



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

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MEETING DATE: January 9, 2024

SUBJECT: Consideration of Resolution 2024-12, Making a Determination that a Negative Declaration was Adopted for the Project and no Subsequent Environmental Document Shall Be Prepared, Approval of General Plan Amendment (GPA) 23-2502, and Approval of the 6th Cycle RHINA Housing Element Update

RECOMMENDATION:

Adopt Resolution 2024-12, making findings that the Project is consistent with a previously adopted Negative Declaration and pursuant to Section 15162 of the California Environmental Quality Act, no further action is required; and approve General Plan Amendment 23-2502, readopting the 6th Cycle Housing Element Update for the 2021-2029 planning period.

BACKGROUND:

State law requires each City and County adopt a comprehensive, long-term General Plan to guide development in their jurisdiction and land outside its boundaries that has relation to its city planning (Govt. Code §65300). California Government Code Section 65302 requires the General Plan to consist of seven State-mandated elements, including Land Use, Circulation, Housing, Conservation, Open Space, Noise, and Safety Elements. The Housing Element is one of the seven State-mandated elements of the General Plan and must be updated every 8 years, unless otherwise mandated by California Government Code Section 65581. The purpose of the Housing Element is to develop comprehensive strategies for providing safe, decent, and affordable housing within the community across all income levels. Furthermore, the Housing Element implements the following goals:

1. To provide an assessment of both current and future housing needs and constraints in meeting these needs; and
2. To establish housing goals, policies, and programs to facilitate the future development of housing for special needs groups.

All jurisdictions within the six-county Southern California Association of Governments (SCAG) region^[1] are required to prepare an update to the Housing Element for the “6th RHNA Cycle” planning period of 2021-2029. The due date for adoption of the 6th RHNA Cycle Housing Element was October 15, 2021, along with a 60-day grace period.

The City of Banning prepared and the City Council adopted the 6th Cycle General Plan Housing Element

Update for the 2021-2029 planning period and underwent a deliberate planning process that touched a wide spectrum of stakeholders. The following summary provides a chronology of events to date:

Joint Planning Commission and City Council Workshop	April 13, 2021
City Hosted and Online Community Survey	May 13, 2021
Public Workshop	June 2, 2021
Community Survey ended; results evaluated	June 30, 2021
Draft Housing Element posted on City website	July 14, 2021
Housing Element sent to HCD for preliminary review	July 14, 2021
Conference with HCD[2]; received preliminary comments	August 20, 2021
Housing Element revised and sent to HCD for review	August 30, 2021
HCD review comments received	September 17, 2021
Revised Housing Element posted on City website	October 4, 2021
Planning Commission considered Draft Housing Element	October 19, 2021
City Council adopts 6 th Cycle Housing Element Update	November 9, 2021
Adopted Housing Element Sent to HCD for Certification	November 18, 2021
HCD does not Certify Housing Element, sends comments	February 21, 2022

State law delegates the authority to HCD for review of the City’s Housing Element. A finding of substantial compliance from HCD is referred to as “Certification” of the Housing Element. Timely certification is important to maximize the City’s eligibility for grant funds, ensure the legal adequacy of the General Plan, maintain local land use control, and especially, to avoid a **carryover** of unmet housing needs from the prior planning period (i.e., 5th RHNA Cycle) to this planning period (6th RHNA Cycle). The City must avoid this requirement as it would result in adding over 1,000 additional units. In addition, failure to obtain timely certification of the Element can result in HCD reducing future time frames of our planning periods, such as reducing the 8-year update cycle to a 4-year cycle.

Since February 2022, City staff and the Housing Element consultant have met with HCD on three occasions to discuss the sections of the Housing Element and the issues identified by HCD requiring additional information or actions to be taken. A revised Draft 6th Cycle Housing Element was sent to HCD for an “informal” review in January 2023. In March 2023, HCD sent new comments concerning the newly revised sections of the Housing Element and followed up with a noncompliance letter dated May 19, 2023. A second noncompliance letter was sent to the City on July 20, 2023. City staff, the City’s Housing Element consultant, and HCD staff met on September 20, 2023 to discuss the remaining issues that needed to be addressed to achieve certification, and potential consequences for non-compliance. A schedule was mutually agreed upon as follows:

Planning Commission Public Hearing to Recommend Re-Adoption of Housing Element	December 6, 2023
City Council Public Hearing to Re-Adopt Housing Element	January 9, 2024
On or before this date, submit Housing Element to HCD for Certification Review	January 16, 2024
On or before this date, submit signed City Council Resolution to HCD as verification of Rezone	January 16, 2024

HCD 60-Day Certification Review Period concludes (City Council Resolutions and Ordinances to implement Amendments to General Plan Land Use/Zoning Map, and Zoning Text Amendments required by Programs in the Housing Element to occur by January 2024 must March 8, 2024 be sent to HCD prior to this date).

The regularly scheduled Planning Commission meeting noticed for November 1, 2023 was canceled due to lack of quorum. The schedule for re-adoption has been revised and HCD has been so advised of the following changes to the schedule:

Planning Commission Public Hearing to Recommend	December 6, 2023
Re-Adoption of Housing Element	
City Council is Dark the week after Christmas	December 26, 2023
City Council Public Hearing to Re-Adopt Housing Element	January 9, 2023
On or before this date, submit Housing Element to HCD for Certification Review	January 16, 2023
City Council Public Hearing to Amend Land Use Map per H.E. Site Inventory Analysis (No longer required due to Appendix B and proposed Zoning Text Amendment for VHDR)	N/A
On or before this date, submit signed City Council	February 29, 2023
Resolution(s) to HCD as verification of Zoning Text Amendment	
HCD 60-Day Certification Review Period concludes	March 8, 2024

[1] The SCAG region includes Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura counties.

[2] HCD is the acronym for *Housing and Community Development*.

DISCUSSION AND ANALYSIS:

For most cities, the key to obtaining HCD certification is demonstrating sufficient capacity for new housing development that equals the level of need described in the current Regional Housing Needs Assessment (“RHNA”). The focus of HCD’s review mainly concerns properties and parcels (i.e., “sites”) where the existing and underlying zoning classification authorizes multi-family development at densities appropriate to support affordable housing, which is defined in state housing statutes, as a minimum 30 dwelling units per acre, for specific areas in the City.

Regional Housing Needs Assessment (“RHNA”)

State Housing Element law requires that each jurisdiction provides for its share of the statewide housing demand. The number of housing units is established through the process known as the *Regional Housing Need Assessment* (RHNA). The RHNA is prepared by the Southern California Association of Governments (SCAG) in consultation with member jurisdictions and sub-regional councils of governments such as the Western Riverside Council of Governments (WRCOG). The RHNA is based on

the regional forecast of population growth and new household formation during the planning period, and the number of new housing units needed to accommodate additional household growth at each income level. The City’s required RHNA allocation is distributed among the following five income categories, which are based on a household’s annual income compared to the “areawide median income” (AMI):

- Extremely Low (<30% AMI)
- Very Low (31-50% AMI)
- Low (51-80% AMI)
- Moderate (81-120% AMI)
- Above Moderate (120%+ AMI)

SCAG determined that the City’s regional share of future housing need is 1,673 dwelling units. This allocation is distributed into five income categories, as shown on **Table 1**. The RHNA includes a fair share adjustment which distributes units by income category to reduce over-concentration of lower income households in historically lower-income communities in the region.

Table 1 Housing Needs for 2021-2029

Income Category (% of County AMI)	Number of Units	Percent
Extremely Low (30% or less)*	155	9.30%
Very Low (31 to 50%)	162	9.70%
Low (51 to 80%)	193	11.60%
Moderate (81% to 120%)	280	16.70%
Above Moderate (Over 120%)	883	52.70%
Total	1,673	100.00%

Source: Final Regional Housing Needs Allocation, SCAG, (2021).

**The City has an RHNA allocation of 192 very low-income units (inclusive of extremely low-income units). Pursuant to State law (AB 2634), the City must project the number of extremely low-income housing needs based on Census income distribution or assume 50 percent of the very low-income units as extremely low. According to the CHAS data developed by HUD, 33.0% of City households earned less than 50 percent of the AMI. Among these households, 49.3 percent earned incomes below 30% (extremely low). Therefore, the City’s RHNA allocation of 317 very low-income units may be split into 155 extremely low and 162 very low-income units. However, for purposes of identifying adequate sites for the RHNA allocation, State law does not mandate the separate accounting for the extremely low-income category.*

Appropriate Zoning to Accommodate the RHNA

It is important to note that the RHNA establishes a planning goal, and not a mandate or quota, to build or issue permits for the 1,673 dwelling units. Rather, the City is required to demonstrate that there are adequate sites, with appropriate high density zoning classifications available, for development commensurate with the RHNA. If property owners and developers choose to pursue such development opportunities, these Projects are evaluated in accordance with the City’s General Plan land use and policies, the underlying zoning classification, and applicable housing law provisions.

Under state law, sites must be zoned high density, allowing residential development at a density that can accommodate 30 units/acre, which is the minimum density considered suitable for lower-income housing

in metropolitan areas such as Riverside County. Regardless of density, deed-restricted affordable housing typically requires public subsidies, and the level of funding for affordable housing is extremely limited. As a result, very few income-restricted affordable housing projects are built each year, and with the statewide elimination of redevelopment agencies, the construction of affordable housing is less likely to occur in lieu of “market rate” housing. The purpose of state law in stipulating minimum densities is to reduce constraints on affordable housing development due to local land use regulations, which may include either a General Plan Amendment, a Zone Change, or both.

Credits Toward RHNA: Units Planned or Approved

Housing units approved and/or pending (and not yet permitted for construction) can be credited towards meeting the City’s RHNA. The City must demonstrate in this Housing Element the ability to meet the remaining housing needs, through the provision of sites, after subtracting anticipated units. **Table 2**, below, shows the remaining unit deficit after subtracting units that are pending or approved as of October 2023.

Table 2 Remaining 2021-2029 Share of Regional Housing Needs

Income/Affordability Category	RHNA	Units Pending or Approved	Remaining Units Deficit
Lower	510	9	501
Moderate	280	352	0
Above Moderate	883	1,496	0
Total	1,673	3,518	501

Remaining RHNA After accounting for the planned and approved units, there is a remaining need of 501 units, all of which are designated for lower income units. The City must demonstrate the availability of sites with appropriate zoning and development standards that can facilitate and encourage the development of such units.

Residential Sites Inventory

State law requires that jurisdictions demonstrate in the Housing Element that the land inventory is adequate to accommodate a jurisdiction’s share of the regional growth. The City is committed to identifying sites at appropriate densities as required by law. The State, through AB 2348, has established “default density” standards for local jurisdictions. State law assumes that a land use density minimum, of 30 units/acre, is adequate to facilitate the production of housing affordable to lower income households.

Therefore, in estimating potential units by income range, it is assumed that:

- A density of 0.20 to 14.9 du/acre (primarily for single-family homes) is assumed to facilitate housing in the above moderate-income category.
- A density of 15.0 to 29.9 du/acre (primarily for medium density multi-family developments) is assumed to facilitate housing in the moderate-income category; and,
- A density of 30 or more du/acre (primarily for higher density multi-family developments) is assumed to facilitate housing in the very low- and low-income category.

Rezoning to Accommodate the RHNA

In addition to vacant and nonvacant parcels, the City completed a rezone (e.g., commonly referred to “up-zoning”) of 16 residential parcels that will support affordable housing densities. For example, the rezone of low-or-medium densities (5-10 du/ac) to higher density zones, can accommodate low-income development at 30 du/ac. The City has identified eligible sites and locations throughout the City that have

been incorporated into the 6th RHNA Cycle Housing Element Update. The sites inventory of residential capacity can be found in Appendix B of the Housing Element. As indicated in Appendix B, the remaining RHNA as shown in Table 2 above, is fully met by the rezone of the aforementioned 16 parcels.

In compliance with the last Housing Element Cycle Update (5th Cycle), Title 17 (Zoning) of the Banning Municipal Code was amended to introduce a new residential zoning classification of Very High Density Residential (VHDR) having a density range from 19 to 24 units per acre. This classification was defined in Title 17 of the BMC, but development standards were never adopted. Pursuant to requirements of the 6th Cycle Housing Element, a Zoning Text Amendment (ZTA) will be required to increase the upper density threshold to 30 units per acre, consistent with the default density required for affordable housing as determined by the State of California. The ZTA will also introduce development standards such as required setbacks, maximum lot coverage, and maximum height. The City will introduce VHDR as a new General Plan land use category that will be included in the Land Use Element Update currently underway on a separate schedule. This new category would support up to 30 du/ac and could facilitate the future development of lower-income units. This new land use designation is a recommended program of the Housing Element that will be implemented on or before the conclusion of HCD's Housing Element certification review.

Revisions to the Draft Housing Element

The Draft Housing Element has been reviewed, revised, and updated over several iterations to address comments raised by HCD in comment letters received from February 2022 through July 2023 (Attachment 3). Major topics of concern to HCD (see Attachment 4, Comment Tracker) that have been addressed include:

- Sites Inventory and Analysis – Realistic Capacity: Prior analysis relied upon assumptions made on vacant and nonvacant sites and their potential to develop at a certain percentage of maximum densities. HCD expressed concern over the assumptions used. However, in 2022, the City rezoned 12 properties from Low Density Residential, Medium Density Residential, and High Density Residential to Very High Density Residential; and removed an Affordable Housing Overlay (AHO) from 4 High Density Residential properties. The Banning Municipal Code requires new development projects to meet at least the lowest density threshold for a project to garner Project approval. Under current zoning requirements for the VHDR zone, the existing density threshold is from 19 to 24 units per acre. Using the higher current density threshold of 24 units per acre for these rezoned parcels, combined with Pipeline projects identified in Table 41, and as indicated in Appendix B, the RHNA for lower-income households can be met with the recently rezoned sites. Moreover, a proposed ZTA to be completed in January 2024 will change the maximum density threshold for VHDR to 30 units per acre, consistent with the State's default density threshold. This will yield even more affordable units giving the City a substantial "cushion" to meet its 6th Cycle RHNA.
- Sites Inventory and Analysis – Suitability of Nonvacant Sites: HCD expressed dissatisfaction that assumptions made regarding capacity analysis of nonvacant sites was not supported by substantial empirical evidence or based on local area trends. This is largely due to a lengthy period of time where the City of Banning experienced little to no new residential development. With no firm examples to support potential carrying capacity of nonvacant sites, Programs are recommended to encourage the development of underutilized residential sites by 2025. Due to rezones already completed and discussed above, the Housing Element has demonstrated that the 6th Cycle RHNA can be met with current vacant inventory. As a result, nonvacant sites have been removed from the analysis to meet the City's RHNA obligation, but the future development of nonvacant sites continues to be an important topic for the future orderly development of the City. Policies and programs to support this shall be investigated in the next year.

- Zoning for a Variety of Housing Types: Complete a ZTA to allow Emergency Shelters by right (nondiscretionary action) in the Public Facility Zone by January 2024.
- New Legislation: Address implementation of AB 2339 by incorporating newly adopted state mandates for emergency shelters into Title 17 (Zoning) of the Banning Municipal Code by January 2024.
- Governmental Constraints on Housing for Persons with Disabilities: Complete a ZTA to allow group homes in all residential zones in line with similar uses, by January 2024. For example, small residential care facilities are currently permitted by right in all residential zones, but large residential care facilities are only permitted in the MDR and HDR zones upon approval of a Conditional Use Permit.
- Program 9. Zoning Ordinance Monitoring: Complete a ZTA to ensure that parking requirements for emergency shelters are compliant with AB 139 by January 2024.
- Quantified Objectives: Programs 2, 4, and 5 of the Housing Element have been revised to recommend outreach programs, amend Title 17, Zoning of BMC, and address rehabilitation, conservation and preservation of housing stock for all income levels.
- Other, Rezoning: Completed in 2022, fully satisfies 6th Cycle RHNA. Additional rezoning to occur in 2024 pursuant to Land Use Element update.
- Affirmatively Furthering Fair Housing: Site selection for affordable housing rezoning (Appendix B) took into consideration desired concepts for AFFH. For example, each site is under 10 acres in size to avoid overconcentration of lower-income families in large-scale projects. The selected sites are dispersed citywide to offer lower-income households the opportunity to live in different parts of the City. Not all desired elements attractive for meeting AFFH requirements are available at each site, such as proximity to grocery stores, transit stops, City parks, and schools. However, each site can boast a combination of such desired elements and future residents can decide which of these offerings are most important to them when they choose where to live. As the City continues to grow, more of these types of amenities will become available. Program 26 of the Housing Element has committed to further developing programs, zoning amendments, and community outreach efforts by 2026.

At the time this report was prepared, HCD was not able to accommodate staff with an informal review as requested in a letter sent to HCD on September 21, 2023. However, City staff is confident that the revised Housing Element fully satisfies all of HCD's prior comments and concerns.

Planning Commission Review

The 6th Cycle Housing Element Update was publicly noticed for the November 1, 2023 Planning Commission Meeting, however, due to a lack of quorum, the public hearing was continued to the next regularly scheduled meeting. On December 6, 2023, the Planning Commission conducted the public hearing, heard staff's presentation, provided an opportunity for public comment, closed the public hearing, and after considering all of the information presented in the public record recommended that the City Council adopt a Notice of Determination that the Project is consistent with the previously adopted Negative Declaration prepared for the 6th Cycle Housing Element, and recommended the City Council readopt the Housing Element and submit to HCD for Certification review.

CEQA COMPLIANCE:

Pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines, an Initial Study/Negative Declaration (IS/ND) was prepared to evaluate the environmental impacts of the Housing Element and related General Plan Amendment. The results of the Initial Study found there are no significant impacts to the environment and the Negative Declaration was adopted by the City Council in November 2021. Subject to Section 16162 (Subsequent EIRs and Negative Declarations) of the CEQA Guidelines, no further analysis is required.

ENVIRONMENTAL DETERMINATION:

California Environmental Quality Act (CEQA)

Planning Division staff has determined that the proposed project will not have a significant impact on the environment and no mitigation is recommended or required. Staff has prepared and will file a Notice of Determination pursuant to Section 15075 of the California Environmental Quality Act and CEQA Guidelines within 5 working days of the City's approval of the project.

PUBLIC COMMUNICATION:

The proposed update of the 6th Cycle Housing Element was advertised in the Record Gazette newspaper, December 29, 2023. As of the date of this report, staff has not received any written comments in favor of or opposed to the project.

JUSTIFICATION:

California Government Code Section 65302 requires the General Plan to consist of seven State-mandated elements, including Land Use, Circulation, Housing, Conservation, Open Space, Noise, and Safety Elements. The Housing Element is one of the seven State-mandated elements of the General Plan and must be updated every 8 years, unless otherwise mandated by California Government Code Section 65581. Failure of the City to comply with Housing Element Update Cycles can lead to severe repercussions including fines, and the inability to apply for grants and other public funding.

FISCAL IMPACT:

The Project is within the confines of the budget for the amended consultant contract. There is no anticipated fiscal impact if HCD certifies the readopted 6th Cycle Housing Element.

ALTERNATIVES:

1. The City Council may vote to readopt the 6th Cycle Housing Element and submit to HCD for Certification Review.
2. The City Council may revise the 6th Cycle Housing Element and direct staff to make the changes and submit to HCD for Certification Review.
3. The City Council may reject the 6th Cycle Housing Element and refer the item to the Planning Commission for additional recommendations as directed. Exercising this option could expose the City to non-compliance financial sanctions by HCD and other Federal, State and local jurisdictions.

ATTACHMENTS:

1. [Resolution 2024-12.docx](#)
2. [Revised Adopted Banning Draft Housing Element_November 2023_wtihAppendices.pdf](#)
3. [HCD Notice of Violation 05-19-23.pdf](#)
4. [HCD Notice of Violation 07-20-23.pdf](#)
5. [Comment Tracker.docx](#)
6. [Response to HCD Noncompliance Letter 9-21-2023.docx](#)
7. [NOD 6th Cycle Housing Element Update.pdf](#)