this obligation to indemnify, protect, defend, and hold harmless the City in these litigation matters, and its obligation to reimburse the City for the costs and expenses it has incurred in the course of its defense in these matters. . The City's attorney fees and costs in defending these matters through April 2008 is \$130,284.10, and has incurred approximately \$15,000 more in attorneys fees and costs in these matters since then, and the claimed legal fees for opposing counsel total \$722,000. Vacating the adoption of Resolution 2006-128 is necessary to limit the City's costs and expenses associated with these matters and to limit the potential attorney's fees incurred by the petitioners in these matters.

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 24th day of June, 2008.

Brenda Salas, Mayor

ATTEST:

Marie Calderon, City Clerk

APPROVED AS TO FORM:

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. 2008-71 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 24th 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"

Judgment and Peremptory Writ of Mandate

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

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

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

13 HIGHLAND SPRINGS CONFERENCE AND
14 TRAINING CENTER,

15 Petitioner,

16 v.

17 CITY OF BANNING,

18 Respondent.

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

21 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

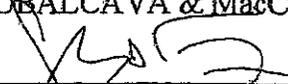
22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

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

27 DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

28 
Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

203

Exhibit 1

204

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



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.

206

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

Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

208

Exhibit 2

209

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

HR

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

210

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 _____
24 Hon. Thomas H. Cahraman
25 JUDGE OF THE SUPERIOR COURT
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

212

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
13 Santa Monica, CA 90405
14 Tel: (310) 314-8040
15 Fax: (310) 314-8050

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

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

Attorneys for Respondent
CITY OF BANNING

22 Stephen R. Onstot
23 Amy E. Morgan
24 **BURKE, WILLIAMS & SORENSEN, LLP**
25 2800 Market Street, Suite 300
26 Riverside, CA 92501
27 Tel: (951) 788-0100
28 Fax: (951) 788-5785

213

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

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

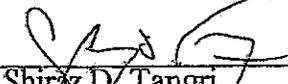
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

214

Exhibit 1

215

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").

216

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.

217

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.

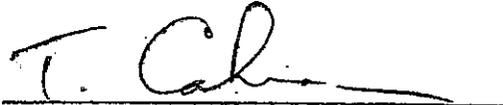
11 6. Petitioner BBCIA, as prevailing party, is entitled to costs ~~in the amount of~~
12 ~~as established by the appropriate~~
~~pursuant to Code of Civil Procedure section 1093.5~~
~~post-judgment procedures.~~

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 
Honorable Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

218

Exhibit 2

219

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



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.

220

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

222

1 Banning Bench Community of Interest Association, Inc. v. City of Banning, et al.
2 Case No. RIC 461069

3
4 SERVICE LIST

5
6
7 John G. McClendon
8 Alisha M. Santana
9 **LEIBOLD, McCLENDON & MANN LLP**
10 23422 Mill Creek Drive, Suite 105
11 Laguna Hills, CA 92653
12 Tel: (949) 457-6300
13 Fax: (949) 457-6305

Attorneys for Petitioner and Plaintiff
**BANNING BENCH COMMUNITY OF
INTEREST ASSOCIATION, INC.**

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

Attorneys for Respondents and Defendants
**CITY OF BANNING and
CITY COUNCIL OF THE CITY
OF BANNING**

20 Stephen R. Onstot
21 Amy E. Morgan
22 **BURKE, WILLIAMS & SORENSEN, LLP**
23 2800 Market Street, Suite 300
24 Riverside, CA 92501
25 Tel: (951) 788-0100
26 Fax: (951) 788-5785
27
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

Attorneys for SCC/BLACK BENCH, LLC

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

12 CENTER FOR BIOLOGICAL DIVERSITY,

13 Petitioner,

14 v.

15 CITY OF BANNING, CITY COUNCIL OF
16 THE CITY OF BANNING,
17 and Does 1-20,

18 Respondents.

19 SCC/BLACK BENCH, LLC,
20 and DOES 21 through 50, Inclusive,

21 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

22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

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

27 DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

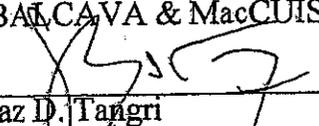
28 
Shiraz D. Tangri
Attorneys for Real Party in Interest
SCC/Black Bench, LLC

Exhibit 1

225

1 Matthew D. Vespa (SBN 222265)
2 CENTER FOR BIOLOGICAL DIVERSITY
3 1095 Market Street, Suite 511
4 San Francisco, CA 94103
5 Tel: (415) 436-9682 x 309
6 Fax: (415) 436-9683
7 Email: mvespa@biologicaldiversity.org

8 John Buse (SBN 163156)
9 CENTER FOR BIOLOGICAL DIVERSITY
10 5656 S. Dorchester Ave., No. 3
11 Chicago, IL 60637
12 Telephone: (312) 237-1443
13 Email: jbuse@biologicaldiversity.org

14 Attorneys for Petitioner
15 CENTER FOR BIOLOGICAL DIVERSITY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 IN AND FOR THE COUNTY OF RIVERSIDE

460950 MF

18 CENTER FOR BIOLOGICAL	)	Case No. RIC 460967
19 DIVERSITY,)	
20 Petitioner,	)	Case Filed Under the California Environmental
21 vs.	)	Quality Act (CEQA)
22)	
23 CITY OF BANNING,	)	PROPOSED JUDGMENT
24 CITY COUNCIL OF THE CITY OF)	
25 BANNING,	)	Original Date of Filing: November 21, 2006
26 and DOES 1-20,	)	Judge: Hon. Thomas H. Cahraman
27 Respondents.	)	Department: 42
28)	
29 SCC/BLACK BENCH, LLC)	
30 and DOES 21-50,)	
31)	
32 Real Parties in Interest.)	

[Proposed] Judgment

Case No. RIC 460967

226

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

227

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 \$~~
~~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 the City to
16 exercise its lawful discretion, in any particular way. Nothing in the judgment or peremptory
17 writ should be construed as requiring the City or Real Party to go forward with the Black
18 Bench Project, or to reapprove the Black Bench Project, or to take any particular action other
19 than as specifically set forth herein.

20 The City shall file a return to the peremptory writ no later than 60 days after the date of
21 the issuance of the peremptory writ which shall state that it has complied with writ or that an
22 appeal from the judgment has or will be filed.
23

24
25 Dated: April 7, 2008

T. Cahran

Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

229

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



1 Matthew D. Vespa (SBN 222265)
2 CENTER FOR BIOLOGICAL DIVERSITY
3 1095 Market Street, Suite 511
4 San Francisco, CA 94103
5 Tel: (415) 436-9682 x 309
6 Fax: (415) 436-9683
7 Email: mvespa@biologicaldiversity.org

8 John Buse (SBN 163156)
9 CENTER FOR BIOLOGICAL DIVERSITY
10 5656 S. Dorchester Ave., No. 3
11 Chicago, IL 60637
12 Telephone: (312) 237-1443
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.

) Case No. RIC 460967
) ^{460950 MF}
) 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

230

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. Cahraman
27 JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

232

Center for Biological Diversity v. City of Banning, et al.
Case No. RIC 460967

SERVICE LIST

1
2
3
4
5
6
7 Matthew Vespa Attorneys for Petitioner
8 **CENTER FOR BIOLOGICAL DIVERSITY** **CENTER FOR BIOLOGICAL**
9 1095 Market Street, Suite 511 **DIVERSITY**
10 San Francisco, CA 94103
11 Tel: (415) 436-9682
12 Fax: (415) 436-9683

11 John Buse
12 **CENTER FOR BIOLOGICAL DIVERSITY**
13 5656 S. Dorchester Ave., No. 3
14 Chicago, IL 60637
15 Tel: (312) 237-1443

15 Julie H. Biggs, City Attorney Attorneys for Respondents
16 **CITY OF BANNING** **CITY OF BANNING** and
17 99 E. Ramsey St. **CITY COUNCIL OF THE CITY**
18 Banning, CA 92220 **OF BANNING**
19 Tel: (951) 922-3106
20 Fax: (951) 922-3161

20 Amy E. Morgan
21 **BURKE, WILLIAMS & SORENSEN, LLP**
22 2800 Market Street, Suite 300
23 Riverside, CA 92501
24 Tel: (951) 788-0100
25 Fax: (951) 788-5785
26
27
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 & MacCUIISH LLP
6 333 South Hope Street, Sixteenth Floor
7 Los Angeles, California 90071
8 Telephone: (213) 576-1000
9 Facsimile: (213) 576-1100

Attorneys for SCC/BLACK BENCH, LLC

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

10 CHERRY VALLEY PASS ACRES AND
11 NEIGHBORS, a California Non-Profit
12 Corporation, and CHERRY VALLEY
13 ENVIRONMENTAL PLANNING GROUP, a
14 California Non-Profit Corporation,

Petitioners,

v.

15 CITY OF BANNING, a Municipal Corporation,

Respondent.

17 SCC/BLACK BENCH, LLC,
18 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

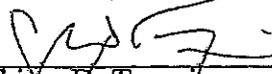
20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

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

25 DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUIISH LLP

27 
Shiraz D. Tangri
Attorneys for Real Party in Interest
28 SCC/Black Bench, LLC

234

Exhibit 1

235

1 ROGERS JOSEPH O'DONNELL
ROBERT C. GOODMAN (State Bar No. 111554)
2 ANN M. BLESSING (State Bar No. 172573)
311 California Street
3 San Francisco, California 94104
Telephone: 415.956.2828
4 Facsimile: 415.956.6457

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
APR 08 2008
HR

5 Attorneys for Petitioners Cherry Valley
6 Pass Acres and Neighbors and Cherry Valley
Environmental Planning Group

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

11 CHERRY VALLEY PASS ACRES AND)
12 NEIGHBORS, a California non-profit)
corporation; and CHERRY VALLEY)
13 ENVIRONMENTAL PLANNING GROUP, a)
California non-profit corporation,)
14)
15 Petitioners,)
16)
17 v.)
18 CITY OF BANNING, a municipal corporation;)
Respondent.)

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

20 SCC/BLACK BENCH, LLC; and ROES 1 to
21 100; inclusive,
Real Parties in Interest

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

236

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 ARMY 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

237

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.~~

Fee

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

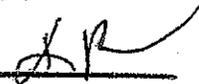
Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

239

1 ROGERS JOSEPH O'DONNELL
ROBERT C. GOODMAN (State Bar No. 111554)
2 ANN M. BLESSING (State Bar No. 172573)
311 California Street
3 San Francisco, California 94104
Telephone: 415.956.2828
4 Facsimile: 415.956.6457

5 Attorneys for Petitioners Cherry Valley
Pass Acres and Neighbors and Cherry Valley
6 Environmental Planning Group

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
APR 08 2008


7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 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

~~FILED~~ 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,
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:

240

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.

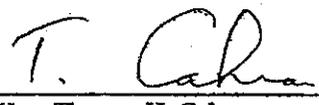
11 Under Public Resources Code section 21168.9(c), this Court does not direct
12 Respondent to exercise its lawful discretion in any particular way.

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

20 
21 _____
22 Hon. Thomas H. Cahraman
23 JUDGE OF THE SUPERIOR COURT

241

1 **PROOF OF SERVICE**

2 I, Dana Camacho, declare:

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

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

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

21 **BY FEDERAL EXPRESS** **UPS NEXT DAY AIR** **OVERNIGHT
22 DELIVERY:** I deposited such envelope in a facility regularly maintained by
23 **FEDERAL EXPRESS** **UPS** **Overnight Delivery** [specify name of service:]
24 with delivery fees fully provided for or delivered the envelope to a courier or driver of
25 **FEDERAL EXPRESS** **UPS** **OVERNIGHT DELIVERY** [specify name of
26 service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava
27 & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with
28 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 Cherry Valley Pass Acres And Neighbors, et al., v. City of Banning
2 Case No. RIC 461035

3
4 SERVICE LIST

5
6
7 Robert C. Goodman
8 Ann M. Blessing
9 LAW OFFICES OF ROBERT C. GOODMAN
10 311 California Street
11 San Francisco, CA 94104
12 Tel: (415) 956-2828
13 Fax: (415) 956-6457

Attorney for Petitioners
CHERRY VALLEY PASS ACRES
AND NEIGHBORS, and CHERRY
VALLEY ENVIRONMENTAL
PLANNING GROUP,

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

Attorneys for Respondent
CITY OF BANNING

20 Stephen R. Onstot
21 Amy E. Morgan
22 BURKE, WILLIAMS & SORENSEN, LLP
23 2800 Market Street, Suite 300
24 Riverside, CA 92501
25 Tel: (951) 788-0100
26 Fax: (951) 788-5785
27
28

EXHIBIT "B"

Resolution No. 2006-130

244

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.

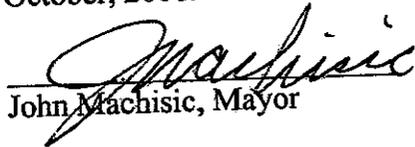
7. The design of the subdivision and improvements proposed under Tentative Tract Map 34001, will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision in that conditions have been imposed that will require all the required 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.

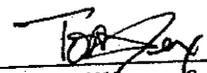
The City Council hereby takes the following action:

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.

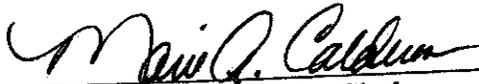

John Machisic, Mayor

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



Burke, Williams & 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



Planning Department
(951)922-3125

DEPARTMENT OF
PLANNING

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

Completion
Date

____/____/____

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.

- 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 |
| <i>(Note: A, B, D, & C shall be processed concurrently.)</i> | |
| 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.

____/____/____
 ____/____/____
 ____/____/____
 ____/____/____
 ____/____/____
 ____/____/____
 ____/____/____

261

- 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.

____/____/____

264

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.

268

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, the City further desires to vacate and set aside the adoption of Resolution No. 2006-128 to limit the costs and expenses associated with these matters, including attorney fees, because SCC/Black Bench LLC is in actual and anticipatory breach of its contractual obligation to indemnify the City in these matters and reimburse the City for its actual costs and expenses incurred in the course of its defense; 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 hearings held on June 10, 2008 and June 24, 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.

3. Condition of Approval A.1 to the Tentative Tract Map for Black Bench project requires the Sun Cal Companies, including SCC/Black Bench LLC to

"indemnify, protect, defend, and hold harmless, the City . . . from any and all claims, demands, lawsuits, writs of mandamus . . . brought against the City . . . that challenge, attack, or seek to modify, set aside, void, or annul, the action of, or any permit or approval issued by, 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 applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense."

4. SCC/Black Bench LLC is in actual and anticipatory breach of this obligation to indemnify, protect, defend, and hold harmless the City in these litigation matters, and its obligation to reimburse the City for the costs and expenses it has incurred in the course of its defense in these matters. . The City's attorney fees and costs in defending these matters through April 2008 is \$130,284.10, and has incurred approximately \$15,000 more in attorneys fees and costs in these matters since then, and the claimed legal fees for opposing counsel total \$722,000. Vacating the adoption of Resolution 2006-128 is necessary to limit the City's costs and expenses associated with these matters and to limit the potential attorney's fees incurred by the petitioners in these matters.

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 8th day of July, 2008.

Brenda Salas, Mayor

ATTEST:

Marie Calderon, City Clerk

APPROVED AS TO FORM:

Burke, Williams & Sorensen, LLP
City Attorney

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 8th day of July, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT "A"

Judgment and Peremptory Writ of Mandate

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

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

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF RIVERSIDE**

13 **HIGHLAND SPRINGS CONFERENCE AND**
14 **TRAINING CENTER,**

15 Petitioner,

16 v.

17 **CITY OF BANNING,**

18 Respondent.

19 **SCC/BLACK BENCH, LLC,**
20 **and DOES 1 through 10,**

21 Real Parties in Interest.

22 **Case No. RIC 460950 (MF)**

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

25 **NOTICE OF ENTRY OF ORDERS RE**
26 **JUDGMENT AND PEREMPTORY**
27 **WRIT OF MANDATE**

28 Action Filed: November 21, 2006

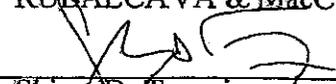
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

280

Exhibit 1

281

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



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

282

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

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. Cahran

Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

286

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



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

Highland Springs Conference and Training Center
Petitioner,

v.

CITY OF BANNING,
Respondent.

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

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

Real Parties in Interest.

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

287

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 approval 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 
22 _____
23 Hon. Thomas H. Cahraman
24 JUDGE OF THE SUPERIOR COURT
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

289

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
13 Santa Monica, CA 90405
14 Tel: (310) 314-8040
15 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

17 Stephen R. Onstot
18 Amy E. Morgan
19 **BURKE, WILLIAMS & SORENSEN, LLP**
20 2800 Market Street, Suite 300
21 Riverside, CA 92501
22 Tel: (951) 788-0100
23 Fax: (951) 788-5785
24
25
26
27
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 & MacCUIISH 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

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF RIVERSIDE**

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

16 Petitioner and Plaintiff,

17 v.

18 CITY OF BANNING and CITY COUNCIL
19 OF THE CITY OF BANNING,

20 Respondents and Defendants.

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

24 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

25 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

28 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

292

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").

293

1 On March 19, 2008, the parties executed a *Joint Stipulation Regarding The Third*
2 *Cause Of Action To Barring 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~~ *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 
Honorable Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

296

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Set aside and vacate its findings under CEQA in connection with its approval of the Black Bench Specific Plan.

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

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

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

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

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

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

LET THE WRIT OF MANDATE ISSUE.

DATED: April 7, 2008 T. Cahran
Honorable Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

298

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

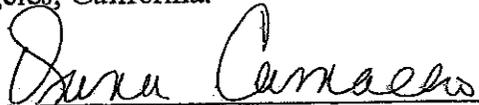
BY FEDERAL EXPRESS **UPS NEXT DAY AIR** **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by **FEDERAL EXPRESS** **UPS** **Overnight Delivery** [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of **FEDERAL 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

299

1 Banning Bench Community of Interest Association, Inc. v. City of Banning, et al.
2 Case No. RIC 461069

3
4 SERVICE LIST

5
6
7 John G. McClendon Attorneys for Petitioner and Plaintiff
8 Alisha M. Santana BANNING BENCH COMMUNITY OF
9 LEIBOLD, McCLENDON & MANN LLP INTEREST ASSOCIATION, INC.
23422 Mill Creek Drive, Suite 105
10 Laguna Hills, CA 92653
Tel: (949) 457-6300
11 Fax: (949) 457-6305

12 Julie H. Biggs, City Attorney Attorneys for Respondents and Defendants
13 CITY OF BANNING CITY OF BANNING and
14 99 E. Ramsey St. CITY COUNCIL OF THE CITY
Banning, CA 92220 OF BANNING
15 Tel: (951) 922-3106
Fax: (951) 922-3161

16
17 Stephen R. Onstot
Amy E. Morgan
18 BURKE, WILLIAMS & SORENSEN, LLP
2800 Market Street, Suite 300
19 Riverside, CA 92501
20 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

11
12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF RIVERSIDE**

15 CENTER FOR BIOLOGICAL DIVERSITY,

16 Petitioner,

17 v.

18 CITY OF BANNING, CITY COUNCIL OF
19 THE CITY OF BANNING,
20 and Does 1-20,

21 Respondents.

22 SCC/BLACK BENCH, LLC,
23 and DOES 21 through 50, Inclusive,

24 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

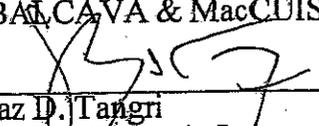
25 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

28 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

301

Exhibit 1

302

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

306

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008



1 Matthew D. Vespa (SBN 222265)
2 CENTER FOR BIOLOGICAL DIVERSITY
3 1095 Market Street, Suite 511
4 San Francisco, CA 94103
5 Tel: (415) 436-9682 x 309
6 Fax: (415) 436-9683
7 Email: mvespa@biologicaldiversity.org

8 John Buse (SBN 163156)
9 CENTER FOR BIOLOGICAL DIVERSITY
10 5656 S. Dorchester Ave., No. 3
11 Chicago, IL 60637
12 Telephone: (312) 237-1443
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

460950 MF

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.

) 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

307

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

309

Center for Biological Diversity v. City of Banning, et al.
Case No. RIC 460967

SERVICE LIST

Matthew Vespa
CENTER FOR BIOLOGICAL DIVERSITY
1095 Market Street, Suite 511
San Francisco, CA 94103
Tel: (415) 436-9682
Fax: (415) 436-9683

Attorneys for Petitioner
**CENTER FOR BIOLOGICAL
DIVERSITY**

John Buse
CENTER FOR BIOLOGICAL DIVERSITY
5656 S. Dorchester Ave., No. 3
Chicago, IL 60637
Tel: (312) 237-1443

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
**CITY OF BANNING and
CITY COUNCIL OF THE CITY
OF BANNING**

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

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

10 CHERRY VALLEY PASS ACRES AND
11 NEIGHBORS, a California Non-Profit
12 Corporation, and CHERRY VALLEY
13 ENVIRONMENTAL PLANNING GROUP, a
14 California Non-Profit Corporation,

15 Petitioners,

16 v.

17 CITY OF BANNING, a Municipal Corporation,

18 Respondent.

19 SCC/BLACK BENCH, LLC,
20 and DOES 1 through 100, Inclusive,

21 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

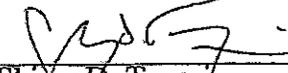
22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

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

27 DATED: April 24, 2008

WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP


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

311

Exhibit 1

3/2

1 ROGERS JOSEPH O'DONNELL
ROBERT C. GOODMAN (State Bar No. 111554)
2 ANN M. BLESSING (State Bar No. 172573)
311 California Street
3 San Francisco, California 94104
Telephone: 415.956.2828
4 Facsimile: 415.956.6457

5 Attorneys for Petitioners Cherry Valley
Pass Acres and Neighbors and Cherry Valley
6 Environmental Planning Group

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 08 2008

HR

7
8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 COUNTY OF RIVERSIDE - RIVERSIDE BRANCH

10
11 CHERRY VALLEY PASS ACRES AND)
12 NEIGHBORS, a California non-profit)
corporation; and CHERRY VALLEY)
13 ENVIRONMENTAL PLANNING GROUP, a)
California non-profit corporation,)

14 Petitioners,

15 v.

16 CITY OF BANNING, a municipal corporation;)

17 Respondent.)

18
19
20 SCC/BLACK BENCH, LLC; and ROES 1 to)
21 100; inclusive,)
Real Parties in Interest)
22
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

313

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

314

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 ~~\$22,222.50~~ *as established by appropriate post-judgment*
10 ~~pursuant to Code of Civil Procedure Section 1033.5~~ *procedures.*

11 7. Petitioner CVPAN, as prevailing party, is entitled to apply for attorney's fees
12 and costs 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.~~

File

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

21 9. Respondent shall file a preliminary return to the peremptory writ no later than
22 60 days after the date of the issuance of the peremptory writ which shall state that an appeal from
23 the judgment has or will be filed or that it has complied with the order to set aside its approval of
24 the project.

25 Dated: April 7, 2008

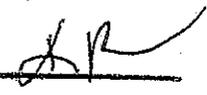
T. Cahraman

Hon. Thomas H. Cahraman
JUDGE OF THE SUPERIOR COURT

Exhibit 2

316

1 ROGERS JOSEPH O'DONNELL
ROBERT C. GOODMAN (State Bar No. 111554)
2 ANN M. BLESSING (State Bar No. 172573)
311 California Street
3 San Francisco, California 94104
Telephone: 415.956.2828
4 Facsimile: 415.956.6457
5 Attorneys for Petitioners Cherry Valley
Pass Acres and Neighbors and Cherry Valley
6 Environmental Planning Group

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
APR 08 2008


8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 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,
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:

317

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 
23 Hon. Thomas H. Cahraman
24 JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

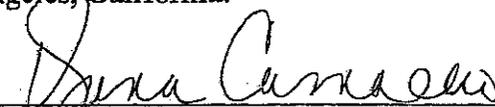
BY FEDERAL EXPRESS **UPS NEXT DAY AIR** **OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by **FEDERAL EXPRESS** **UPS** **Overnight Delivery** [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of **FEDERAL 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

1
2
3
4
5
6
7 Robert C. Goodman
8 Ann M. Blessing
9 **LAW OFFICES OF ROBERT C. GOODMAN**
10 311 California Street
11 San Francisco, CA 94104
12 Tel: (415) 956-2828
13 Fax: (415) 956-6457

Attorney for Petitioners
**CHERRY VALLEY PASS ACRES
AND NEIGHBORS, and CHERRY
VALLEY ENVIRONMENTAL
PLANNING GROUP,**

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

Attorneys for Respondent
CITY OF BANNING

17 Stephen R. Onstot
18 Amy E. Morgan
19 **BURKE, WILLIAMS & SORENSEN, LLP**
20 2800 Market Street, Suite 300
21 Riverside, CA 92501
22 Tel: (951) 788-0100
23 Fax: (951) 788-5785
24
25
26
27
28

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

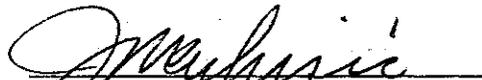
needs of the City's current and future residents". Also, the Map will provide approximately 81.2 acres of parks and 869 acres of open space with a variety of passive and active recreational opportunities, which is consistent with Goal 1 of providing "a high quality public park system with adequate land and facilities to provide recreational facilities and activities for the City's residents."

SECTION 3. CITY COUNCIL ACTIONS.

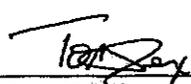
The City Council hereby takes the following actions:

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
Dep. 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

**THIS PAGE
LEFT BLANK
INTENTIONALLY**

**CITY COUNCIL AGENDA
STAFF REPORT**

DATE: June 24, 2008

TO: Honorable Mayor and City Council

FROM: Leonard Purvis, Chief of Police
Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2008-55 – “Awarding the Construction Contract, Approving the Professional Services Agreements for Construction Inspection Services and Miscellaneous Construction Services for Project No. 2006-07, ‘Construction of the New Banning Police Station’”

RECOMMENDATION: Adopt Resolution No. 2008-55:

- I. Awarding the Construction Contract for Project No. 2006-07, “Construction of the New Banning Police Station,” to Oakview Construction, Inc. of Calimesa, California, in an amount “Not to Exceed” \$11,089,836.00.
- II. Approving the Professional Services Agreement for Construction Inspection Services with A&E Inspection Services of Beaumont, California, in an amount “Not to Exceed” \$243,984.00.
- III. Awarding Miscellaneous Construction Services, including soils and materials testing, to Landmark Geo-Engineers and Geologists, and surveying to HP Engineering, Inc., for a total amount “Not to Exceed” \$168,000.00.
- IV. Approving an approximate 8% construction contingency in an amount of \$890,000.00 to be used in the event that additional work arises from unforeseen conditions.
- V. Authorizing the appropriation of \$12,391,820.00 from BUA funds to Account No. 470-2200-413-9010 and authorizing the Director of Finance to make the necessary budget adjustments related to these funds.

JUSTIFICATION: Oakview Construction, Inc. is the lowest responsive and responsible bidder to construct the New Banning Police Station. It is also essential to hire an experienced professional Construction Inspection firm to ensure that the construction of the new Banning Police Station is built per the project plans and specifications. Additionally, miscellaneous construction services such as soils and materials testing and construction surveying are necessary to ensure conformance with the project specifications.

BACKGROUND: The former Banning Police Station was built approximately 20 years ago and was recently demolished to make room for a new facility in order to meet the Police Department’s current and future demand. In November of 2006, the Police Department and its staff moved to a temporary facility located at 321 W. Ramsey St. to accommodate the

construction of the new building. The Banning Chamber of Commerce has also relocated to its newly renovated building at 60 E. Ramsey St.

On December 15, 2004, the City Council approved the Professional Services Agreement with Holt Architects, Inc., for the design of the new Banning Police Station. The design of said facility was completed in September, 2006. The project was advertised for bids on October 2, 2006 and October 9, 2006, and the bid opening was held on December 19, 2006, with four bid submissions. The Engineer's cost estimate for the project was \$12 million dollars; and the bids received were over the budget allocated for the project. Therefore, on February 13, 2007, City Council approved Resolution No. 2007-18, "Rejecting All Bids for Project No. 2006-07, 'Construction of the New Banning Police Station.'"

In order to move forward with the project, on February 27, 2007 the City Council adopted Resolution No. 2007-20, "Amending the Existing Design and Architectural Services Contract with Holt Architects, Inc. for the Redesign of the New Banning Police Station." The building was reduced in size and scope to meet the project budget. While the redesign of the New Police Station was being completed, a contract was awarded to Cal K-12 Construction Management, Inc. to review the Police Station plans and specifications to ensure constructability (to reduce potential Change Orders) and provide value engineering (to save costs on various materials shown on the draft plans). On May 13, 2008, the City Council awarded Cal K-12 Construction Management, Inc. the Construction Management Services contract for the New Banning Police Station.

The project was advertised for bids on April 14, 2008 and April 21, 2008, as shown attached as Exhibit "A," and eleven (11) bids were received and opened on May 29, 2008 with the following results:

<u>Rank</u>	<u>Name of Firm</u>	<u>Bid Amount</u>
1.	Doug Wall Construction, Inc. (Non-Responsive)	\$ 10,480,000.00
2.	Oakview Construction, Inc.	\$ 11,089,836.00
3.	Edge Development, Inc.	\$ 11,430,442.00
4.	HCH Construction Managers, Inc.	\$ 11,439,000.00
5.	Gamut Construction Co., Inc.	\$ 11,497,700.00
6.	Robert Clapper Construction Services, Inc.	\$ 11,828,100.00
7.	Kinney Bros. Construction	\$ 11,877,993.00
8.	Erickson Hall Construction Co.	\$ 11,906,000.00
9.	Woodcliff Corp.	\$ 11,926,000.00
10.	W.D. Gott Construction Co.	\$ 13,564,000.00
11.	ASR Constructors, Inc.	\$ 14,032,000.00

On June 2, 2008, Doug Wall Construction, Inc. formally requested that the City deem their Bid as non-responsive, after finding an error in their proposal that would have increased their overall bid amount. As a result, Oakview Construction, Inc. is deemed the lowest responsive and responsible bidder. Cal K-12 Construction Management, Inc. reviewed the submitted bids and, after reviewing Oakview Construction, Inc.'s bid package and references, recommended them for the award of the Construction Contract. Edge Development, Inc. submitted a letter in protest of the decision to award the construction contract to Oakview Construction, Inc. Said letter was evaluated by the City of Banning's attorney, who concluded that the items under protest are minor defects in Oakview Construction, Inc.'s bid package. Per the terms of the project specifications, these minor defects can be disregarded by the City Council.

The Engineer's estimate for the project is \$9,500,000.00. If approved, it is anticipated that the construction for Project No. 2006-07, "Construction of the New Banning Police Station" will be completed by early 2010.

The Police Station Redesign Advisory Committee met on June 9, 2008 to discuss the project and the bid results and subsequently recommended that the City Council award the contract for the project's construction.

Due to the size of the project, it is necessary to obtain inspection services to ensure that the contractor is complying with the project specifications and drawings. The Construction Inspection firm would perform daily inspections. On April 18, 2008 a Request for Proposals (RFP) was sent to five firms including A&E Inspection Services, Construction Testing & Engineering, Inc., Twining Laboratories, Vali Cooper & Associates, Inc., and Willdan, five firms that provide Construction Inspection Services, and two responded with proposals to the Engineering Division. The proposals were evaluated by an Evaluation/Selection Committee for technical competency, project understanding and approach, the proposed project team's technical experience, project management, and responsiveness to the RFP. A&E Inspection Services was ranked highest by the Evaluation/Selection Committee, is a reputable firm in the Construction Inspection industry, and has extensive experience with Construction Inspection Services of essential service buildings. A copy of the Scope of Work and Fee Schedule is attached herewith as Exhibit "B". Government Code, Section 4526, requires that the selection of a professional services firm shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required and that the services should be provided at a fair and reasonable price to the public agencies.

Further, additional services are required to ensure a successful completion of said project. LandMark Geo-Engineers and Geologists, a soils and materials testing consulting firm, will perform quality assurance and control of concrete, grout, mortar, masonry, rebar, and soils used during the construction of the facility. These services were solicited from several firms and LandMark Geo-Engineers and Geologists was deemed the most qualified. Lastly, HP Engineering, Inc., a civil and surveying engineering consultant, will provide surveying services, such as construction staking and providing pad certifications needed to construct the New Banning Police Station. The consultant performed surveying services during the design stage and prepared the final grading plan and Storm Water Pollution Prevention Plan (SWPPP), and thus is very familiar with the project. A copy of the Scope of Work and Fee Estimate for each is attached as exhibits "C" and "D", respectively.

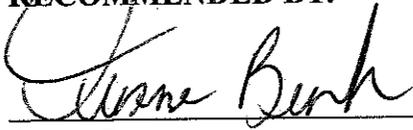
Funds requested for appropriation are attached as Exhibit "E". The total budget summary for the new Police Station is detailed as Exhibit "F".

FISCAL DATA: To date, the City has spent approximately \$1.7 million on the Police Station project. These costs were incurred from 2005 to present and include such things as architectural and design work, undergrounding of utilities, relocation expenses, demolition of the former Police Department building, and various other costs associated with the project. The expenses to date have been funded by Development Impact Fees (approximately \$553,000.00) as well as the interest earned on the \$14 million of bond proceeds received from the Banning Utility Authority. Interest earnings to date total approximately \$1,378,000.00. Approximately

\$1,147,000.00 of this interest has already been spent on the project. Approximately \$14,231,000.00 remains unencumbered.

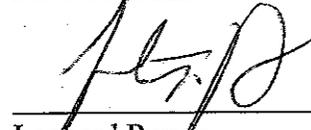
An appropriation of funds from BUA bond proceeds to Account No. 470-2200-413-9010 in the amount of \$12,391,820.00 is requested for FY 2008/09 to cover the construction contract and the Professional Services Agreements for Construction Inspection Services, Soils and Materials Testing, and Surveying for Project No. 2006-07, "Construction of the New Banning Police Station." An approximate 8% construction contingency, totaling \$890,000.00, will be added to the construction contract to pay for unforeseen conditions. The project cost summary showing the requested appropriations is shown herewith as Exhibit "E".

RECOMMENDED BY:



Duane Burk
Director of Public Works

RECOMMENDED BY:



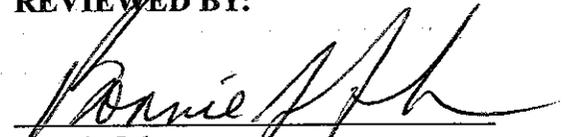
Leonard Purvis
Chief of Police

APPROVED BY:



Brian Nakamura
City Manager

REVIEWED BY:



Bonnie Johnson
Director of Finance

RESOLUTION NO. 2008-55

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AWARDING THE CONSTRUCTION CONTRACT, APPROVING THE PROFESSIONAL SERVICES AGREEMENTS FOR CONSTRUCTION INSPECTION SERVICES AND MISCELLANEOUS CONSTRUCTION SERVICES FOR PROJECT NO. 2006-07, "CONSTRUCTION OF THE NEW BANNING POLICE STATION"

WHEREAS, the City of Banning's Police Station was demolished and needs to be rebuilt in order to meet current and future demands; and

WHEREAS, the City Council approved the professional services agreement with Holt Architects, Inc., for the design and redesign of the new Banning Police Station on December 15, 2004 and February 27, 2007, respectively; and

WHEREAS, the City Council approved, at its May 13, 2008 regular meeting, Resolution No. 2008-45 "Approving the Professional Services Agreement for Construction Management Services for Project No. 2006-07, "Construction of the New Banning Police Station" with Cal K-12 Construction Management; and

WHEREAS, the project was advertised for bids on April 14, 2008 and April 21, 2008, bids were received and opened on May 29, 2008, with eleven (11) contractors bidding the project; and

WHEREAS, on June 2, 2008, Doug Wall Construction, Inc., the initial apparent low Bidder, formally requested that the City of Banning deem their Bid as non-responsive, due to an inaccurate Bid; and

WHEREAS, Oakview Construction, Inc. of Calimesa, California is the lowest responsive and responsible bidder; and

WHEREAS, Edge Development, Inc. submitted a letter in protest of the decision to award the construction contract to Oakview Construction, Inc. and said letter was evaluated by the City of Banning's attorney who concluded that the items under protest were minor defects in Oakview Construction, Inc.'s bid package which, per the project specifications, can be disregarded by the City Council; and

WHEREAS, A&E Inspection Services was ranked as the most qualified Construction Inspection Services firm based upon their extensive experience with public buildings and overall response to the Request for Proposals for the project; and

WHEREAS, LandMark Geo-Engineers and Geologists, a Soils and Materials Testing Consultant firm, is needed to perform quality assurance and control of concrete, grout, mortar, masonry and rebar, and soils, during the construction of the Police Station; and

WHEREAS, HP Engineering, a Civil and Surveying engineering consultant, is needed to perform construction staking and provide pad certifications during construction; and

WHEREAS, the Police Station Redesign Advisory Committee met on June 9, 2008 to discuss the project and the bid results and subsequently recommended that the City Council award the contract for the project's construction; and

WHEREAS, the funding for the project is available from BUA bond proceeds in the amount of \$12,391,820.00 to pay for: the Construction Contract, Construction Inspection Services, Soils and Materials Testing, and Surveying and Construction Staking, and an approximate 8% construction contingency for the new Banning Police Station.

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

Section I. Award the construction contract for Project No. 2006-07, "Construction of the New Banning Police Station," to Oakview Construction, Inc. of Calimesa, California, for an amount "Not to Exceed" \$11,089,836.00 and all other bids are hereby rejected.

Section II. Award various contracts necessary to complete Project No. 2006-07, "Construction of the New Banning Police Station," including the Construction Inspection Services Agreement with A&E Inspection Services of Beaumont, California; the Soils and Materials Testing Agreement with LandMark Geo-Engineers and Geologists of Palm Desert, California; and the Surveying and Construction Staking Agreement with HP Engineering of Redlands, California.

Section III. Authorize the Director of Finance to make the necessary budget adjustments and appropriations to Account No. 470-2200-413-9010 in the amount of \$12,391,820.00.

Section IV. The Mayor is authorized to execute the Construction Contract agreement with Oakview Construction, Inc. of Calimesa, California; the Construction Inspection Services Agreement with A&E Inspection Services of Beaumont, California; the Soils and Materials Testing Agreement with LandMark Geo-Engineers and Geologists of Palm Desert, California; and the Surveying and Construction Staking Agreement with HP Engineering of Redlands, California for Project No. 2006-07, "Construction of the New Banning Police Station." This authorization will be rescinded if the contract agreement is not executed by both parties, for each Agreement, within fifteen (15) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 24th 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. 2008-55, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 24th day of June, 2008.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

333

EXHIBIT "A"

**NOTICE INVITING TO BID
AND BID OPENING RESULTS**

**PRESS ENTERPRISE
APRIL 14, 2008 & APRIL 21, 2008**

**NOTICE INVITING TO BID
PROJECT NO. 2006-07, "CONSTRUCTION OF THE
NEW BANNING POLICE STATION"**

**PRESS ENTERPRISE
APRIL 14, 2008**

THE PRESS-ENTERPRISE

PUBLIC NOTICES

THE PRESS-ENTERPRISE **PE.com**

MUNDAY, APRIL 14, 2008 • D3

**NOTICE INVITING TO BID
PROJECT NO. 2006-07,
"CONSTRUCTION OF THE
NEW BANNING POLICE
STATION"**

OWNER: City of Banning

PROJECT DESCRIPTION:

The scope of work under this project includes construction of an approximately 30,000-square-foot, masonry, steel and wood-frame, two-story building, as shown on the approved plans.

PLANS & SPECS: Full-size drawings available April 18, 2008, through OCB Reprographics (all locations), non-refundable \$200.00. Checks should be made payable to the City of Banning and sent to OCB Reprographics, Attn: Bob Moore, 200 N. D St., San Bernardino, CA 92510. Contact OCB Reprographics at (909) 381-6535 for applicable shipping rates.

MANDATORY PRE-BID CONFERENCE: May 1, 2008 at 10:00 am at City Hall, 99 E. Ramsey St., Banning.

REQUIREMENTS: Prevailing Wage, Certified Payroll, Bid Bond, Payment and Performance Bond, Insurance, etc., per the approved specifications.

Pursuant to the provisions of Public Contract Code Section 3300, the City has determined that the Contractor shall possess a valid Class B (General Building Contractor) license at the time that the Contract is awarded. Failure to possess the specified license shall render the bid as not responsible and/or non-responsive and shall act as a bar to award the Contract to any bidder not possessing said license at the time of award.

Pursuant to the provisions of Public Contract Code Section 22300, Contractor may substitute certain securities for funds withheld by City to ensure his performance under the contract. At the request and expense of Contractor, securities equivalent to any amount withheld shall be deposited at the discretion of City, with either City or a state or federally chartered bank, as the escrow agent, who shall then pay any funds otherwise subject to retention to Contractor. Upon satisfactory completion of the contract, the securities shall be returned to Contractor.

SEALED BIDS DUE: May 16, 2008 and Opened Publicly @ 10 a.m., local time, above City Hall address. Attn: City Clerk.
FOR MORE INFORMATION:

NOTE: All questions shall be directed to Cal K-12 Construction Management at (909) 795-9169.
**CITY OF BANNING,
CALIFORNIA**
Dated: 4-11-08
Marie A. Calderon
City Clerk 4/14/08

335

PUBLIC NOTICES

THE PRESS-ENTERPRISE **PE.com**

NOTICE INVITING TO BID PROJECT NO. 2006-07, "CONSTRUCTION OF THE NEW BANNING POLICE STATION"

PRESS ENTERPRISE
APRIL 21, 2008

NOTICE INVITING TO BID
PROJECT NO. 2006-07,
CONSTRUCTION OF THE
NEW BANNING POLICE
STATION

OWNER: City of Banning
PROJECT DESCRIPTION:
 The scope of work under this project includes construction of an approximately 30,000-square-foot, masonry, steel-and-wood-frame, two-story building, as shown on the approved plans.

PLANS & SPECS: Full-size drawings available April 18, 2008 through OCB Reprographics (all locations), non-refundable \$200.00. Half-size drawings (not to scale) are also available upon purchase of full-size drawings, non-refundable \$50.00. Checks should be made payable to the City of Banning and sent to OCB Reprographics, Attn: Bob Moore, 200 N. D St., San Bernardino, CA 92510. Contact OCB Reprographics at (909) 381-6535 for applicable shipping rates.

MANDATORY PRE-BID CONFERENCE: May 1, 2008 at 10:00 am at City Hall, 99 E. Ramsey St., Banning.

REQUIREMENTS: Prevailing Wage, Certified Payroll, Bid Bond, Payment and Performance Bond, Insurance, etc., per the approved specifications.

Pursuant to the provisions of Public Contract Code Section 3300, the City has determined that the Contractor shall possess a valid Class B (General Building Contractor) license at the time that the Contract is awarded. Failure to possess the specified license shall render the bid as not responsible and/or non-responsive and shall act as a bar to award the Contract to any bidder not possessing said license at the time of award.

Pursuant to the provisions of Public Contract Code Section 22300, Contractor may substitute certain securities for funds withheld by City to ensure his performance under the contract. At the request and expense of Contractor, securities equivalent to any amount withheld shall be deposited at the discretion of City, with either City or a state or federally chartered bank, as the escrow agent, who shall then pay any funds otherwise subject to retention to Contractor. Upon satisfactory completion of the contract, the securities shall be returned to Contractor.

SEALED BIDS DUE: May 16, 2008 and Opened Publicly @ 10 a.m., local time, above City Hall address. Attn: City Clerk.

FOR MORE INFORMATION: All questions shall be directed to Cal K-12 Construction Management at (909) 795-9169.

CITY OF BANNING,
 CALIFORNIA
 Dated: 4-11-08
 Marie A. Calderon
 City Clerk 4/14.21

336

**SUMMARY OF BIDS RECEIVED
CITY OF BANNING**

DESCRIPTION: Construction of the New Banning Police Station

PROJECT NO.: 2006-07

BID OPENING DATE: ~~MAY 29, 2008~~ MAY 29, 2008

TIME: ~~10:00 a.m.~~ 2:00 p.m.

NAME OF BIDDER:	1	2	3	Addendum 4	Bid Bond	TOTAL BID AMOUNT:
1) CAMUT CONSTE. CO. INC.				X	X	\$ 11,497,700. ⁰⁰
2) Montclair, CA W. D. GOTT CONSTE. CO.				X	X	\$ 13,564,000. ⁰⁰
3) Upland, CA OAKVIEW CONSTRS. INC.				NO Addendums	X	\$ 11,089,896. ⁰⁰
4) Calimesa, CA ERICKSONHALL CONSTE. CO.				X	X	\$ 11,906,000. ⁰⁰
5) ESCONDIDO, CA EDGE DEVELOPER INC. Temecula, CA				X	X	\$ 11,430,442. ⁰⁰
6) DUNCAN - DOUG WALL CONSTE. INC.				X	X	\$ 10,480,000. ⁰⁰
7) BEAUMONT DUNES, CA HCH CONSTRS. MANAGERS, INC. MOREJETA, CA				X	X	\$ 11,439,000. ⁰⁰

Maria A. Calderon, City Clerk
Anne Marie Socorro, Associate Civil Engineer
Michelle Mubold, Purchasing Manager

**SUMMARY OF BIDS RECEIVED
CITY OF BANNING**

DESCRIPTION: Construction of the New Banning Police Station

PROJECT NO.: 2006-07

MAY 29, 2008

BID OPENING DATE: ~~MAY 29, 2008~~ TIME: 2:00 P.M.

NAME OF BIDDER:	1	2	3	Addendum	Bid Bond	TOTAL BID AMOUNT:
8) ROBERT CLAPPER CONSTR. SCS, INC Rialto, CA				NO Addendums	X	\$ 11,828,100. ⁰⁰
9) ASK CONSTRS. INC. Riverside, CA				X	X	\$ 14,032,000. ⁰⁰
10) KINNEY BROS. CONSTR. BEAUMONT, CA				X	X	\$ 11,877,993. ⁰⁰
11) WOODOLIFF CORP. LOS ANGELES, CA				X	X	\$ 11,926,000. ⁰⁰

M. G. Calabum, City Clerk
Orin Marie Jacone, Associate Civil Engineer
Muhammad, Purchasing Manager

23
38

EXHIBIT "B"

**PROFESSIONAL SERVICES PROPOSAL
AND FEE ESTIMATE FOR
CONSTRUCTION INSPECTION SERVICES**

A&E INSPECTION SERVICES

RUBEN G. MANZANARES
A & E INSPECTION SERVICES
P.O. BOX 745 Beaumont, Ca. 92223
Phone No. (951) 845-1783

May 22, 2008

City of Banning
99 E. Ramsey St.
Banning, CA 92220-0998
Attn: Duane Burk, Director of Public Works

Re: Inspection Services for
New Police Department, City of Banning

Dear Mr. Duane Burk,

Please accept this Proposal for your upcoming "New Police Department" project. A & E Inspection Services can provide a Project Inspector, Special Masonry Inspector and CWI Field Welding Inspector for this project at the following hourly rates with a four (4) hour minimum per site visit.

<u>Inspector</u>	<u>Reg. hours</u>	<u>Over time</u>	<u>Sundays</u>
Project Inspector	\$78.00 per hour	\$117.00	156.00
Special Masonry Inspector	\$70.00 per hour	\$105.00	140.00
CWI Field Welding Inspector	\$70.00 per hour	\$105.00	140.00

A & E Inspection Services has reviewed the progress prints prepared by the Holt Group in conjunction with the Draft Baseline Schedule provided by Cal K-12 (attached). Based on our review, we estimate the time involved for the **Project Inspector to be 391 days (\$243,984.00)**. A more accurate estimate can be worked up once the actual Construction Schedule has been established by the awarding general contractor. Please be advised, this estimate does not include over time or Sunday work. Shop or in-plant welding inspection is not a part of this proposal. Changes in schedule (due to weather, scope change, delays, etc.) may also cause change to the estimated amounts.

Should you have any questions or require any additional information please feel free to call me at (909) 906-1538 or at my office.

Sincerely,


Ruben G. Manzanares
A & E Inspection Services

EXHIBIT "C"

**PROFESSIONAL SERVICES PROPOSAL
AND FEE ESTIMATE FOR
SOILS AND MATERIAL TESTING**

LANDMARK GEO-ENGINEERS AND GEOLOGISTS



February 27, 2008

Mr. Duane Burke
City of Banning
99 E. Ramsey Street
Banning, CA 92220

780 N. 4th Street
El Centro, CA 92243
(760) 370-3000
(760) 337-8900 fax

77-948 Wildcat Drive
Palm Desert, CA 92211
(760) 360-0665
(760) 360-0521 fax

Proposal for Construction Testing & Inspection Services
Banning Police Station
Banning, California
LCI Proposal No.: LP08037T

CITY OF BANNING

FEB 27 2008

PUBLIC WORKS DEPT.

Dear Mr. Burke:

LandMark Consultants, Inc. is pleased to provide this proposal for Construction Testing and Inspection at the proposed Police Station project in the city of Banning, California.

The following scope of work is anticipated for this project:

Soil:

- Grading Observation & Testing
- Compaction backfill for Utility Trenches and Retaining Wall
- Compaction for subgrade and base course
- Laboratory testing for soil and base Materials

Materials:

- Concrete Mix Design Review
- ICC Concrete Inspection
- ICC Masonry Inspection
- ICC Field Welding Inspection
- Laboratory Testing for concrete, grout, mortar, masonry and reinforcing steel

342

For budgetary purposes, we have estimated a fee of \$40,000.00 for soil testing and \$ 82,000.00 for materials testing and inspection. Our services will be provided on *time and material* basis in accordance with the rates set forth in the attached 2008 prevailing wage fee schedule. The fees presented are based on prompt payment for services presented in our standard invoicing format.

We appreciate the opportunity to provide these services for the subject project. Please feel free to call me if you have any questions.

Sincerely Yours,

LandMark Consultants, Inc.

Greg M. Chandra, P.E.

Area Manager – Palm Desert



780 N. 4th Street
 El Centro, CA 92243
 (760) 370-3000
 (760) 337-8900 fax

77-948 Wildcat Drive
 Palm Desert, CA 92211
 (760) 360-0665
 (760) 360-0521 fax

ESTIMATE WORKSHEET - SOIL

CLIENT: City of Banning
PROJECT: Banning Police Station
LOCATION: Banning, California

FIELD	Hrs.		Rate	Total
Technician - Grading	120	@	\$ 90.00	\$ 10,800.00
Technician - Wall Backfill	120	@	\$ 90.00	\$ 10,800.00
Technician - Trench Backfill	120	@	\$ 90.00	\$ 10,800.00
Technician - Subgrade/Basegrade	40	@	\$ 90.00	\$ 3,600.00
Supervisor Insp/Operation Manager	12	@	\$ 100.00	\$ 1,200.00
Staff Engineer	4	@	\$ 120.00	\$ 480.00
Subtotal:				\$ 37,680.00

LABORATORY

Max Density-Opt Moisture (A)	2	@	\$ 170.00	\$ 340.00
Max Density-Opt Moisture (B/C/D)	2	@	\$ 200.00	\$ 400.00
Subtotal:				\$ 400.00

PROJECT MANAGEMENT - REPORTS

Principal Engineer	2	@	\$ 190.00	\$ 380.00
Staff Engineer	4	@	\$ 120.00	\$ 480.00
Technical Typist/Administrative	8	@	\$ 60.00	\$ 480.00
Subtotal:				\$ 1,340.00
TOTAL:				\$ 39,420.00

OTHER CHARGES

Fuel Surcharge/trip	50	@	\$ 25.00	\$ 1,250.00
Subtotal:				\$ 1,250.00

GRAND TOTAL: \$ 40,670.00



780 N. 4th Street
 El Centro, CA 92243
 (760) 379-3000
 (760) 337-8900 fax

77-948 Wildcat Drive
 Palm Desert, CA 92211
 (760) 360-0665
 (760) 360-0521 fax

ESTIMATE WORKSHEET - MATERIALS

CLIENT: City of Banning
PROJECT: Banning Police Station
LOCATION: Banning, California

FIELD	Hrs.		Rate	Total
ICC Inspector:				
Concrete	120	@	\$ 95.00	\$ 11,400.00
Masonry	240	@	\$ 95.00	\$ 22,800.00
Field Welding	200	@	\$ 95.00	\$ 19,000.00
Ultrasonic (Level II)	40	@	\$ 120.00	\$ 4,800.00
Sample Pick-up	80	@	\$ 90.00	\$ 7,200.00
Supervisor Insp/Operation Manager	20	@	\$ 100.00	\$ 2,000.00
Staff Engineer	8	@	\$ 120.00	\$ 960.00
		Subtotal:		\$ 68,160.00

LABORATORY

Concrete Compression Test	80	@	\$ 25.00	\$ 2,000.00
Grout/Mortar Compression Test	80	@	\$ 27.00	\$ 2,160.00
Rebar Tension/Bend Test	12	@	\$ 151.00	\$ 1,812.00
Masonry Prism Compression	12	@	\$ 145.00	\$ 1,740.00
Mix Design Review	2	@	\$ 245.00	\$ 490.00
		Subtotal:		\$ 8,202.00

PROJECT MANAGEMENT - REPORTS

Principal Engineer	4	@	\$ 190.00	\$ 760.00
Staff Engineer	8	@	\$ 120.00	\$ 960.00
Technical Typist/Administrative	24	@	\$ 60.00	\$ 1,440.00
		Subtotal:		\$ 3,160.00
		TOTAL:		\$ 79,522.00

OTHER CHARGES

Fuel Surcharge/trip	100	@	\$ 25.00	\$ 2,500.00
		Subtotal:		\$ 2,500.00

GRAND TOTAL: \$ 82,022.00



780 N. 4th Street
 El Centro, CA 92243
 (760) 370-3000
 (760) 337-8900 fax

77-948 Wildcat Drive
 Palm Desert, CA 92211
 (760) 360-0665
 (760) 360-0521 fax

**Construction Observation & Testing
 Material Testing and Inspection
 2008 Prevailing Wage Fee Schedule**

Field

Hourly Rate

Technician (Soil/Concrete/Asphalt Concrete)	\$ 90.00
Inspector (ICBO/AWS/CWI)	\$ 95.00
Ultrasonic (Level II)	\$ 120.00
Staff Engineer/Geologist	\$ 120.00
Supervisory Tech./Operation Manager	\$ 100.00
Principal Engineer/Geologist	\$ 190.00
Word Processor/Typist	\$ 60.00
Trip Charges	\$ 210.00/trip
Fuel Surcharge <i>due to increase in gas prices</i>	\$ 25.00/trip

Laboratory Test

Max. Density – Op. Moisture (A)	\$ 170.00
Max. Density – Op. Moisture (B, C, D)	\$ 200.00
AC Maximum Density (Marshall)	\$ 200.00
Check Point	\$ 80.00
Sieve Analysis	\$ 116.00
Sand Equivalent	\$ 78.00
R-Value	\$ 265.00
CBR (100% Compaction)	\$ 360.00
Soil Corrosion	\$ 275.00
Concrete Compression Test	\$ 25.00
Grout/Mortar Compression Test	\$ 27.00
Mix Design Review	\$ 245.00
Masonry Prism Compression Test	\$ 145.00
Reinforcing Steel Tension & Bend Test	\$ 151.00
Structural Steel Tension & Bend Test	\$ 151.00
Machine Test Specimen	\$ cost + 20%

Basic Charges

HOURS WORKED

HOURS BILLED

Sample pickup/canceled work
 0-4 Hours Worked
 4-8 Hours Worked
 8-12 Hours Worked, Saturdays
 >12 Hours, Saturdays/Holidays

2 Hours
 4 Hours
 8 Hours
 Time One-Half
 Double Time

346

EXHIBIT "D"

**PROFESSIONAL SERVICES PROPOSAL
AND FEE ESTIMATE FOR
SURVEYING & CONSTRUCTION STAKING**

HP ENGINEERING



HP ENGINEERING, Inc.

Civil Engineering • Land Surveying

May 7, 2008

Duane Burk

Director of Public Works, City of Banning

99 E. Ramsey Street

Banning, Ca. 92220

Re: Proposal for Construction Staking, City Police Station

Dear Mr. Burk:

HP Engineering, Inc. is pleased to present this proposal to provide construction surveying services for the above project as requested. We will provide one set of stakes for the following scope of services:

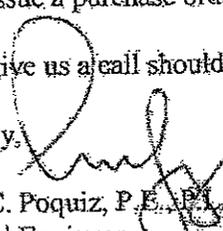
1. One set of stakes for demolition limits
2. One set of stakes for rough grading
3. One set of stakes for building pad
4. Building Pad Certifications
5. One set of stakes for building grid layout
6. One set of stakes for waterline and fireline
7. One set of stakes for Generator Plant
8. One set of stakes for sewerline
9. One set of stakes for sub-drains
10. One set of stakes for storm drain
11. One set of stakes for curb, curb and gutter
12. One set of stakes for concrete swales
13. One set of stakes for retaining walls
14. One set of stakes for perimeter block walls
15. One set of stakes for Alessandro Street rehabilitation
16. One set of stakes for Ramsey Street Rehabilitation
17. One set of stakes for Hay Street Rehabilitation
18. One set of stakes for east parking lot rehabilitation
19. Project meetings and coordination

We will provide the above services for a Time and Material basis since timing, re-staking, other survey request, project meetings and coordination are variables that cannot be determined at this time. For initial budget purposes, the estimated amount is \$45,000.00

Please issue a purchase order number if this proposal is acceptable to you.

Please give us a call should you have any questions.

Sincerely,


Henry C. Poquiz, P.E., P.L.S.
Principal Engineer

348

EXHIBIT "E"
REQUESTED APPROPRIATIONS

PROJECT NO. 2006-07

"CONSTRUCTION OF THE NEW BANNING POLICE STATION"

CONTRACTOR/CONSULTANT	COST
Oakview Construction, Inc. (Contractor)	\$11,089,836.00
A & E Inspection (Construction Inspections)	\$243,984.00
Landmark Geo-Engineers and Geologists (Soils and Materials Testing)	\$123,000.00
HP Engineering (Surveying)	\$45,000.00
8% Construction Contingency	\$890,000.00
TOTAL COST	\$12,391,820.00

TOTAL BUDGET:	\$14,231,000.00
TOTAL COST:	\$12,391,820.00
CAL K-12 CONST MNGMT (Previously Awarded)	\$ 578,750.00
REMAINDER:	\$ 1,260,430.00

EXHIBIT "F"

**NEW POLICE STATION
BUDGET SUMMARY**

Market Factor @ 5%	
Subtotal Construction	\$ 11,089,836
Bonds @ 1.5%	\$ -
2. Subtotal Construction	\$ 11,089,836
3. Change Order Contingency 8% x C.2 =	\$ 890,000
Subtotal Construction	\$ 11,979,836
D. CONSTRUCTION SUPPLEMENTAL	
1. Inspections 3128 hr x \$78	\$ 243,984
2. Agencies	
Banning Electric	\$ 200,000
Gas Company	\$ -
Verizon	\$ -
Water District	
3. Labor Compliance	
4. Temporary Fencing	\$ -
5. Temporary Toilets	\$ -
6. Temporary Power	\$ -
7. Workout Equipment	\$ 30,000
8. S.W.P.P.P. Permit	\$ -
9. Funding Consultants	\$ -
10. Furniture, Fixtures and Equipment	\$ 917,844
Subtotal:	\$ 1,391,828
Total Project Cost	\$ 14,118,414

PART 2: CURRENT PROJECT BUDGET STATUS

A. City Funding	\$ 14,231,000
B. Interest accrued	\$ -
C.	\$ -
D.	\$ -
E. Other	\$ -
Total Project Budget	\$ 14,231,000
Variance of Budget vs. Cost (Part 2 - Part 1)	\$ 112,586

Prepared by: Steve Morse
Date: May 15, 2008

352

**CITY COUNCIL AGENDA
Staff Report**

Date: June 24, 2008
TO: City Council
FROM: Ted Yarbrough, Fire Marshal/Emergency Services Coordinator
SUBJECT: Fire Hazard Severity Zone Determinations for the City of Banning

RECOMMENDATION: None.

JUSTIFICATION: None.

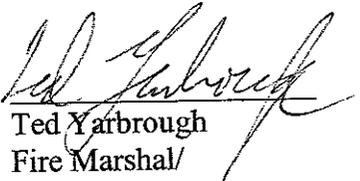
BACKGROUND: The State of California is responsible for determining Fire Hazard Severity Zones for all geographic areas within the state. Analysts use modern fire modeling technology, fire history, fuel models, aerial photos and weather records to determine how fires will burn in an area under different weather conditions. The Fire Hazard Severity Zones that were developed by the analysis indicate how the models predicted the rate of spread (speed of flaming front), the intensity (heat produced by the flaming front), ember production and the potential for those embers to ignite new fires. The zones that were created were titled Very High (most extreme fire behavior), High, Moderate Non-Wildland/Non-Urban and Urban Unzoned. To compliment the adoption of the 2007 International Building and Fire Codes, a chapter was created in the new building code that designated how buildings must be constructed in the moderate, high and very high severity zones. The requirements of the new chapter must be applied for those geographic areas of the state designated as "State Responsibility Areas" for fire protection purposes. In areas designated as a "Local Responsibility Area" (i.e. within the city limits of Banning), the new building code standards must be enforced only in "very high" severity zones.

In the summer of 2007, the state disseminated maps of the severity zones for review by local fire departments. Local departments had until mid-November of 2007 to respond to the zones created by the State. The City Fire Chief and Fire Marshal reviewed the State maps. It was felt that the analysts had made some incorrect (or uneducated) assumptions regarding local wind conditions, local development standards and local codes related to fire hazard abatement. Changes to the severity zones boundaries were made to the map and returned to the State, for review, along with an explanation of why the changes were made. The modified map was returned within the time limit specified. As of now, the State review has not been completed.

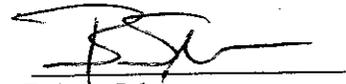
On July first, any local jurisdiction that does not have a State approved map adopted by ordinance, must use the map originally developed by the State. That means that the stricter building standards must be applied in the Very High severity zones originally created by the State. Once an approved map is adopted, the construction standards will only apply to the Very High zones as amended.

FISCAL DATA: There will be added construction costs to all development in the geographic areas of the City designated as a Very High severity zone.

PREPARED BY:


Ted Yarbrough
Fire Marshal/
Emergency Services Coor.

APPROVED BY:


Brian Nakamura
City Manager

**CITY COUNCIL AGENDA
DISCUSSION ITEM**

DATE: June 24, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Brian S. Nakamura, City Manager

SUBJECT: Godbe Tramutola Transient Occupancy Tax Public Outreach and Education Update

RECOMMENDATION:

That the City Council, subsequent to update by Godbe Tramutola, provide direction to City staff regarding the Transient Occupancy Tax public outreach and education component of a potential ballot initiative.

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 approving an additional appropriation in the amount of \$47,500 to fund the contract. In addition, Council directed 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. 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."

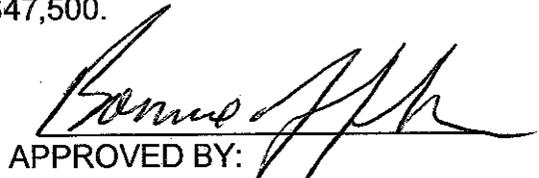
At the June 10, 2008 meeting the City Council agreed to focus on public outreach and education regarding a Transient Occupancy Tax initiative and asked that Godbe Tramutola be present at the next available City Council meeting to answer questions related to this effort.

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:
Brian Nakamura



APPROVED BY:
Bonnie J. Johnson

**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/UTILITY AUTHORITY/COMMUNITY REDEVELOPMENT AGENCY
AGENDA
JOINT MEETING
REPORTS OF OFFICERS**

Date: June 24, 2008

TO: City Council and Utility Authority Board

FROM: Bonnie J. Johnson, Finance Director

SUBJECT: Recommendation to Adopt Three Resolutions (1) Adopting the City's Annual Budgets for the Fiscal Period 2008-09, (2) Adopting the Fiscal Year 2008-09 Gann Limit Calculation and (3) Adopting the Utility Authority's Annual Budget for the Fiscal Period 2008-09

RECOMMENDATION:

1. "The City Council adopt Resolution No. 2008-82 approving the Annual Budget for the Fiscal Period July 1, 2008 to June 30, 2009"
2. "The City Council adopt Resolution No. 2008-83 approving the Fiscal Year 2008-09 Gann Limit Calculation."
3. "The Banning Utility Authority Board adopt Resolution No. 2008-03UA approving the Annual Budget for the Fiscal Period July 1, 2008 to June 30, 2009."

JUSTIFICATION: At the end of each fiscal year the Council and Board adopt a budget for the upcoming fiscal year, which serves as a guideline for staff to follow in providing the desired level of service to the citizens. The budget being proposed for adoption covers the fiscal year 2008-09.

BACKGROUND/ANALYSIS: At the June 11th Budget Workshop, the City Manager and Finance Director submitted the proposed budget to the City Council and Banning Utility Authority (BUA) Board. The Finance Director made a presentation to the Council which provided an overview of the budget process as well as the content of the proposed budget. During the workshop, City Council discussed the City's overall financial condition. At the conclusion of the meeting, Council accepted the proposed City and BUA budgets without amendment.

In addition, Budget Committee recommendations as well as existing budgetary and fiscal policies were presented. Adoption of Resolution 2008-82 includes approval of those policies and recommendations.

The bound Preliminary Budget Document as presented on June 11th at the Budget Workshop is the same document being submitted for approval. The document is on file with the City Clerk's Office. Even though budgetary line items are being approved at this time, staff will, on an ongoing basis, suggest amendments to the Budget as deemed appropriate.

GANN LIMIT CALCULATION

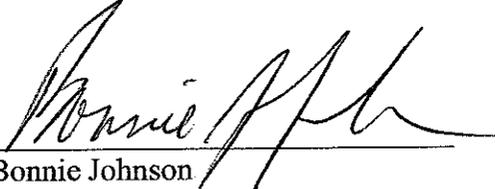
In accordance with Article XIII B of the California Constitution, the City is limited as to how much revenue from taxes it may receive. The appropriations limit is based on actual appropriations during the 1978-79 fiscal year, and is increased each year using the growth of population and inflation. Not all revenues are restricted by the appropriations limit, only those which are referred to as "proceeds of taxes".

The limit is calculated by taking the prior year's limit and applying growth factors as appropriate. When growth factors are applied to the FY 2008-09 appropriation limit, the limit for Fiscal Year 2008-09 is calculated to be \$30,311,309. The City's proceeds of taxes for 2008-09 are estimated to be \$8,868,420. The limit exceeds taxes subject to limitation by \$21,442,889.

FISCAL DATA: 2008-09 estimated revenues and proposed expenditures for all City funds are incorporated into the Preliminary Budget Document. Remaining budget balances allocated in previous fiscal years for capital improvement projects or other necessary continuing appropriations will be brought back to the Council for approval after the close of the current fiscal year. These carryover balances have been accounted for in the 2007-08 estimated actual figures presented in the Budget and therefore will not impact fund balance as presented.

Based on the preliminary budget for the 2008-09 fiscal year, the proceeds of taxes is \$8,868,420 which is less than the appropriation limit of \$30,311,309, therefore, there will be no fiscal impact with the adoption of the appropriation limit.

SUBMITTED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

RESOLUTION NO. 2008-82

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING ADOPTING THE ANNUAL BUDGET FOR THE FISCAL PERIOD JULY 1, 2008 THROUGH JUNE 30, 2009 AND MAKING APPROPRIATIONS TO MEET EXPENSES APPROVED THEREIN AND APPROVING BUDGETARY POLICIES AND RECOMMENDATIONS

WHEREAS, the City Manager prepared the annual budget for Fiscal Year 2008-09 which set forth all of the expected revenue of the City of Banning, and the recommended appropriations to meet the operating and capital expenses for all City of Banning funds; and

WHEREAS, the City Council at public sessions has considered the recommendations and approved or modified them so as to best serve the interests of the citizens of the City of Banning; and

WHEREAS, it is essential that the City of Banning adopt a budget plan establishing the revenues and expenditures for all of its governmental, proprietary and fiduciary funds;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Annual Budget for the fiscal period from July 1, 2008 through June 30, 2009 as summarized in the bound Preliminary Budget document (presented at the June 11, 2008 Budget Workshop and on file in the City Clerk's Office), and the Budgetary and Fiscal Policies as presented in the Preliminary Budget workshop, are hereby approved and adopted, and the appropriations therein shall be expended in accordance with all applicable laws.
2. The Budget Committee recommendations as presented in the June 11, 2008 are hereby adopted and will be incorporated into future budgetary policies as applicable.
3. The City's Classification Plan is hereby amended to change the classification of Redevelopment Director to Redevelopment Manager as recommended at the June 10, 2008 City Council meeting.

PASSED, APPROVED AND ADOPTED this 24th 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. 2008-82 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 24th day of June, 2008, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

RESOLUTION NO. 2008-83

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA
ESTABLISHING AN APPROPRIATIONS LIMIT FOR THE FISCAL YEAR 2008-09,
PURSUANT TO ARTICLE XIII B OF THE CALIFORNIA CONSTITUTION**

WHEREAS, Article XIII B of the California Constitution provides that the total annual appropriations subject to limitation of each governmental entity, including this City, shall not exceed the appropriation limit of such entity of government for the prior year adjusted for changes in the cost of living or personal income and population, except as otherwise provided for in said Article XIII B and implementing State statutes; and

WHEREAS, pursuant to said Article XIII B of said California Constitution, and Section 7900 et seq. of the California Government Code, the City is required to set its appropriation limit for each fiscal year; and

WHEREAS, the Finance Department of the City of Banning has interpreted the technical provisions of said Article XIII B and Section 7900 et seq., performed computations and a technical review of the documentation for the City's said appropriation limitation, and has caused the numbers upon which the City's appropriation limit was and is based; and

WHEREAS, based on such calculations the Finance Department has determined the said appropriation limit and, pursuant to Section 7910 of said California Government Code, has made available to the public the documentation used in the determination of said appropriation limit;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BANNING, that said appropriation limit for Fiscal Year 2008-09 is set in the amount of \$30,311,309 for said fiscal year as reflected in *Exhibit A*.

PASSED, APPROVED AND ADOPTED this 24th day of June, 2008.

Brenda Salas, Mayor
City of Banning

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

Burke, Williams & Sorensen, LLP
City Attorney

364

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. 2008-83 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 24th day of June, 2008, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

City of Banning FY 2008-09 Budget Document

GANN LIMIT CALCULATION

Article XIII B of the California State Constitution was adopted by California voters in November 1979, and is more commonly referred to as the Gann Limit. The Article places limits on the amount of revenue which can be appropriated (spent) each fiscal year. Only revenues which are considered proceeds of taxes are subject to the limit. The limit is different for each agency and changes each year, modified for changes in inflation and population.

Fiscal Year	(1)		(2)		(3)	(4)		(5)		(6)	(7)
	Prior Year Gann Limit	16,752,075	Previous Year's Population	23,813	Current Year's Population	2000 Census	City Population % Change (Col.2 / Col. 3)	County Population Change %	% Change In Per Capita Income	Current Year Gann Limit	
01-02	16,752,075	23,813	23,867	0.23%	23,867	23,867	3.33%	7.82%	18,663,555		
02-03	18,663,555	23,867	24,655	3.30%	24,655	24,655	3.88%	-1.27%	19,141,477		
03-04	19,141,477	24,655	25,581	3.76%	25,581	25,581	3.69%	2.31%	20,319,990		
04-05	20,319,990	25,581	27,192	6.30%	27,192	27,192	3.37%	3.28%	22,308,634		
05-06	22,308,634	27,192	27,954	2.80%	27,954	27,954	3.87%	5.26%	24,390,824		
06-07	24,390,824	27,954	28,128	0.62%	28,128	28,128	3.45%	3.96%	26,231,507		
07-08	26,231,507	28,128	28,272	0.51%	28,272	28,272	3.31%	4.42%	28,297,580		
08-09	28,297,580	28,272	28,348	0.27%	28,348	28,348	2.71%	4.29%	30,311,309		

The Gann Limit is adjusted annually by multiplying the "Prior Year Gann Limit" (column 1) by the greater of the "City or County % Change in Population" (column 4 or 5) and then by the "% Change in Per Capita Income" (column 6). This annual Gann adjustment figure is then added to the Prior Year's limit amount to obtain the Current Year Gann Limit amount in column 7. The shaded boxes indicate the calculation factors that were used in determining the adjustment to the Gann Limit.

RESOLUTION NO. 2008-03UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING ADOPTING THE ANNUAL BUDGET FOR THE FISCAL YEAR JULY 1, 2008 TO JUNE 30, 2009 AND MAKING APPROPRIATIONS TO MEET EXPENSES APPROVED THEREIN

WHEREAS, the Executive Director prepared the annual budget for the fiscal year 2008-09 which set forth all of the expected revenues of the City of Banning Utility Authority, and the recommended appropriations to meet the operating and capital expenses for all Authority funds; and

WHEREAS, the Authority Board has considered the recommendations and approved or modified them so as to best serve the interest of the citizens of the City of Banning; and

WHEREAS, it is essential that the City's Utility Authority adopt a budget plan establishing the revenues and expenditures for all of its funds;

NOW, THEREFORE, BE IT RESOLVED BY THE BANNING UTILITY AUTHORITY BOARD that the Annual Budget for the Fiscal Years 2008-09, as summarized in the bound Preliminary Budget (as presented at the June 11, 2008 budget workshop and on file in the City Clerk's office) and the appropriations therein shall be expended in accordance with all applicable laws.

PASSED, APPROVED AND ADOPTED this 24th day of June, 2008.

Brenda Salas, Chairman
Banning Utility Authority

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

Burke, Williams & Sorensen, LLP
Authority Counsel

3:67

ATTEST:

Marie A. Calderon, Secretary
Banning Utility Authority

CERTIFICATION:

I, Marie A. Calderon, Secretary to the Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution 2008-03UA was adopted by the BUA of the City of Banning, at a regular meeting thereof held on the 24th day of June 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, Secretary
Banning Utility Authority

368

**CITY COUNCIL/UTILITY AUTHORITY/COMMUNITY REDEVELOPMENT AGENCY
AGENDA
JOINT MEETING
REPORTS OF OFFICERS**

Date: June 24, 2008

TO: Community Redevelopment Agency Board

FROM: Bonnie J. Johnson, Finance Director

SUBJECT: Recommendation to Adopt CRA Resolution No. 2008-08 Adopting the Annual Budget for the Fiscal Year 2008-09

RECOMMENDATION: “The Agency Board adopt CRA Resolution No. 2008-08, authorizing the adoption of the Annual Budget for Fiscal Year July 1, 2008 to June 30, 2009.”

JUSTIFICATION: Each fiscal year the Board adopts a budget for the upcoming fiscal year, which will serve as a guide in providing desired level of services to the Community. The budget being considered is for a one year period.

BACKGROUND/ANALYSIS: The Community Redevelopment Agency (CRA) is comprised of four operating and three bond proceed funds. These funds are the Low to Moderate (Low/Mod) Housing Fund, a Debt Service Fund, an Administration Fund, a Project Fund, two bond proceeds funds related to the 2003 Tax Allocation Bonds and one bond proceeds project fund related to the 2007 Tax allocation Bonds.

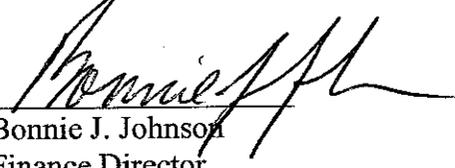
The Low to Moderate (Low/Mod) Income Housing Fund, by statute, receives 20% of the Agency’s net property tax increment revenue. The three bond funds, one for Low/Mod Housing and two for Project Improvements, have a limited life, which is related to the spending of the bond proceeds. Once bond proceeds have been entirely spent, these bond funds will be closed.

The Budget being presented is the same document that was presented at the June 11th Council Workshop with one amendment: the inclusion of \$171,500 in appropriations in the tax increment project fund to pay for the proposal from the Cultural Alliance that was presented at the June 11th workshop. The Preliminary Budget (on file with the City Clerk’s office), provides a funding overview of all CRA operations. In addition, attached to Resolution 2008-08 is a revised Fund Summary that incorporates the above change.

Remaining budget balances allocated in previous fiscal years for capital improvement projects or other necessary continuing appropriations will be brought back to the Board for approval after the close of the current fiscal year. These carryover balances have been accounted for in the 2007-08 estimated actual figures presented in the Budget.

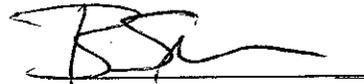
FISCAL DATA: All anticipated 2008-09 operational activities of the Agency have been budgeted for. Capital monies will be appropriated as projects are approved and contracts awarded. Adequate funds have been retained within Agency funds for continuing appropriations and for cash flow purposes.

RECOMMENDED BY:



Bonnie J. Johnson
Finance Director

APPROVED BY:



Brian Nakamura
Executive Director

CRA RESOLUTION NO. 2008-08

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING ADOPTING THE ANNUAL BUDGET FOR THE FISCAL YEAR JULY 1, 2008 TO JUNE 30, 2009 AND MAKING APPROPRIATIONS TO MEET EXPENSES APPROVED THEREIN

WHEREAS, the Executive Director prepared the annual budget for the fiscal year 2008-09 which set forth all of the expected revenues of the City of Banning Community Redevelopment Agency, and the recommended appropriations to meet the operating and capital expenses for all Agency funds; and

WHEREAS, the Agency Board has considered the recommendations and approved or modified them so as to best serve the interest of the citizens of the City of Banning;

WHEREAS, per Health and Safety Code section 33334.3 (d), the Agency determines annually that the planning and administrative expenses are necessary for the production, improvement, or preservation of low- and moderate-income housing; and

WHEREAS, it is essential that the City's Redevelopment Agency adopt a budget plan establishing the revenues and expenditures for all of its funds;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMUNITY REDEVELOPMENT AGENCY BOARD that the Annual Budget for the Fiscal Year 2008-09 as summarized in the bound Preliminary Budget (as presented at the June 11, 2008 workshop and on file in the City Clerk's Office), is hereby amended to include \$171,500 of funding for the Banning Cultural Alliance per their request presented at the June 11th workshop. Attached as Exhibit "A" to this resolution is a revised CRA Fund Summary reflecting the above amendment. In addition, the budget, as amended above, is hereby approved and adopted, and the appropriations therein shall be expended in accordance with all applicable laws.

PASSED, APPROVED AND ADOPTED this 24th day of June, 2008.

Robert E. Botts, Chairman
Community Redevelopment Agency

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

Burke, Williams & Sorensen, LLP
Agency Counsel

371

ATTEST:

Marie A. Calderon, Secretary

CERTIFICATION:

I, Marie A. Calderon, Secretary to the Community Redevelopment Agency of the City of Banning, California, do hereby certify that the foregoing Resolution 2008-08 was adopted by the CRA of the City of Banning, at a regular meeting thereof held on the 24th day of June 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, Secretary
Community Redevelopment Agency

Exhibit A

COMMUNITY REDEVELOPMENT AGENCY

FUND NAME	Estimated		Budgeted		Projected
	Balance July 1, 2008	Budgeted Revenue	Budgeted Expenditures	Balance June 30, 2009	
Low\Mod Housing	2,612,462	1,237,414	447,715	3,402,161	
Debt Service Fund	3,463,986	6,339,588	8,334,574	1,469,000	
Administration Fund	109,491	795,546	860,045	44,992	
Low\Mod Housing Bond Proceeds	44,871	1,200	0	46,071	
Tax Alloc. Bonds-2007	18,589,664	500,000		19,089,664	
Tax Alloc. Bonds-2003	139,597	10,000	149,597	0	
Low\Mod Tax Alloc Bonds-2003	1,648,521	40,000		1,688,521	
Project Fund	633,210	2,966,635	1,108,579	2,491,266	
	27,241,802	11,890,383	10,900,510	28,231,675	

372

MINUTES
COMMUNITY REDEVELOPMENT AGENCY
BANNING, CALIFORNIA

05/27/08
REGULAR MEETING

A regular meeting of the Community Redevelopment Agency of the City of Banning was called to order by Chairman Botts on May 27, 2008 at 5:30 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Boardmember Franklin
Boardmember Hanna
Boardmember Machisic
Boardmember Salas
Chairman Botts

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Brian Nakamura, Executive Director
Julie Hayward Biggs, Agency Counsel
Jim Earhart, Electric Utility Director
Duane Burk, Public Works Director
Chris Paxton, Human Resource Officer
Matthew Bassi, Interim Community Development Dir.
Marie A. Calderon, City Clerk

PUBLIC COMMENTS – Items Not on the Agenda

There were none.

CONSENT ITEMS

1. Approval of Minutes – Regular Meeting – 4/22/08

Recommendation: That the minutes of the Regular Meeting of April 22, 2008 be approved.

2. Approval of Minutes – Special Meeting – 5/13/08

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

3. Approve An amendment to Original Agreement with Von Klug and Associates Inc. for Redevelopment Consulting Services for the Banning Redevelopment Agency.

Recommendation: That the Agency Board approve an amendment to the Original Agreement with Von Klug and Associates for Redevelopment Consulting Services for the Banning Redevelopment Agency.

Motion Machisic/Franklin to approve Consent Items 1-3. Chairman Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

DIRECTOR'S REPORT

1. CRA Resolution No. 2008-07, Approving a Purchase and Sale Agreement with Joint Escrow Instructions with Paula Rae Glick for 128-130 San Geronio Avenue and Appropriating Funds for the Acquisition.
(Staff Report – Brian Nakamura, Executive Director)

Executive Director addressed this item and stated that the Board has received a copy of the appraisal that was conducted which was one of the items that needed to be brought back for the purchase.

Boardmember Hanna asked the Executive Director to review what the report since they received the corrected numbers but the public may have seen this in its incorrect form.

Executive Director said essentially what they had was a report that he pulled from a previous meeting and the numbers were not consistent with what had been brought forward. He said that the total cost is estimated at approximately \$730,000 and the immediate cash outlay will be \$530,000 and there will be a \$200,000 repayment over time which is a graduated scale repayment and the rehabilitation is approximately \$250,000.

Boardmember Machisic asked who the real estate agent of record was. He also said that on page 23, it talks about a 15-year loan at 7.5% interest and he would think this is a rather secure loan since the City is the owner or record and we are putting down \$250,000 and we have paid more than 55% of the money. He would think that we could get a good rate in here somewhere in the 6% category which would make it a little bit more viable as far as a payment by the Association.

Mr. Bob Keeling, ReMax Real Estate Consultant, said that he wrote the offer for the Alliance. In regards to the interest rate he said that commercial loans are better than that now – probably 6.5% on adjustable.

Boardmember Machisic asked if it were possible to get this loan at 6.5%. Executive Director said that is a possibility. His understanding was that this was a negotiated rate and at the deal was put together.

Chairman Botts said he agrees with Boardmember Machisic but on the other hand he thinks we need to make sure that we are fair to the seller because the seller is carrying the mortgage. He agrees that we want to put together the best deal we can for the Alliance if

this does move forward tonight but again, the owner has been very faithful and has worked very closely with the Alliance and the City holding this property off the market for some time.

Boardmember Salas said overall this has been one of our more difficult items to make a decision on and she has gone back and forth and done her homework and it is difficult because this entire Council supports the arts and what you are doing in the downtown and on the weekends. But at the same time we have to look where the market is going and the tough situations that we are have to face as a City and looking across the State at what is happening in Sacramento and nationwide and we have to be resourceful and think outside the box. She has done a little homework on redevelopment and how it began and where the monies come from and she found a couple of documents on "Public Improvement and Elimination of Blight" and that is mainly our focus and target when working with redevelopment dollars and what to do with them. In there it states, "That finding an agency's contribution to a public improvement will assist in the elimination of blight in a project area. Public facilities consisting of buildings or other improvements in a project area should not be difficult to show the link between the facility project area benefit and blight elimination. Presumably the building is replacing a formerly blighted building or structure." We have several older building in Banning especially in the downtown and that is one of our focuses in what we are trying to do. It goes on to say, "A new courthouse or jail serving the entire jurisdiction whether built inside or outside the project area is an example of such a facility." This would bring jobs, people to shop in our downtown, a good number of traffic and all of a sudden it spurs restaurants, etc. She said that in the last couple of Council Meetings when this came up she did ask to take a look at two or three other property sites so that maybe we could compare. Normally when you buy a house or purchase a property she looks at two or three different sites to make sure that she is getting a good deal for the dollar. She commended the property owner for doing a good job of accommodating the community and arts but in general when you look to buy a house you want to make sure that the square feet and the dollar compare to what your other options could be. Boardmember Salas asked staff if we did our homework when looking at other alternative sites and other options where we would like to bring together the arts. Potentially there have been ideas floated with multi-uses. Did we compile a list of other sites?

Executive Director said it is his understanding, having not been here through the whole deliberations and negotiations, that there was some idea of having kind of an arts area street and that property was identified as a potential site. He knows that there were some other discussions of other properties but at that time they were not available and he still doesn't think that they are available. But when this property came forward it was upon the Redevelopment Director at that time and the City Manager to negotiate with Ms. Glick to acquire that site through the direction of the Board.

Boardmember Salas said as a Board of the City Council sometimes is it important that we make sure that we are fair and she would like to ask specifically the City Manager and Agency Counsel would this set a precedent to other groups to feel that we could also buy them a building.

Chairman Botts pointed out that we are going to own this and we are not buying this for them. They are going to rent this building from the City. We had this discussion months ago when there was questions about helping the Alliance and he thinks that Council was involved and Jae Von Klug and felt this was the best way to go if three or more agreed at this level that we ought to buy it and maintain it.

Agency Counsel addressed the Agency Board saying that it doesn't necessarily set a binding precedent just because you do this one deal you don't necessary have to do one for someone else. It does however say that the City is willing to own property and lease it to particular groups for activities that the City basically chooses to sponsor. But it is not anything that would legally be binding on a City. These are discretionary decisions that you make and you make them each time on a case by case basis.

Boardmember Franklin said in the report it says that the Alliance would be overlooking the construction and the rehab and she wanted to know if anyone here from the Alliance could talk about what their experience is in overseeing rehab construction.

Carol Newkirk, 905 Twin Hills Dr. and Executive Director of the Banning Cultural Alliance addressed the Agency Board stating that in terms of building rehab for ten years she was the Executive Director of the Want to Be Saved San Francisco at that point owning five buildings. Three of which were Julia Morgan Buildings and they took one of those buildings which had been built in 1936 as a residence for young women moving to the City of San Francisco to be safe. In 1973, the young women moving to San Francisco didn't want to live in the Height Asbury area and they were stuck with a building on their hands and they converted it into housing for the elderly serving now primarily the Chinese community and they were able to retain all of the original architecture of the building and it is a historical landmark but more importantly it runs something like a 99% occupancy and it is now in its 26th year.

Chairman Botts opened the item for public comments.

Carol Newkirk addressed Agency Board giving a brief history and outline of the Banning Center for the Arts. (See Exhibit "A").

Helen Barnes, 2102 W. Lincoln Street said as a former City employee who was employed in the Utility Department she feels personally, while she doesn't disagree with some of the things that have been said, she believes that some of the redevelopment dollars would be better spent on the infrastructure for this city. Water lines in the city all need to be repaired, the power lines need to be repaired or replaced and we need these things done that would actually serve the entire community rather than a few. She doesn't have anything against art and thinks it is a good thing but Community Redevelopment dollars should go for the entire community.

Ellen Carr, 471 W. George Street said the thing that has her most concerned is this is community redevelopment and should benefit the entire community and not just a select

few but this is how it appears to her. She looks around the city and sees so many things that need to be done. At the Senior Center they are only budgeted to serve thirty lunches a day. There are more than 30 hungry seniors in the city so something needs to be done about that. She knows that there is Carol's Kitchen at different locations and at different times but then you have the problem with transportation. Many of these people who cannot afford to feed themselves obviously can't afford to get themselves transported to another city. She would like to see the money go for something for the whole city, the whole community, that is what we need.

Dorothy McLean, 916 Linda Vista Dr. read from a prepared letter regarding this purchase (see Exhibit "B").

Don Smith said the last three speakers make a point of prioritizing how the City spends its money. He knows that there is some confusion amongst some people as to the source of these funds and what you can legally do with them being redevelopment funds. He said thirty years ago the City decided to create a Redevelopment Agency for one single purpose and it was to find a way to revitalize downtown. For thirty years priorities in that fund have spent most of the money some place other than downtown. At some point of time what is in the best interest of the entire City is to have a vital downtown and the question how we get a vital downtown. This Council decided that the best way to move forward with downtown wouldn't necessary be to turn it back into a retail area because demographics show that retail is done differently than it was done when those buildings were built 60 years ago. But to at least have a portion of the downtown to create an art center. If that is your long term goal, the question is how do we get there and it isn't through having an anchor tenant who is going to run these programs that you have asked them to run. He doesn't know what it is. Perhaps there is a different way. He would be willing to look into it and consider it. All he knows is that it is time to do something downtown. Someone decided that the best thing to do, at least on San Gorgonio, is to turn it into an art center. He said lets start taking small steps to make the arts center a center point in Banning. He would encourage the Board to decide how you are going to make it an arts center, decide whether or not you are going to have an art gallery as a way to get there and if it is, to move forward.

Marion Johnson, 541 E. Repplier Rd. said she has lived in Banning for almost 50 years and has seen the ups and downs and the things that are happening now. She agrees whole-heartedly with the Alliance. She thinks that this is something that Banning really needs a facility like that and they probably do need a permanent facility and it is encouraging to see that they are searching for something like that. Her only concern is using the redevelopment funds for this particular building. If there was some way that the City could make a loan and purchase a building and do that, it would be an excellent idea. She knows that redevelopment money is to build on something that will help our city to grow and this would be an excellent addition to the city however, there are so many needs right now. In looking at the Community Center they have been trying to get it back into shape so that it can be a viable area so that the entire city of Banning can use it and there are funds that can be allocated for that facility. There are other facilities in the Banning area that you could use the redevelopment funds for and if there is any way

we can help the Alliance, she would be in agreement with doing something like that. But using the funds at this particular time with the economy as it is now if we have anything here in this city where we may need to do something, to do some repairs we will not be able to get the funds. Maybe the government may not be able to give us the funds to do the job that we have to do here. She would suggest that the Council think this over very carefully to see if this is the wisest thing to do at this particular time.

John Klimkiewicz, 4678 W. Gilman Street said in the interest of full disclosure he is a member of the Board of Directors for the Banning Cultural Alliance. However, this evening he would like to make his remarks as the Chairman of the Economic Development Committee and he is not speaking for the other members of the EDC. In their discussions on the EDC in working on a strategic/economic development plan for this City have identified four major focus areas in the city that they feel are vitally important for economic development. Our downtown area is one of those four areas. They feel that an active, attractive, vital downtown is extremely important for a full strategic, economic development plan. One of the elements obviously in our downtown area currently is an art element and that art development keys on the Alliance, the Alliance keying their activities on that building, on that art gallery. The art element is not the only elements that will help revitalize downtown but it is a very important part. Purchase, rehabilitating, revitalizing a building, leasing it to the right operator for the right business to fit in with the vision of a revitalized downtown this is what a Redevelopment Agency does. This is not something just for art sake. This is good business and good business in our downtown is good for the whole community. If there are people who live in Banning who don't know that there is an art gallery downtown and will never ever visit it, the benefits of having a revitalized downtown with an important art element in it will benefit that person even if they never see that gallery.

Clidene Roper, Manager of the Banning Art Gallery said she moved here from Huntington Beach and everyone she met said don't dare go into downtown Banning; it's a dreadful place. Now several of those people are regular visitors to the gallery and she has seen a tremendous improvement. Without the arts, without culture, a city dies.

City Clerk read into the record two letters regarding this issue and they are from John McQuown and Charlie Strang (see Exhibits "C" and "D").

Victor Dominguez, Vice President of Carol's Kitchen addressed the Board stating that he wanted to thank the arts for the work that they have done and they have done a wonderful job. The bottom line is simple; to invest in the community is to invest in its people. If you want a community to grow and prosper, we have to invest in community buildings, our community center, we have to invest in our kids, and we have to invest in our high school programs. There is so much investment that we need to do. This talk about a building for arts to stage out of is an investment and a small portion. Just to role a deal to role a deal isn't good enough. You have a bigger challenge tonight and that is to come up with something better for our community.

Chairman Botts closed the item for public comments.

Chairman Botts said that there have been a lot of comments pro and con and he noticed from the minutes that some of his colleagues made comments that they received calls and he said he has also received calls about this issue wanting to understand it. We have had comments and Don Smith started to allude to it whether we agree or disagree on the expenditure these are capital dollars. These are not operating funds but capital bond funds. Bonds were floated to basically make capital purchases. He said that Mr. Klimkiewicz mentioned the four quadrants in the city and not only did the EDC but the Council approved that and said here is about \$24 million dollars worth of capital expenditure. A lot of that going towards infrastructure going into four areas, north, south, east and west of the city and primarily one segment of downtown. He wanted to make sure that everyone here plus the listening audience knows that these are bond funds primarily used for capital expenditure. He would like to put this in perspective that this is not in his mind for the Alliance and it is not for art. This Council has regularly and publicly and in closed session and in all of our planning said we need to revitalize downtown. This is an economic revitalization plan for downtown Banning and by the way, art is a part of it and so is the façade grants and so are the restaurants that are coming and the retail that is coming. We are so focused on art and the Alliance and if he was to support this and he will support it, this is for the community and not just for the arts. Like Mr. Klimkiewicz said if no one every goes into that art gallery from some part of town, but comes downtown because it is a fun place to be, it is revitalized, it looks good, we've turned the downtown around and we have retail. His point is that they have a plan and they have approved the plan and they want to revitalize it for everyone. Also art happens to be a piece of that. He said that Boardmember Salas did some homework and he appreciated her fine comments but he wanted to briefly read from a news article from the Cleveland Conference and it said, "Artist see themselves as devoted to creativity. City planners now look at artists and see a highly valuable form of urban fertilizer. Sprinkle some galleries on a dying main street, change the zoning to allow live and work loft spaces and throw in some government money for façade renovation or mortgage assistance and guess what happens, property values will jump and you will soon worry about how to avoid gentrification which is what happens when people with money move into a former zone of blight." Those in the art community and maybe some out know that there are hundreds of billions of dollars invested every year by all levels of government in art. Some just for the sake of art but in our case for the sake of the revitalization of downtown. The City of Fontana obviously a little bigger than we are just bought their downtown performing arts theater and put \$6.5 million dollars of their redevelopment money into that. You can argue pro and con but the point is that this isn't just art; this is revitalization of downtown.

Boardmember Hanna said she agrees with everything he just said. It is so hard to maintain a vision. This Council and a previous Council has said revitalizing downtown is important. In regards to the arts, she disagrees that art is just for a select few. If you were able to attend the Art Hop recently you would have seen Hays Street from San Gorgonio over to about a block and half packed with families and packed with children. The arts are for children. The arts are for families. The arts are for seniors. The arts are for Hispanics. Over a year ago they did a Community Forum that was directed to

Spanish language people and one of the issues they wanted to discuss at that forum was the arts. Not just for the children but for the adults as well. The arts are important to our entire community. The "arts" is a tool to revitalizing downtown. How is it going to revitalize downtown? The way it can revitalize a downtown and the way that it is revitalizing our downtown is that it brings people to the downtown. The number of 10,000 people that are coming to the Banning Center for the Arts are 10,000 people that would have not come. She spoke recently to a perspective stuffed potato little restaurant that is going to be in DeMario Jackson's building and image a small restaurant like that; they need people to come. How big will their budget be for marketing; probably not very big. But those 10,000 people that go to the Alliance are going to say look at that there is a stuffed potato restaurant right there and who knew that and check it out. So we need the arts and we have this anchor that is already established and already getting a name for it. She would encourage people to attend and just this last weekend they saw a nationally renowned artist work there. What was not mentioned was the Haven; the four different businesses that are going to be a part of the Haven Complex that will be opening over the next several months not only a coffee shop, a book and gift shop, a gallery and a ceramic studio. The ceramic studio will also be selling wholesale products to artist from Ontario to the desert. So people will be coming to the downtown Banning to buy these products because this exists. We must maintain the vision. It is very complex. The City financing is very complex and money has to be spent on capital projects. This building was blighted and it is not only going to be bought but renovated so that not only will it be a façade but major improvement to this building that will be vital and contribute to the renovation. This excites her and we need to revitalize our downtown. She is open as John Klimkiewicz said to other strategies. She is not suggesting that is the only strategy possible. She hasn't heard of another one that would be effective but it is certainly one effective way to bring people downtown. We should continue the vision and continue to revitalize the heart of our city.

Boardmember Salas said first of all it is very healthy to question what we are doing and that is how you know you have a good City Council. Because respectfully as a group, as a community and as a Council we can disagree and it is all because we care about our community and we want what is best. It is a matter of which way we go in our process in getting it done and we have different opinions on that. As far as community dollars are concerned, it is confusing when it comes to general fund money versus redevelopment dollars but regardless they are community dollars. And when we look at what we are going to do with those community dollars whether they are RDA dollars or General Fund monies we have to take a look at our needs and what do we need, where we are going as a community in the 10 to 15 years and not just look at tomorrow. We need a police department building to show how strong we are in our law enforcement which we are. We need jobs and infrastructure so we can provide for those businesses that will bring those jobs. And taking a look at our speakers she appreciates them coming forward and she was impressed that out of speakers seven of them brought forward from different areas of the community regardless if they lived in different segments and some of you represented animals, some had lots of experience with utilities and others with schools, pre-school age children, with seniors dealing with budgets and just looking at some of the comments brought forward from a variety of people in the community that care about

what we do and where we go. With that it has helped her make a decision as far as this evening and again, she supports the arts and would love to be a part of a plan where we even work with looking at a larger library with a lock-off component for the arts to have and that way we could have the arts and the kids work together and that is your built-in. Right now in the times we are in financially we need to be creative and think outside the box. Bring more people to the table and cut our costs and also provide ourselves with ways we can have grant monies to do bigger things versus having just a little piece here or there. Why not collaborate and make it a community-wide event. She doesn't want it to come off that she doesn't support the arts because she does. Again, it is a tough decision.

Boardmember Franklin said she agrees with many of the comments that have been stated not only today but she knows that quite a few people spoke the last time this was discussed and she stated at that time that she was concerned about whether or not we are providing arts for the city because it is her understanding that the Alliance would still be able to do all of the programs they offer now whether or not this building is purchased. But her concern is how we are spending our money and to be fiscally responsible means to her that we listen to everything that is said. That we look at what the needs are for the city and at the same time look for ways that we could accomplish a lot of things that we want to do. To say whether or not we are going to buy the building should not be the difference as to whether or not we have art here. It should only be a real concern as to how we are being fiscally responsible. She is considered about the fiscal responsibility of the City. We do have bond money in our redevelopment area that we have not as a Board finally agreed upon that this is the way we want to go and she thinks that is something they have to do before they talk about how the rest of the dollars are going to be spent because we all know money goes very quickly when you start writing checks. She would like to see that we are not focused on necessarily buying the building as much as what can we do looking at alternative ways to be able to offer arts for our city. Some of the things that she would want them to look at are do we have any other buildings that the City owns that we could utilize for this and do we have the opportunity to utilize store fronts. We talked about revitalizing downtown and we have a lot of empty buildings on Ramsey Street and have we talked to any of those owners about utilizing some of their buildings. And we have to look at what are our pressing needs for the City. Right now based on the economy and based on all the needs that the City has what can we actually afford to do as we plan for the future. We have other reports that they have received and they will be discussed, as well as, our façade grants and owner participation agreements but we have a report that has told us, as well as, other reports that we have to focus on our infrastructure to prepare us for the future and that is what she would like to really see them focus on as preparing for the long term future for the entire community. And when you look at the fact that John Husing is saying that in the next 25 years the majority of the people moving into our area are blue collar workers and they are not the people who are going to have a lot of money to spend on art. They are people who are going to be working to make sure that we have good places for our family; that we have a lot of opportunities for our young people. And she agrees with some of the comments that were said earlier that is where we really need to focus our money.

Boardmember Machisic said that he whole-heartedly agrees with some of the comments that were made that our City needs a great many things. You talked about water, you talked about electricity, you talked about the senior center, talked about transportation and gasoline and a number of things. One of the biggest lessons he had coming to City government when he sees a pool of money he thinks you can spend it any way you want. He would like to have more police, he would like to have more firemen but you have to recognize that redevelopment money cannot be spent on those items; that is a fact. That is not something that he created. It is what the law says to eliminate blight, to reenergize the area. When you talk about money we have done about nine facades and some of those facades are on a corner and we have put \$200,000 in some of those buildings so you are talking about \$200,000 on one building. Also as we've gone along we have redefined the areas that we are going to put our money in. For instance, recently a local business wanted to have a partnership with us but they were outside of the area so the Council said no and we are going to have a clearly defined area and we are going to concentrate our money there. In the 9 to 10 facades that we have approved that probably represents \$1.4 million dollars but what we are trying to do is to make the downtown more appealing so that people will come down there. He hears from everybody that we would like to revitalize it but you have to spend some money to revitalize it. It has been a long time for improvement in the city of Banning but it takes time and it takes money. The one thing he said the last time we had this meeting when the Chairman was not here is that when you look at the Cultural Alliance it is not so much about buying art, it's about some of the things they do and he has always been after them that he wants youth activities because those kinds of activities don't take place in our community because the school district cannot afford to offer them. He is always after the Alliance to offer those activities because that is where you start in a community. You start when they are young and you teach them about different things and you expose them to different experiences and that is the important thing. We have invested a lot of money downtown and in fact, we have a lot of people who are still waiting for facade grants and we are going to talk about clarifying the criteria for that on Friday. Also, we have gone into some partnerships. The building across the street, the Oddfellows, we invested \$675,000 but that looks like a hub of something downtown. We recently had a proposal from the theater and it is being reworked with the staff. Now, having the theater revitalized will get us some more people downtown. The thing about the Cultural Alliance is that when you think about a theme that goes through the downtown area and the Cultural Alliance and art appears to be the only theme down there, at least from his point of view. We are doing individual buildings, facades, going into partnerships with companies such as Mr. Jackson and some others. We are doing what we can with downtown and it doesn't happen overnight. You do it in bits and pieces. If you look at collectively all the things that we have done and have been doing and concentrating on that is the whole purpose of redevelopment money. When Rite Aid came in we put some money into that street there and the reason for it was that the property couldn't be sold because of the improvement that was needed and the City Redevelopment Agency came in and improved it and as soon as we agreed to the improvement that lot was sold and Rite Aid came in. That is important to realize. We are doing these kinds of things because we are allowed to spend the money on those things. Like all of you have said it would be nice to get ten new policemen, five more firemen, remodel the senior center, provide transportation for

anyone from here to there but you cannot do it with redevelopment money. Council has committed to the downtown improvement and if you look at where we spent our money, he thinks we are fulfilling that objective.

Chairman Botts said he would like to add to that pro or con these issues are going to continue to come to the Council and he would say again it is not about art. It is about our commitment and our plan. We spent \$80,000 to \$90,000 for Jerry Ogburn and the Design Center to say let's draw out downtown and here is what we want. There is money in the budget for the San Geronio Inn and not a day goes by that someone doesn't say to him what is going to happen to the San Geronio Inn. He can tell you that the issue is going to come to the Council and in fact, it is already here in closed session and that is a terribly important segment of downtown revitalization. The theater is going to come to us for money to help and you can say you don't like the theaters or do we need a theater and don't need the art, etc. Every one of these is a terribly important building block for our master plan for redesign of the downtown.

Boardmember Salas asked the Agency Counsel for example, if you have redevelopment bonds often times agencies might loan the money to build whether it be a sheriff station or infrastructure needed and even though you cannot necessarily use it to build it and operate it, can it be loaned and then later paid back.

Agency Counsel said yes and in addition some of the restrictions on RDA money in terms of public facilities is largely limited to city hall. You cannot use it for city hall but for other aspects of city or public facilities it can be used.

Boardmember Salas said it would be able to be loaned to anything but city hall. Agency Counsel said that was right.

Boardmember Franklin said to clarify you are saying that we could use some of our RDA dollars to if we needed to for the police building.

Agency Counsel said unless there is something she is unaware of with the police department, yes.

Motion Hanna/Machisic that the Agency Board adopt CRA Resolution No. 2008-07, approving the Purchase and Sale Agreement with Joint Escrow Instructions for the purchase of APNs 541-141-002, 003, and 004 as amended with an interest rate at 6.5%. Motion carried with Franklin and Salas voting no.

ITEMS FOR FUTURE AGENDAS

New Items:

Boardmember Hanna said that the plan for the design of the downtown was to come back every 30 days and it has been a few months and they have not seen anything.

Chairman Botts asked that Mr. Ogburn come back to give the Board a report.

FUTURE MEETINGS

1. Redevelopment Workshop on OPA and Façade Grant Programs – May 30, 2008
at 3:00 p.m. – Council Chambers

ADJOURNMENT

By common consent the meeting adjourned at 6:42 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.

CRA Meeting
5-27-08

BANNING CULTURAL ALLIANCE
Banning Center for the Arts

Background: The Banning Cultural Alliance became involved in the Banning Center for the Arts (gallery) located on San Gorgonio Ave in September 2005. The Center was operated by David Fairsington for a year while the Alliance played a minor role in its operation by paying the rent with funds granted by the City of Banning and by promoting the Center's shows and activities.

Currently: Commencing September 2006, the Alliance assumed management of the Center and undertook some minor cosmetic work as well as the promotion of the gallery as a destination. During that time we developed the Gallery into a more professional environment and added retail items to generate foot traffic and income. More people have become involved through a gallery committee and there is a part-time manager. A group of docents including a co-op of 18 artists staff the gallery five days per week.

Name recognition for the Center has grown. A close association with the Plein Aire Artists of Riverside has been formed. The Artists painted one weekend in Banning last November and brought an exhibit of California missions to the Center to coincide with Art Hop 2008.

Sales and Income. Total income for the Banning Center for the Arts for the year 2007 was \$10,647. Income for 2008 through today is \$8,648. This is a growing business. Growing businesses are needed in Downtown Banning.

Looking into the Future: In addition, negotiations are underway with Martha Green of The Eating Room in Redlands for the Center to become an outlet for baked goods.

The University of Redlands is interested in partnering with the Alliance to involve undergraduate and graduate students including those living in the Pass Area to work on developing and implementing a business plan for the Center for the Arts.

Renovation and upgrading of the gallery through cosmetic, structural and mechanical work is planned to increase the numbers of people attending by making it more visually appealing to street and foot traffic.

The Alliance is partnering with the Banning Chamber of Commerce and San Gorgonio Rotary Club on the Cool Summer Nites market project. Activities are planned for 9 weeks that will attract people downtown on Friday nights with activities in areas in close proximity to attract visitors to the gallery.

Center Attendance: Attendance at the gallery has grown and continues to grow since September 2006. 2006 gallery attendance was 956 and 2007 gallery attendance was 3690. We are projecting that over 13,000 people will visit the gallery in 2008 and 2009.

Anchors: The Banning Center for the Arts has from its inception been considered by many as a major anchor in the redevelopment of Downtown Banning. Today, the Canyon View Plaza project at First and Hays and the Banning Center for the Arts on San Gorgonio represent two significant anchors for Downtown revitalization. Together they will attract businesses and shoppers to our city for years to come.

May 2008

Exhibit "A"

386

May 27, 2008

Dear Members of the Redevelopment Agency,

I am here to speak about the allocation of money for the Cultural Arts Building on San Gorgonio Ave. Supporting the Cultural Arts Building is a wonderful idea, but not at this time.

in today's market.

To begin with, purchasing this building for \$450,000 is excessive. Why is the city purchasing a building for the Alliance? What does the Alliance plan on contributing? What are the Banning taxpayers going to get for this kind of investment?

What will the city gain by this purchase at this time? This building may be a high priority to the people who are in the Alliance, but that is a small portion of our town. This center is not a necessity for the majority of the residents of Banning. It is supported by a small group of people in town.

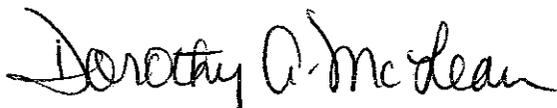
Can you prove what percentage of people have patronized this facility, not using the exaggerated numbers that have been give in the past?

It is requested that the city planners look at things that are a higher priority at this time, to build up the town, for example, building up the general downtown area to generate dollars is more important. Moving forward with the general downtown plan to enhance our town is important. You may say, "Well, the Cultural Arts Building will do just that." It may do that just for a small number of people in Banning.

Allocating money for rehabbing the building is one thing, but purchasing the building AND rehabbing it is above and beyond what should be done.

I urge you to rethink the spending of this money. The Cultural Arts Building is not a necessity at this time; think of doing things that will benefit the majority of our town's people, not just a chosen few.

Sincerely yours,



Dorothy A. McLean

Exhibit "B"

From: Charlie Strang [thebravestgreek@earthlink.net]
Sent: Tuesday, May 27, 2008 5:17 PM
To: Marie Calderon
Subject: Purchase of Building for Arts on San Gorgonio

Exhibit "C"

To the City Council,

I am not able to attend tonight's meeting, but wish to state my strong opposition to the expenditure of city funds on this project.

I believe the costs are excessive, particularly in today's market. Given the state of the economy and the city's finances, I consider this proposal too risky at this time.

People are cutting back in their spending due to the high costs of gasoline and the subsequent effect on the rest of the economy. I find it difficult to believe who are finding it more of a challenge to maintain a household budget will have extra money to spend on art at this time.

I suggest this proposal, if it has merit, is coming at the wrong, economically.

We need to support only those projects which will result in a timely and direct benefit to the city.

Thank you,

Charlie Strang

4175 Hillside Drive
Banning

From: John McQuown, DVM [vetdoc21@earthlink.net]
Sent: Tuesday, May 27, 2008 1:35 PM
To: Marie Calderon
Subject: Fw: RE: purchase of building at 128 San Gorgonio

Exhibit "D"

>>Hi Debbie:

>>

>>I have heard that the purchase of the Arts building at 128 San Gorgonio is on the agenda again. I need to let you know that I am strongly opposed to this for a number of reasons. I know you are to and I have written to Bob Botts with my concerns.

>>

>>I could be off by a few zeros but at a purchase price of \$400,000 and a retrofit of \$300,000 or 3/4 of a million dollars I simply don't see how this pencils out as a good investment for the city. Even amortized over 30 years at 5% the monthly P.I. payment would be over \$3000.00 per month

>>

>>I don't think the City wants to become landlords whatever the rent may be. There is too much uncertainty in this market as far as rents and who is going to collect and manage said property as we continue to cut back on City staff. I certainly don't think anyone from the Alliance would or should take this on to manage this property. The liability alone to the City as far as landlord/renter relationship should make this deal unacceptable. I don't want to see the city at risk if anything happens to the tenants or building.

>>

>>I know as a landlord and a businessman and you as a businessman we would and should be hard pressed to reach into OUR pocket for 3/4 million dollars for this property. I like it's location but I think continuing to rent is definitely the way to go. If the economy turns around then we can always re-visit the issue.

>>

>>As you know I was on the budget committee and I just don't like the message this sends to our Banning citizens and employees and staff of the City that we are spending like this in economic hard times where revenue is down and we are seeking cuts and ways to save money. If this building and the artists involved were going to generate substantial revenue to the City then I possibly could be persuaded to purchase but at this time I just don't see this happening.

>>

>>Sorry I won't be there tonight as my brother in law is in town. Thanks for listening and I appreciate your support.
Take Care Dr. JOHN

>

**CITY COUNCIL/COMMUNITY REDEVELOPMENT AGENCY AGENDA
JOINT MEETING
CONSENT ITEM**

Date: June 24, 2008

TO: City Council and Redevelopment Agency Board

FROM: Bonnie J. Johnson, Finance Director

SUBJECT: Recommendation to adopt the 2008-2009 Cooperative and Repayment Agreement between the City of Banning and the Banning Redevelopment Agency for the payment of Administrative Expenses

RECOMMENDATION:

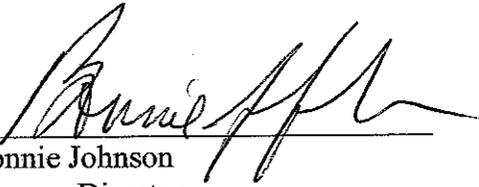
1. "The City Council adopt the 2008-2009 Cooperative and Repayment Agreement between the City of Banning and the Redevelopment Agency."
2. "The Banning Redevelopment Agency Board adopt the 2008-2009 Cooperative and Repayment Agreement between the City of Banning and the Redevelopment Agency."

JUSTIFICATION: This agreement is necessary in order to use tax increment revenue for CRA administrative services provided by the City of Banning.

BACKGROUND/ANALYSIS: This is a housekeeping item. Historically the Agency has simply made operating transfers from the debt service fund, the fund in which all tax increment must be deposited, into the administration fund to pay all administrative expenses of the Agency. Some of those costs are direct costs of the Agency and others are allocations for City services per the Citywide Cost Allocation Plan. Under the California Health and Safety Code, tax increment can only be used to pay indebtedness of the Agency. The attached agreement establishes the administrative expenses as indebtedness. The attached agreement will allow the appropriate transfers for 2008-09. In addition, this agreement includes an amendment to the 2007-08 agreement to cover increased administrative costs that were identified during the 2007-08 mid-year budget review process. Failure to approve this agreement will result in the Agency reporting to the County on its Statement of Indebtedness more funds than it actually has available. In other words, on the Statement of Indebtedness, an annual filing, the Agency can only report indebtedness. To the extent tax increment is spent on items that do not constitute debt, the report will reflect more available fund balance than the Agency actually has. Furthermore, the Agency will only continue to receive the maximum tax increment if it reports a sufficient amount of debt. In as much as the Agency now has two outstanding bond issues, this will not be a problem in the short-term, but ultimately if funds are spent on items other than qualifying indebtedness, the Agency's tax increment allocations from the County may fall short of meeting all of its obligations.

FISCAL DATA: No additional appropriations are necessary. The budget has been prepared to accommodate the transfer of necessary funds.

RECOMMENDED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager/Executive Director

**2008-2009 COOPERATION AND REPAYMENT AGREEMENT
BANNING REDEVELOPMENT AGENCY**

This 2008-2009 Cooperation and Repayment Agreement ("Agreement") is hereby made and entered into by and between the Banning Redevelopment Agency, a public body corporate and politic ("Agency") and the City of Banning, a general law municipal corporation ("City"), as of June 24, 2008 as set forth below:

RECITALS

- A. The Agency, a subdivision of the State of California, is a separate and distinct legal entity from the City, existing and exercising the powers vested under the California Community Redevelopment Law (California Health and Safety Code section 33000, *et seq.*) ("Community Redevelopment Law").
- B. The City Council of the City of Banning, acting pursuant to the provisions of the Community Redevelopment Law, has activated the Agency and has declared itself to constitute the Governing Board of the Agency.
- C. Pursuant to the Community Redevelopment Law, the Agency is performing a public function of the City and may have access to services and facilities of the City, and may accept assistance from the City.
- D. Pursuant to California Health and Safety Code §§ 33126, 33127, and 33220 the Agency is authorized to obtain and the City to provide staff services, office space, and necessary equipment and supplies, and to give and receive aid and cooperation in the planning, undertaking, construction and operation of redevelopment projects.
- E. City has administrative personnel and necessary facilities required for the operation of Agency and Agency desires to utilize City's personnel and facilities in order to more effectively control Agency's costs of the administration of Agency's redevelopment activities.
- F. Based on the foregoing, City and Agency desire to enter into this Agreement: (i) to provide for the personnel, services and facilities which the City will provide for and make available to Agency in furtherance of the activities and functions of the Agency under the Community Redevelopment Law; (ii) to establish the reasonable costs of the personnel, services and facilities to be provided by City to Agency; and (iii) to set forth the obligation of Agency to repay City for prior expenditures on its behalf and to and/or pay for such future costs and expenses incurred by the City for and on behalf of the Agency.

OPERATIVE PROVISIONS

NOW, THEREFORE, the parties hereto agree as follows:

1. **Services Provided.** City's officers and employees shall, at the request of the Agency, perform services for the Agency in carrying out its redevelopment work as follows:
 - 1.1 Those City officers and employees who are also appointed to positions or offices with or related to the Agency shall perform services for the Agency in a dual capacity.
 - 1.2 The City Manager shall perform services for the Agency as its Executive Director and shall establish the procedures to be followed in the request for, and the rendering of such services. These services shall include, but not be limited to services by a Redevelopment Director and City's Finance Director.
 - 1.3 City shall provide Agency access to supplies, facilities, and utilities with respect to Agency operations.
 - 1.4 City shall provide for the expenditure of City funds by the City on behalf of the Agency as requested by Agency.
 - 1.5 The foregoing services shall be provided to Agency with regard to the general administration of the Agency as well as with regard to each Project Area of Agency for fiscal year 2008-09.
 - 1.6 Agency shall pay to the City the value of the above-referenced services established in accordance with generally accepted municipal accounting practices on a no-less-than-quarterly basis during the course of fiscal year 2008-09.
2. **Payment.** In consideration of the services and facilities to be provided to Agency pursuant to this Agreement, Agency agrees to pay to City, as soon as is practicable from available tax increment funds, for services, facilities, and utilities provided as follows:
 - 2.1 The sum of \$794,236 for fiscal year 2008-09 as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. City shall invoice Agency no less than quarterly, reflecting all charges attributable to Agency for fiscal year 2008-09.
 - 2.2 An additional \$115,494, as an amendment to the fiscal year 2007-08 agreement, as set forth in Exhibit "A" attached hereto and incorporated herein by this reference.
 - 2.3 Any obligation of Agency to make payments hereunder from tax increment or any other funds shall be subordinate to any obligation to use such

funds to service any bonds heretofore or herein after issued by Agency with respect to redevelopment activities which may occur in Agency's project areas.

- 2.4 The parties agree that tax increment funds subject to Health and Safety Code § 33334.2 shall only be used to reimburse or pay costs related to the preservation, improvement and creation of low and moderate income housing with the Agency's jurisdiction.
3. **Indebtedness Created.** The obligations of the Agency under this Agreement, whether to advance funds or to reimburse the City for services rendered or expenditures made on the Agency's behalf shall constitute an indebtedness of the Agency within the meaning of California Health and Safety Code section 33670, *et seq.*, for each project area for which the debt was incurred. Upon receipt of the billing therefore from the City, the debt will be due and payable by the Agency in accordance with the terms of this Agreement.
4. **Inclusion in Insurance Policy.** The City agrees to include the Agency within the terms of the City's insurance policy.
5. **Remedies.** If either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within ninety (90) days after service of the notice of default, or if the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly within a reasonable period of time after commencement, the defaulting party shall be liable to the other party for damages caused by such default.
6. **Miscellaneous Provisions.** The following provisions shall apply to this Agreement:
 - 6.1 **Integration.** This Agreement consists of pages 1 through 4, inclusive, which constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.
 - 6.2 **Recitals and Definitions.** The Recitals set forth at the beginning of this Agreement are a substantive and integral part of this Agreement and are incorporated by reference in the Operative Provisions of this Agreement.
 - 6.3 **Severability.** Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other

provision, term, condition, covenant, and/or restriction, of this Agreement and the remainder of the Agreement shall continue in full force and effect.

- 6.4 Amendments to Agreement. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of the Agency and City.
- 6.5 Counterpart Originals. This Agreement may be executed in duplicate originals, each of which is deemed to be an original.
- 6.6 Effective Date of Agreement. This Agreement shall not become effective until the date it has been formally approved by the Agency's Governing Board and executed by the appropriate authorities of the Agency and Participant.
- 6.7 The Agreement shall supersede any prior agreement between the parties hereto dealing with the subject matter of this Agreement.

WHEREFORE, the parties hereto have executed this Agreement as of the date and year set forth below opposite the name of each such party.

CITY OF BANNING
A Municipal Corporation

Date: _____

By: _____
Mayor

Date: _____

Attest: _____
City Clerk

BANNING REDEVELOPMENT AGENCY
City of Banning, California

Date: _____

By: _____
Chairman

Date: _____

By: _____
Secretary

Approved as to Form:

Burke, Williams & Sorenson, LLP
City Attorney

EXHIBIT A

REIMBURSEMENT FOR ADMINISTRATIVE SERVICES
FOR REDEVELOPMENT AGENCY BY CITY

Fiscal Year 2008-09

	<u>FY 2008-09</u>
Personnel	\$ 523,007
Services and Supplies	211,939
Interfund Services	<u>125,099</u>
TOTAL	\$ 860,045
Less Fund Balance Used	<u>- 65,809</u>
NET REIMBURSEMENT	\$ 794,236

Fiscal Year 2007-08
Amendment to Original Agreement

Adjusted administrative expenses	\$1,040,494
Original reimbursement agreement	<u>- 925,000</u>
Additional reimbursement required	\$ 115,494

**CITY COUNCIL/COMMUNITY REDEVELOPMENT AGENCY AGENDA
JOINT MEETING
CONSENT ITEM**

Date: June 24, 2008

TO: City Council and Redevelopment Agency Board

FROM: Bonnie J. Johnson, Finance Director

SUBJECT: Recommendation to adopt Resolution No. 2008-85, a resolution of the City Council of the City of Banning, approving a loan and repayment between the City and the Redevelopment Agency to facilitate the funding of Redevelopment Capital Projects and CRA Resolution No. 2008-10, a resolution of the Redevelopment Agency of the City of Banning, approving a loan and repayment between the City and the Redevelopment Agency to facilitate the funding of Redevelopment Capital Projects

RECOMMENDATIONS:

1. "That the City Council adopt Resolution No. 2008-85, a resolution of the City Council of the City of Banning approving a loan and repayment between the City and the Redevelopment Agency to facilitate the funding of Redevelopment Capital Projects."
2. "That the Redevelopment Agency Board adopt CRA Resolution No. 2008-10, a resolution of the Redevelopment Agency of the City of Banning approving a loan and repayment between the City and the Redevelopment Agency to facilitate the funding of Redevelopment Capital Projects."

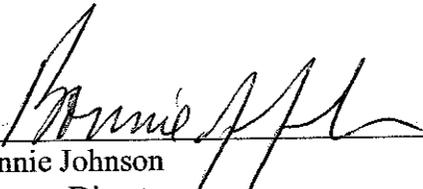
JUSTIFICATION: This loan is necessary in order to use tax increment revenue for funding various CRA capital project expenses.

BACKGROUND/ANALYSIS: This is a housekeeping item. Historically the Agency has simply made operating transfers from the debt service, the fund in which all tax increment must be deposited, into the Capital Project Fund to pay for capital project costs other than those paid for with bond proceeds. Under the California Health and Safety Code, tax increment can only be used to pay indebtedness of the Agency. The attached resolutions will establish indebtedness on behalf of the Agency as of the fiscal year ending June 30, 2008 in the amount necessary to cover project expenses for 2007-08. The loan will be made from the General Fund to the Agency on June 30, 2008 and then be repaid by the Agency to the General Fund on July 1, 2008. This transaction results in revenue (i.e. loan proceeds) to the capital project fund of the Agency and loan repayment (i.e. expense) from the debt service fund of the Agency. There is no net fiscal effect on the General Fund. Failure to approve the attached resolutions will result in the Agency reporting to the County on its Statement of Indebtedness more funds that it actually has available. In other words, on the Statement of Indebtedness, an annual filing, the Agency can only report indebtedness. To the extent tax increment is spent on items that do not constitute debt, the report will reflect more available fund balance than the Agency actually has.

Furthermore, the Agency will only continue to receive the maximum tax increment if it reports a sufficient amount of debt. In as much as the Agency now has two outstanding bond issues, this will not be a problem in the short-term, but ultimately if funds are spent on items other than qualifying indebtedness, the Agency's tax increment allocations from the County may fall short of meeting all its obligations.

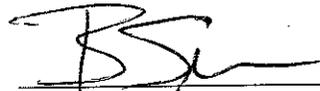
FISCAL DATA: No additional appropriations are necessary. The budget has been prepared to accommodate the necessary movement of funds.

RECOMMENDED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager/Executive Director

RESOLUTION NO. 2008-85

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING A LOAN AND REPAYMENT BETWEEN THE CITY AND THE REDEVELOPMENT AGENCY TO FACILITATE THE FUNDING OF REDEVELOPMENT CAPITAL PROJECTS

WHEREAS, Under the California Health and Safety Code, tax increment revenue of the Agency can only be used to pay indebtedness of the Agency; and

WHEREAS, the Agency will only continue to receive its full allocation of tax increment revenue by incurring indebtedness; and

WHEREAS, the Agency desires to use a portion of its excess tax increment on various capital projects; and

WHEREAS, a short-term loan from the City to the Agency establishes qualified indebtedness under the California Health and Safety Code; and

WHEREAS, adequate fund and cash balances are available in the City's General Fund to fund the recommended loan;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the of the City of Banning, California that Council hereby authorizes a loan from the City's General Fund to the Redevelopment Agency on June 30, 2008 in the amount of \$1,300,000. The loan will be repaid to the General Fund July 1, 2008. No interest will accrue on this loan.

PASSED, APPROVED AND ADOPTED this 24th 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. 2008-85 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 24th day of June, 2008 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, City Clerk

CRA RESOLUTION NO. 2008-10

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING APPROVING A LOAN AND REPAYMENT BETWEEN THE CITY AND THE REDEVELOPMENT AGENCY TO FACILITATE THE FUNDING OF REDEVELOPMENT CAPITAL PROJECTS

WHEREAS, Under the California Health and Safety Code, tax increment revenue of the Agency can only be used to pay indebtedness of the Agency; and

WHEREAS, the Agency will only continue to receive its full allocation of tax increment revenue by incurring indebtedness; and

WHEREAS, the Agency desires to use a portion of its excess tax increment on various capital projects; and

WHEREAS, adequate fund balances are available in the CRA to fund the recommended loan and repayment;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Redevelopment Agency of the City of Banning, California that the Agency hereby accepts a loan from the City's General Fund on June 30, 2008 in the amount of \$1,300,000. The loan will be repaid to the General Fund July 1, 2008. No interest will accrue on this loan.

PASSED, APPROVED AND ADOPTED this 24th day of June 2008.

Bob Botts, Chairman
Community Redevelopment Agency

APPROVED AS TO FORM AND
LEGAL CONTENT:

Burke, Williams & Sorensen, LLP
Agency Counsel

ATTEST:

Marie A. Calderon, Secretary
City of Banning

CERTIFICATION

I, MARIE A. CALDERON, Secretary of the Community Redevelopment Agency of City of Banning, California, do hereby certify that the foregoing CRA Resolution No. 2008-10 was duly adopted by the Community Redevelopment Agency of the City of Banning, California at a regular meeting thereof held on the 24th day of June, 2008 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, Secretary
Community Redevelopment Agency

**CITY COUNCIL/CRA AGENDA
JOINT MEETING
CONSENT ITEM**

DATE: June 24, 2008

TO: Honorable Mayor and City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Community Redevelopment Agency Resolution No. 2008-11 and City Council Resolution No. 2008-80, "Awarding the Construction Contract for Project No. 2008-05, 'Removal of an Underground Storage Tank and Appurtenances at 311 E. Ramsey St.'"

RECOMMENDATION: The CRA/City Council adopt Community Redevelopment Agency Resolution No. 2008-11 and City Council Resolution No. 2008-80:

I. Awarding the Construction Contract for Project No. 2008-05, "Removal of an Underground Storage Tank and Appurtenances at 311 E. Ramsey St.," to West Tek, Inc. of Spring Valley, California for an amount of "Not to Exceed" \$66,000.00, which includes an approximate 10% construction contingency.

II. Authorizing the appropriation of \$66,000.00 from 2007 Tax Allocation Bond Proceeds to Account No. 855-9500-490.90-01 and authorizing the Director of Finance to make the necessary budget adjustments related to these funds.

JUSTIFICATION: The removal of one or more underground storage tanks (USTs) at 311 E. Ramsey St. is necessary in order to allow for future onsite development along Ramsey Street, one of the City's main thoroughfares. West Tek, Inc. is the lowest responsible bidder to perform the specified work.

BACKGROUND: On December 11, 2007, the Community Redevelopment Agency (CRA) Board approved the purchase of 7.68 acres of vacant land (311 E. Ramsey St.) located at the northeast corner of Ramsey Street and Martin Street from Richard Ehline. The intention of owning the land is to provide the City of Banning with a better chance of securing the proposed Mid-Riverside County courthouse complex. The CRA hired Terra Nova Planning & Research, Inc. in July of 2007 to perform the required Environmental Assessments.

Based on the findings of a February, 2008 geologic survey conducted by Environmental Data Resources, Inc., it has been determined that one or more Underground Storage Tanks, totaling a 12,000-gallon capacity, was/were identified immediately north of an unused building foundation at 311 E. Ramsey St., formerly a liquor store, furniture store, and gas station. In addition to the UST identified north of the building foundation, two relatively smaller metallic anomalies were encountered during the geophysical survey. One was encountered within the western portion of the building foundation. This anomaly is suspected of being metallic debris, a relatively smaller UST, or a hydraulic lift. The second anomaly was located east of the foundation and is suspected of being metallic debris, a buried vault, or infrastructure related to the nearby piping. With few exceptions,

physical evidence of soil contamination (staining and/or odors) was not encountered within the borings.

The scope of work under this project includes obtaining the necessary permits for the removal of one or more Underground Storage Tank(s) (UST), potential hoist, vaults, waste oil tank, etc., and associated piping from the Riverside County Department of Environmental Health; exposing three anomaly areas, including potential underground storage tank, hoist, piping, vaults, and waste oil tank, etc., during the geophysical phase, per the Phase I & II reports; exposing underground storage tank, potential hoist, vault, piping, etc. for cleaning and inspection; excavation; triple rinse, wash, haul and dispose one or more USTs (one 12,000 gallon tank or two 6,000-gallon tanks), hoist, potential piping, etc., and waste oil tank, if located; backfilling and compacting excavation to 90% relative dry density; demolition of the concrete foundation at 311 E. Ramsey St. and adjacent property; removal and disposal of concrete debris; completion of a Tank Closure Report and submittal to the Riverside County Department of Environmental Health; removal and disposal of soil and asphalt pile from the northeast and southern portions of the property; and obtaining soil samples for laboratory analysis.

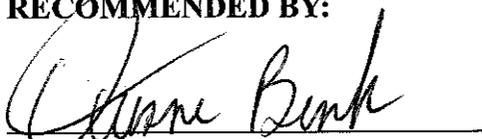
The project was advertised for bids on May 23, 2008, as shown attached as Exhibit "A", and two (2) bids were received and opened on May 30, 2008 with the following results:

	<u>NAME OF FIRM</u>	<u>BID AMOUNT</u>
1.	West Tek Inc., Spring Valley, CA	\$59,680.00
2.	J.C. Palomar Construction, Inc., Santa Ana, CA	\$61,170.00

The Engineer's estimate for the project is \$65,000.00. If approved, it is anticipated that the project will be completed by August of 2008.

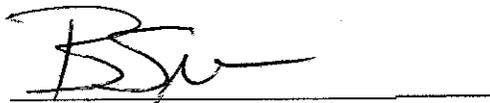
FISCAL DATA: An appropriation of \$66,000.00 from 2007 Tax Allocation Bond Proceeds to CRA Account No. 855-9500-490.90-01 is necessary in order to fund this project.

RECOMMENDED BY:



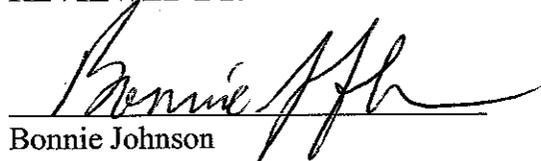
Duane Burk
Director of Public Works

REVIEWED BY:



Brian Nakamura
City Manager/Executive Director of the
Community Redevelopment Agency

REVIEWED BY:



Bonnie Johnson
Finance Director

RESOLUTION NO. 2008-80

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AWARDING THE CONSTRUCTION CONTRACT FOR PROJECT NO. 2008-05, "REMOVAL OF AN UNDERGROUND STORAGE TANK AND APPURTENANCES AT 311 E. RAMSEY ST."

WHEREAS, on December 11, 2007, the Community Redevelopment Agency (CRA) Board approved the purchase of 7.68 acres of vacant land located at the northeast corner of Ramsey Street and Martin Street from Richard Ehline; and

WHEREAS, based on the findings of a February, 2008 geologic survey conducted by Environmental Data Resources, Inc., it has been determined that one or more Underground Storage Tanks, totaling a 12,000-gallon capacity, and two relatively smaller metallic anomalies were identified within the property located at 311 E. Ramsey St., formerly a liquor store, furniture store, and gas station; and

WHEREAS, the project was advertised for bids in a local newspaper on May 23, 2008; and

WHEREAS, West Tek, Inc. of Spring Valley, California is the lowest responsible bidder out of two bids that were received on June 6, 2008; and

WHEREAS, the funding for this project is available in 2007 Tax Allocation Bond Proceeds.

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

Section I. Award the construction contract for Project No. 2008-05, "Removal of an Underground Storage Tank and Appurtenances at 311 E. Ramsey St.," to West Tek, Inc. of Spring Valley, California, for an amount "Not to Exceed" \$66,000.00 (which includes an approximate 10% construction contingency), and all other bids are hereby rejected.

Section II. Authorize the Director of Finance to appropriate \$66,000.00 from 2007 Tax Allocation Bond Proceeds to Account No. 855-9500-490.90-01 and make the necessary budget adjustments related to these funds.

494

Section III. Authorize the Mayor to execute the Construction Contract agreement with West Tek, Inc. of Spring Valley, California for Project No. 2008-05, "Removal of an Underground Storage Tank and Appurtenances at 311 E. Ramsey St." This authorization will be rescinded if the contract agreement is not executed by both parties within fifteen (15) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 24th 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. 2008-80, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 24th day of June, 2008.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

406

CRA RESOLUTION NO. 2008-11

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING, CALIFORNIA, AWARDING THE CONSTRUCTION CONTRACT FOR PROJECT NO. 2008-05, "REMOVAL OF AN UNDERGROUND STORAGE TANK AND APPURTENANCES AT 311 E. RAMSEY ST."

WHEREAS, on December 11, 2007, the Community Redevelopment Agency (CRA) Board approved the purchase of 7.68 acres of vacant land located at the northeast corner of Ramsey Street and Martin Street from Richard Ehline; and

WHEREAS, based on the findings of a February, 2008 geologic survey conducted by Environmental Data Resources, Inc., it has been determined that one or more Underground Storage Tanks, totaling a 12,000-gallon capacity, and two relatively smaller metallic anomalies were identified within the property located at 311 E. Ramsey St., formerly a liquor store, furniture store, and gas station; and

WHEREAS, the project was advertised for bids in a local newspaper on May 23, 2008; and

WHEREAS, West Tek, Inc. of Spring Valley, California is the lowest responsible bidder out of two bids that were received on June 6, 2008; and

WHEREAS, the funding for this project is available in 2007 Tax Allocation Bond Proceeds.

NOW, THEREFORE, BE IT RESOLVED by the Community Redevelopment Agency of the City of Banning as follows:

Section I. Award the construction contract for Project No. 2008-05, "Removal of an Underground Storage Tank and Appurtenances at 311 E. Ramsey St.," to West Tek, Inc. of Spring Valley, California, for an amount "Not to Exceed" \$66,000.00 (which includes an approximate 10% construction contingency), and all other bids are hereby rejected.

Section II. Authorize the Director of Finance to appropriate \$66,000.00 from 2007 Tax Allocation Bond Proceeds and make the necessary budget adjustments related to these funds.

Section III. Authorize the Mayor to execute the Construction Contract agreement with West Tek, Inc. of Spring Valley, California for Project No. 2008-05, "Removal of an Underground Storage Tank and Appurtenances at 311 E. Ramsey St." This authorization will be rescinded if the contract agreement is not executed by both parties within fifteen (15) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 24th day of June, 2008.

Robert E. Botts, Chairman

ATTEST:

Marie A. Calderon, Secretary

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

Burke, Williams & Sorensen, LLP
Agency Counsel

CERTIFICATION:

I, Marie A. Calderon, Secretary of the Community Redevelopment Agency of the City of Banning, California, do hereby certify that the foregoing CRA Resolution No. 2008-11 was duly adopted by the Community Redevelopment Agency of the City of Banning, California, at a regular meeting thereof held on the 24th day of June, 2008.

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, Secretary
Community Redevelopment Agency
Banning, California

EXHIBIT "A"

**NOTICE INVITING TO BID
AND BID OPENING SUMMARY**

NOTICE INVITING TO BID
PROJECT NO. 2008-05, "REMOVAL OF AN UNDERGROUND
STORAGE TANK AT 311 E. RAMSEY STREET"

RECORD GAZETTE
May 23, 2008

Friday, May 23, 2008

Record Gazette

PUBLIC NOTICES

NOTICE INVITING
TO BID
PROJECT NO. 2008-05
"REMOVAL OF AN
UNDERGROUND
STORAGE TANK
AT 311 E. RAMSEY ST."
OWNER: City of Banning
PROJECT DESCRIPTION: The scope of work
under this project includes
obtaining the necessary
permits for the under-
ground storage tank,
potential hoist, and associ-
ated piping removal at 311
E. Ramsey St. (northeast
corner of Ramsey Street

and Martin Street) from
the Riverside County
Department of Environ-
mental Health; exposing
three anomaly areas,
including potential under-
ground storage tank, hoist,
and waste oil tank, during
the geophysical phase;
exposing underground
storage tank and hoist
area for cleaning and
inspection; excavation;
triple rinse, wash, haul,
and proper disposal of one
or more approximate
12,000 gallon under-
ground storage tanks and
hoist (and waste oil tank, if
located); backfilling; dem-
olition of the concrete
foundation at 311 E. Ram-
sey St. and adjacent prop-
erty; removal and disposal
of concrete debris; com-
pletion of Tank Closure
Report and submittal to
the Riverside County
Department of Environ-
mental Health; removal
and disposal of soil and
asphalt pile from the north-
east portion of the prop-
erty; and obtaining soil sam-
ples for laboratory analy-
sis; as shown in the
attached specifications.
The contractor must com-
ply with all National Pollu-
tant Discharge Elimination
System (NPDES) require-
ments to reduce storm
water runoff by implement-
ing applicable Best Man-
agement Practices
(BMPs) as required by the
Public Works Inspector.
SPECIFICATIONS: Avail-
able May 20, 2008 at City
of Banning, 99 E. Ramsey
St., Engineering Div.,
(951) 922-3130; non-
refundable \$50 per set, +
\$10/mailing.

NON-MANDATORY PRE-
BID CONFERENCE: May
27, 2008 at 10 a.m., City
Hall, 99 E. Ramsey St.,
Banning.

REQUIREMENTS: Pre-
vailing Wage, Certified
Payroll, Bid Bond, Pay-
ment and Performance
Bond, Insurance, etc., per
the approved specifica-
tions. Pursuant to the pro-
visions of Public Contract
Code Section 3300, the
City has determined that
the Contractor shall pos-
sess a valid Class A
license at the time that the
Contract is awarded. Fail-
ure to possess the speci-
fied license shall render
the bid as not responsible
and/or non-responsive
and shall act as a bar to
award the Contract to any
bidder not possessing said
license at the time of
award. Pursuant to the
provisions of Public Con-
tract Code Section 22300,
Contractor may substitute
certain securities for funds
withheld by City to ensure
his performance under the
contract. At the request
and expense of Contrac-
tor, securities equivalent to
any amount withheld shall
be deposited at the discre-
tion of City, with either City
or a state or federally char-
tered bank, as the escrow
agent, who shall then pay
any funds otherwise sub-
ject to retention to Con-
tractor. Upon satisfactory
completion of the contract,
the securities shall be
returned to Contractor.
SEALED BIDS DUE: May
30, 2008 and Opened
Publicly @ 2 p.m., local
time, above City Hall
address, Attn: City Clerk.
Dated: 5-13-08
Marie A. Calderon
City Clerk
Publish the Record
Gazette
No. 1718

5/23, 2008

411

**SUMMARY OF BIDS RECEIVED
CITY OF BANNING**

PROJECT NO.: 2008-05

DESCRIPTION: REMOVAL OF AN UNDERGROUND STORAGE TANK
AND APPURTENANCES AT 311 E. RAMSEY STREET

BID OPENING DATE: June 6, 2008 TIME: 2:00 p.m.

NAME OF BIDDER:	Bid Schedule 1			TOTAL BID AMOUNT:
West Tek, Inc. Springs, Valley, CA				\$ 59,680. ⁰⁰
J. C. Palomar Constr. Inc. Santa Ana, CA				\$ 61,170. ⁰⁰

VERIFIED BY: Maria A. Calderon, City Clerk
Ann Marie T. Locante, Associate Civil Engineer

**COMMUNITY REDEVELOPMENT AGENCY MEETING
DIRECTOR'S REPORT**

DATE: June 24, 2008

TO: Honorable Chairman and Board Members

FROM: Brian S. Nakamura, Executive Director

SUBJECT: Review and Approval of Fixed Based Operator Services

RECOMMENDATION: That the Community Redevelopment Agency provide further direction to the Executive Director and Staff regarding the Fixed Based Operator Services desired for the Banning Municipal Airport.

JUSTIFICATION: The City Council/Community Redevelopment Agency recently adopted the Airport Master Plan and desires to secure a Fixed Based Operator to provide a myriad of services, which is intended to improve and enhance services for those utilizing the Airport.

BACKGROUND: On June 28, 2005, City Council adopted Resolution No. 2005-63, "Approving the Professional Services Agreement for Project No. 2004-49, 'Updating the Airport Master Plan for Banning Municipal Airport.'" Through a competitive bid process, C & S Engineers was awarded the contract who later was obtained to prepare the City's Fixed Based Operator Feasibility Study.

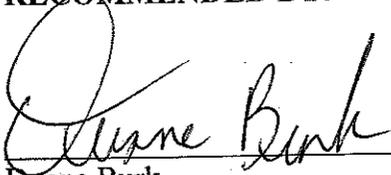
In April of 2007, the Airport Master Plan was completed and then approved by the Federal Aviation Administration (FAA) and by the County of Riverside Airport Land Use Commission (ALUC). On October 23, 2007, the City of Banning held a public hearing for the adoption of the Airport Master Plan Update. At this hearing, City Council directed staff to hold a workshop to discuss the Airport Master Plan Update. The workshop was held on January 8, 2008 where a representative from C & S Engineers, Inc. provided a brief overview of the Airport Master Plan and Based Operator Feasibility Study. Upon completion of the workshop, City Council directed staff to proceed with the Airport Master Plan Update and Fixed Based Operator Feasibility Study.

On April 8, 2008 City Council adopted Resolution No. 2008-08, "Adopting the Airport Master Plan Update for the Banning Municipal Airport." In effort to continue with progress, staff is requesting direction from the Community Redevelopment Agency regarding the level of services desired for the Banning Municipal Airport. C & S Engineers completed the Based Operator Feasibility Study in March of 2007 and is prepared to create a Request for Quotes (RFQ) that will identify the key services desired at the Banning Municipal Airport in an effort to obtain a fixed based operator.

C & S Engineers has submitted a proposal as shown as attached Exhibit "A" which lists services for consideration that include, but are not limited, to fuel sales, hangar rentals, restaurants, and other services as deemed appropriate by the City Council/Community Redevelopment Agency Board.

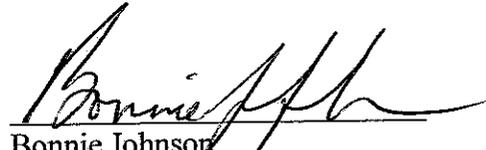
FISCAL DATA: The total cost for fixed based operator screening services "Not to Exceed" \$36,237, but may be reduced depending on the level of services desired by the Council.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
Executive Director

Exhibit "A"

C&S Engineers Proposal for Fixed Base Operator Screening Services

SCHEDULE A

SCOPE OF WORK

Project Title: Fixed Base Operator Screening Services

Airport Name: Banning Municipal Airport
City of Banning, CA

Services Provided: Airport Planning

Project Description:

C&S Engineers, Inc. (CONSULTANT) shall provide professional services to the City of Banning, Riverside County, California (CITY) in the search and selection of a Fixed Base Operator (FBO) for the Banning Municipal Airport (AIRPORT).

Services Provided

1. Review Recommended Airport Facility and Operational Improvements (Revisit Feasibility Study):

- Included in the Airport Master Plan Study; and
- Fixed Base Operator Feasibility Study

2. Update Airport Data Relevant to potential FBO service providers including (Revisit Feasibility Study):

- Based and transient aircraft statistics
- Hangar tenant waiting lists
- Fuel sales, current and historical
- Update terminal area forecast
- Local pilot and aircraft data
- Local socio-economic data
- Airport operating and capital budgets
- Existing airport tenant contracts

3. Business Model Development

To assist the City with the development of a realistic FBO business model that will attract potential FBO services providers and meet the needs of the City and airport customers, the Consultant will develop up to 3 FBO business model alternatives. These alternatives will be compared to the current airport city operated FBO business model. Each business model will address the following alternative business arrangements that are included in various FBO/airport owner business relationships. Business models will include proposed hours of operation, minimal aeronautical services required, staffing, capital investments by the FBO and/or the City, tenant management services, airport management services, term of contract, rental rates, fuel flowage fees, possible shared revenue and expense arrangements, development alternatives, and land-lease rentals.

4. Selection of Business Model for RFQ

Following completion of alternative business models, the consultant will assist the City in selection of a final business model to be utilized in the search for a private FBO service provider. The consultant will facilitate a meeting with City officials to determine the final elements of the FBO business model that will be proposed as part of the Request for Qualifications package used to seek and FBO provider.

5. Preparation of RFQ

The consultant will assist the City with the preparation of RFQ materials including

- Advertisements
- Qualifications
- Information packages to be sent to prospective FBOs.

6. Proposal Meeting

The consultant will be present to assist the City at an FBO pre-proposal meeting and tour of airport facilities.

7. Evaluation of Proposals

The consultant will assist the City with the evaluation of proposals received. These services to include:

- The development of an objective evaluation methodology that matches pre-established criteria developed by the consultant and approved by the City.
- Review of references
- Request for additional information from proposers
- Up to eight hours of interview participation

8. Contract Negotiations

Following the selection of the most qualified proposal, the consultant will assist the city with contract negotiations. The consultant will provide the City:

- A draft FBO contract for City use
- Suggest applicable terms and conditions
- Professional staff for on-site or teleconference for negotiations with selected FBO. (Eight hours max.)

9. Schedule

The following schedule is proposed and assumes timely turnaround of documentation from the CITY

- Tasks 1-6 to be completed within 90 days of receiving written notice to proceed from the CITY
- Task 7 to be completed within 21 days after the completion of Tasks 1-6
- Task 8 within three months after the completion of Task 7

10. Assumptions by Consultant:

- The CITY is the ultimate authority in the selection of an FBO service provider
- The CITY will provide access to key staff, documentation, studies, and other information regarding the AIRPORT or CITY as requested by the CONSULTANT
- All information collected and evaluations will remain confidential and will only be released by the CONSULTANT to the personnel designated by the CITY
- Attendance at additional meetings or interviews outside of the above scope will be billed to the CITY at the rates outlined in SCHEDULE B



- The CONSULTANT will direct all media or public inquiries regarding this project to personnel to be designated by the CITY

###

418



ARCHITECTURAL/ENGINEERING COST SUMMARY SCHEDULE "B" PLANNING PHASE

PROJECT NAME: FBO Screening Services
PROJ DESCRIPTION

DATE: 17-Mar-08
A/E: C & S ENGINEERS, INC.
PROJECT NO: D55
C&S CONTACT: C McDermott

CLIENT: City of Banning
CLIENT MANAGER: Mr. Duane Burk

I. DIRECT SALARY COSTS:

		MAXIMUM RATE OF PAY (\$/HR)	AVERAGE RATE OF PAY (\$/HR)	@	HOURS		COST
A.	SERVICE GROUP MANAGER	\$73.20	\$63.30	X	0	=	\$0.00
B.	DEPARTMENT MANAGER	\$63.30	\$48.30	X	26	=	\$1,256.00
C.	MANAGING ENGINEER	\$45.50	\$44.10	X	76	=	\$3,352.00
D.	CHIEF ENGINEER	\$45.00	\$43.00	X	0	=	\$0.00
E.	SENIOR PROJECT ENGINEER	\$39.90	\$35.90	X	0	=	\$0.00
F.	PROJECT ENGINEER	\$38.10	\$32.50	X	0	=	\$0.00
G.	ENGINEER	\$34.10	\$31.60	X	0	=	\$0.00
H.	STAFF ENGINEER	\$28.40	\$24.70	X	0	=	\$0.00
I.	SENIOR DESIGNER	\$34.10	\$29.40	X	18	=	\$529.00
J.	DESIGNER	\$28.40	\$22.60	X	0	=	\$0.00
K.	CADD OPERATOR	\$20.30	\$18.70	X	0	=	\$0.00
L.	ADMINISTRATIVE ASSISTANT	\$22.50	\$18.70	X	12	=	\$224.00
M.	GRANTS ADMINISTRATOR	\$33.60	\$30.20	X	0	=	\$0.00
N.	MANAGER AIRPORT PLANNING	\$50.80	\$48.80	X	24	=	\$1,171.00
O.	SENIOR PLANNER	\$50.90	\$40.10	X	0	=	\$0.00
P.	PLANNER	\$35.70	\$33.10	X	89	=	\$2,946.00
Q.	STAFF PLANNER	\$27.30	\$25.20	X	46	=	\$1,159.00
R.	SENIOR PROJECT ARCHITECT	\$37.30	\$34.40	X	0	=	\$0.00
S.	PROJECT ARCHITECT	\$31.50	\$29.90	X	0	=	\$0.00
T.	MANAGING GEOLOGIST (SOILS ENG)	\$47.70	\$45.80	X	0	=	\$0.00
U.	GEOLOGIST	\$22.90	\$21.50	X	0	=	\$0.00
V.	ENVIRONMENTAL SCIENTIST	\$29.40	\$25.80	X	0	=	\$0.00
W.	SENIOR CONSTRUCTION SUPERVISOR	\$56.70	\$54.60	X	0	=	\$0.00
X.	CONSTRUCTION SUPERVISOR	\$45.50	\$44.10	X	0	=	\$0.00
Y.	RESIDENT ENGINEER	\$39.80	\$37.90	X	0	=	\$0.00
Z.	CHIEF INSPECTOR	\$31.50	\$29.90	X	0	=	\$0.00
AA.	SENIOR INSPECTOR	\$28.10	\$24.20	X	0	=	\$0.00
BB.	INSPECTOR	\$28.40	\$25.20	X	0	=	\$0.00
CC.	JUNIOR INSPECTOR	\$17.90	\$16.80	X	0	=	\$0.00
DD.	SENIOR TECHNICAL ADMINISTRATOR	\$28.80	\$25.20	X	0	=	\$0.00
EE.	PARTY CHIEF	\$48.90	\$46.80	X	0	=	\$0.00
FF.	INSTRUMENT MAN	\$46.10	\$44.00	X	0	=	\$0.00
GG.	RODMAN	\$46.10	\$44.00	X	0	=	\$0.00

TOTAL ESTIMATED DIRECT SALARY COST:

\$10,637.00



419

II. OVERHEAD EXPENSES & PAYROLL BURDEN PER SCHEDULE "C" -
 (AUDITABLE, ESTIMATED AND EXPRESSED AS A PERCENTAGE
 OF DIRECT SALARY COST):

160.00% \$17,019.00

III. SUBTOTAL OF ITEMS I & II:

\$27,656.00

IV. ESTIMATE OF DIRECT EXPENSES:

A.	TRAVEL, BY AUTO:	0 TRIPS @	0 MILES/TRIP @	\$0.505 =	\$0.00
B.	TRAVEL, BY AIR:	2 TRIPS @	1 PERSONS @	\$750.00 =	\$1,500.00
C.	PER DIEM:	4 DAYS @	1 PERSONS @	\$200.00 =	\$800.00
D.	LEGAL STENOGRAPHER:			=	\$0.00
E.	MISCELLANEOUS:			=	<u>\$250.00</u>

TOTAL ESTIMATE OF DIRECT EXPENSES: \$2,550.00

V. FIXED FEE (PROFIT, LUMP SUM):

A.	LABOR PLUS OVERHEAD:	15%	(OF III.)	\$4,148.00
B.	DIRECT EXPENSES:	15%	(OF IV.)	<u>\$383.00</u>

TOTAL FIXED FEE: \$4,531.00

VI. SUBCONTRACTS:

A.	FBO specialist	\$1,500.00
B.		\$0.00
C.		<u>\$0.00</u>

VII. TOTALS:

A. **ESTIMATE OF MAXIMUM TOTAL COST FOR PLANNING SERVICES, AGREEMENT TOTAL & FAA ELIGIBLE:** \$36,237.00

PROPOSAL PRICING

PROJECT NAME: FBO Screening Services
 SERVICES: Airport Operations Services
 PROJ. LOCATION:
 PROJ. DESCRIPTION:

GROUP MANAGER: M. Hotaing
 PROJECT MANAGER: R. Napolitano
 MANAGING ENGINEER: C. McDermott

CLIENT: City of Banning
 CLIENT ADDRESS:

DIRECT LABOR RATES: (2008)
 PROJECT NUMBER: D55

CLIENT MANAGER: Mr. Duane Burk

DIRECT LABOR

LABOR CATEGORY	AVG LABOR RATE	MAX LABOR RATE
SERVICE GROUP MANAGER	\$63.30	\$73.20
DEPARTMENT MANAGER	\$48.30	\$63.30
MANAGING ENGINEER	\$44.10	\$45.50
CHIEF ENGINEER	\$43.00	\$45.00
SENIOR PROJECT ENGINEER	\$35.90	\$39.90
PROJECT ENGINEER	\$32.50	\$38.10
ENGINEER	\$31.60	\$34.10
STAFF ENGINEER	\$24.70	\$28.40
SENIOR DESIGNER	\$29.40	\$34.10
DESIGNER	\$22.60	\$28.40
CADD OPERATOR	\$18.70	\$20.30
ADMINISTRATIVE ASSISTANT	\$18.70	\$22.50
GRANTS ADMINISTRATOR	\$30.20	\$33.60
MANAGER AIRPORT PLANNING	\$48.80	\$50.80
SENIOR PLANNER	\$40.10	\$50.90
PLANNER	\$33.10	\$35.70
STAFF PLANNER	\$25.20	\$27.30
SENIOR PROJECT ARCHITECT	\$34.40	\$37.30
PROJECT ARCHITECT	\$29.90	\$31.50
MANAGING GEOLOGIST (SOILS ENG)	\$45.60	\$47.70
GEOLOGIST	\$21.50	\$22.90
ENVIRONMENTAL SCIENTIST	\$25.80	\$29.40
SENIOR CONSTRUCTION SUPERVISOR	\$54.60	\$56.70
CONSTRUCTION SUPERVISOR	\$44.10	\$45.50
RESIDENT ENGINEER	\$37.90	\$39.80
CHIEF INSPECTOR	\$29.90	\$31.50
SENIOR INSPECTOR	\$24.20	\$28.10
INSPECTOR	\$25.20	\$28.40
JUNIOR INSPECTOR	\$16.80	\$17.90
SENIOR TECHNICAL ADMINISTRATOR	\$25.20	\$26.80
PARTY CHIEF	\$46.80	\$48.90
INSTRUMENT MAN	\$44.00	\$46.10
RODMAN	\$44.00	\$46.10

GENERAL FACTORS

OVERHEAD:	1.60
FIXED FEE FACTOR:	0.15
MULTIPLIER =	2.99

OUT OF POCKET EXPENSES

TRAVEL, BY AUTO (PER MILE):	\$0.505	/MILE
PER DIEM:	\$200.00	/DAY
COPIES, 8 1/2 X 11":	\$0.05	EACH
COPIES, PLANS (22 X 34"):	\$1.00	EACH
COPIES, LARGE XEROX:	\$1.00	/FOOT
MYLARS:	\$5.00	EACH
CELL PHONE	\$200.00	/MONTH

SERVICES BY OTHERS

TOPOGRAPHIC SURVEYS:		LUMP SUM
CUT & FILL SURVEYS:		LUMP SUM
SOIL BORINGS/CONSTRUCTION TESTS:		LUMP SUM
MOBILIZATION/DEMOB:	\$1,000.00	/FOOT
CONTINUOUS SAMPLING:	\$18.00	EACH
TEST PITS:	\$250.00	EACH
PAVEMENT CORES:	\$50.00	EACH
FIELD CBR:	\$250.00	EACH
LABORATORY CBR, 1 POINT:	\$150.00	EACH
LABORATORY CBR, 3 POINT:	\$350.00	EACH
MECHANICAL ANALYSIS:	\$35.00	EACH
FIELD DENSITY TESTS:	\$35.00	EACH
LAB COMPACTION TESTS:	\$100.00	EACH
NATURAL MOISTURE CONTENT:	\$6.00	EACH
ATTERBERG LIMITS:	\$55.00	EACH
HYDROMETER ANALYSIS:	\$60.00	EACH
OBSERVATION WELL:	\$15.00	/FOOT
CONCRETE COMPRESSION:	\$6.00	EACH
CONCRETE FLEXURAL:	\$6.00	EACH
TOPSOIL ANALYSIS:	\$15.00	EACH
SOILS/CONCRETE TECHNICIAN:	\$450.00	/DAY
TRIP CHARGE:	\$60.00	/TRIP
LA ABRASION:	\$180.00	EACH
MAGNESIUM SULFATE SOUNDNESS:	\$185.00	EACH
ASPHALT TECHNICIAN (PLANT):	\$500.00	/DAY

APPROVED BY:

(GROUP MANAGER AUTHORIZATION)

3/17/08
(DATE)

421

C&S COMPANIES ARCHITECTURAL/ENGINEERING WORK SUMMARY

DATE: 13-Mar-06
 GROUP MANAGER: M. Hotelling
 MANAGING ENGINEER: C. McDermott
 PROJECT MANAGER: R. Napolitano
 PROJECT NUMBER: D55

PROJECT: FBO Screening Services
 SERVICES: Airport Operations Services
 CLIENT: City of Banning
 CLIENT MGR: Mr. Duane Burk

CONT NO.	PHASE NO.	TASK	ADMIN ASST	GRANT ADM	CADD OPER	SEN DES	STAFF ENG	PROJ ARCH	STAFF PLAN	PROJ ARCH	STAFF PLAN	SEN PLAN	MGR PLAN	ENV SCIEN	MAN ENG	DEPT MAN	GROUP MGR	SEN TECH ADMIN	INST MAN	ROO MAN	DIRECT COSTS	SERVICES BY OTHERS	TOTALS	
		100 PROJECT ADMINISTRATION																					\$1,752	
		101 REVIEW AIRPORT FACILITIES/OPERATIONAL IMPROV																						\$1,471
		102 UPDATE AIRPORT DATA																						\$3,504
		103 BUSINESS MODEL DEVELOPMENT																						\$7,254
		104 SELECTION OF BUSINESS MODEL FOR RFO																						\$3,285
		105 PREPARATION OF RFO																						\$5,994
		106 PRE-PROPOSAL MEETING																						\$3,285
		107 EVALUATION OF PROPOSALS																						\$3,044
		108 CONTRACT SERVICES/NEGOTIATIONS																						\$2,658
		600 DIRECT EXPENSES (ALL)																						\$2,833
		790 FBO SPECIALIST																						\$1,500
																								\$2,550.00
																								\$1,500.00
																								\$36,240

422

Daniele Savard

From: Duane Burk
Sent: Monday, May 12, 2008 3:45 PM
To: Daniele Savard
Subject: FW: Fixed Base Operator Screening Services- Banning Municipal Airport
Attachments: operator screening services.pdf

Here you go

From: hazlewood cory [mailto:coreyh@CSCOS.COM]
Sent: Tuesday, March 18, 2008 8:09 AM
To: Duane Burk
Cc: napolitano ralph
Subject: Fixed Base Operator Screening Services- Banning Municipal Airport

Duane-

Per our conversation, see the attached scope and fee for FBO screening services at Banning Municipal Airport. Both Ralph Napolitano and I would like to schedule a conference call soon to discuss the specifics on item #3 in order to get the RFQ out for public solicitation.

Thanks,

Cory P. Hazlewood
C&S Companies
619.296.9373 office
619.296.5683 fax
619.857.0882 mobile

423