



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Emery Papp, Senior Planner
David Newell, Community Development Director

MEETING DATE: October 8, 2024

SUBJECT: Reconsideration Request by Sun Lakes Highland, LLC on the City Council's Decision of September 10, 2024 to Adopt Resolution 2024-151, Denying Entitlement Applications (Tentative Parcel Map 38164 and Design Review DR 21-7008) for the Banning Point Project

RECOMMENDATION:

It is recommended that the City Council review the materials submitted by Sun Lakes Highland, LLC, in accordance with Section 17.68.140 of the Municipal Code and Section 11.3(d) of the City Council Manual of Procedural Guidelines, and provide direction to staff on whether the City Council believes it is warranted to reconsider its September 10, 2024 denials of the Tentative Parcel Map and Design Review applications by scheduling the matter for a future public hearing by the City Council. In order for the matter to be reconsidered and scheduled for a new public hearing, a member of the City Council who voted with the majority to deny the two applications and adopt Resolution 2024-151 would need to make a motion to reconsider that action.

The motion would need to be seconded by any member of the City Council, and the motion would need to pass with a majority vote.

BACKGROUND:

On September 10, 2024, the City Council adopted Resolution No. 2024-151 (Attachment No. 1), denying two entitlement applications (Tentative Parcel Map 38164 and Design Review No. 21-7008) for the Banning Point Project, located within the Sun Lakes Village North Specific Plan. On September 25, 2024, the Law Firm of Allen Matkins Leck Gamble Mallory & Natsis LLP, submitted a letter to the City of Banning Community Development Department requesting the City Council reconsider its September 10, 2024 public hearing decision on the matter (Attachment No. 2). While the request is somewhat unusual, it is a lawful request consistent with Section 17.68.140 (Attachment No. 3) of the Banning Municipal Code (BMC). The request was also made timely by having been filed within 15 days of the City Council's decision on the matter.

JUSTIFICATION:

The project applicant, Sun Lakes Highland, LLC has requested that the City Council reconsider its decision, in accordance with BMC Section 17.68.140:

"If more complete or additional facts or information, which may affect the original action taken on an application by a review authority are presented, the review authority may reconsider such action taken, if a request for reconsideration is filed with the department within fifteen days following the final date of action. If a public hearing was required in the original review process, another public notice as specified in Section 17.68.020 shall be made prior to the reconsideration of the review authority, and all costs

associated with the reconsideration shall be paid by the applicant."

For purposes of Section 17.68.140, the "review authority" for TPM 38164 and the appeal of the Planning Commission's approval of DR 21-7008 is the City Council. The Council is permitted to reconsider its action on TPM 38164 and DR 21-7008 if a request for reconsideration is timely filed within 15 days following the date of final action. Because the BMC is silent on who can file a request for reconsideration, it is reasonable to construe the provision to permit the property owner/applicant for the project, Sun Lakes Highland, LLC, to file the request. On September 25, 2024, Sun Lakes Highland, LLC filed the subject request, which complies with the BMC requirements of filing within 15 days of the City Council's September 10, 2024 decision.

Also, although Section 17.68.140 is located in the Zoning Code, it applies to the TPM application based on BMC Sections 16.08.030 and 16.14.010(A). BMC Section 16.08.030 states that, "*[a]n application for a tentative map shall be processed and set for a public hearing in accordance with Chapter 16.14 of this title.*"

In addition, BMC Section 16.14.010(A) states that, "*[a]ny hearing required in this Title 16, subdivisions, shall be set, and notice of the public hearing of the planning commission and of the city council shall be given, in a manner consistent with Chapter 17.68,*" which includes Section 17.68.140. (Section 17.68.140 applies to the Design Review application via Section 17.56.040.)

Finally, the City Council Manual of Procedural Guidelines (Attachment No. 4) addresses motions for reconsideration. Section 11.3(d) of the Manual states:

"Any Legislative Body member who voted with the majority may move to reconsider any action at the same meeting or, within sixty (60) calendar days, request in writing to the Clerk/Secretary that it be agendized for consideration at the following meeting, provided that reconsideration shall not be permitted where a party other than the City has acted in reliance on the Legislative Body's action and would be substantially prejudiced by such reconsideration. The Clerk shall apprise the City Attorney of any facts constituting substantial prejudice and may rely upon the determination of the City Attorney. In the event that the subject of the reconsideration is a motion that failed as the result of a tie vote, any Legislative Body member who voted against the earlier motion may move for reconsideration at the following meeting. The member seeking reconsideration must have the matter agendized unless the motion will be made at the same meeting where the original action was taken. If the motion to reconsider passes, then the original item may be reconsidered at that time or agendized for the next meeting which meets any applicable noticing requirements. After a motion for reconsideration has once been acted upon, no other motion for reconsideration thereof shall be made without unanimous consent of the Legislative Body."

Based on the foregoing, the members of City Council voting in support to adopt Resolution 2024-151 (denying the project) may choose to reconsider their decision. Councilmembers Flynn and Happe and Mayor Pro Tem Minjares voted affirmatively to adopt Resolution 2024-151 and either Councilmembers Flynn or Happe or Mayor Pro Tem Minjares may make a motion to reconsider the denial decision. A second to the motion may be made by any member of the City Council.

FISCAL IMPACT:

There is no Fiscal Impact related to this action other than staff time to prepare the report.

ALTERNATIVES:

1. Consider a motion to grant the request of Sun Lakes Highland, LLC and vote to reconsider the matter by setting it for a future public hearing on the applications.
2. Take no action and the request fails due to lack of a Motion.

BUDGETED?:

No

CONTRACT/AGREEMENT:

No

ATTACHMENTS:

1. [CC Resolution No. 2024-151.pdf](#)
2. [2024-09-25 SLH Reconsideration Request.pdf](#)
3. [BMC 17.68.140___Reconsideration..docx](#)
4. [CC Manual of Procedural Guidelines_Resolution 2023-34 - Copy.pdf](#)