



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Emery Papp, Senior Planner

MEETING DATE: June 11, 2024

SUBJECT: Consideration of Resolution 2024-88, (1) Approving Tentative Parcel Map No. 38164, Allowing the Subdivision of Approximately 47 Gross Acres of Vacant Land Into Three Parcels; (2) Affirming the Planning Commission's Approval of Design Review No. 21-7008 and Denying an Appeal of that Decision and Permitting the Construction of a Proposed 619,959 Square Foot Industrial Warehouse Building, including 10,000 Square Feet of Office Space and a Combined 34,000 Square Feet of Retail/Commercial Buildings, on Real Property Located within the Boundaries of the Sun Lakes Village North Specific Plan Area (APN: 419-140-057); and (3) Adopting an Addendum under the California Environmental Quality Act (CEQA) and Making Findings in Support Thereof, Including Findings of Consistency with the Certified Environmental Impact Report Prepared for Amendment No. 5 to the Sun Lakes Village North Specific Plan (SCH # 2020029074)

RECOMMENDATION:

Adopt Resolution 2024-88.

BACKGROUND:

Tentative Parcel Map (TPM) No. 38164 and Design Review (DR) No. 21-7008 propose to subdivide approximately 47.11 gross acres of vacant land located within the Sun Lakes Village North Specific Plan area (SLVNSP) into three commercial/industrial lots to accommodate the construction of a 619,959 square foot industrial warehouse building (the "Project" or the "Banning Point Project"), including a 10,000 square-foot integrated office component. The Project also proposes six new retail/commercial buildings collectively totaling approximately 34,000 square feet (sf), which range in size from 1,600 sf to 8,400 sf. One of the three parcels will remain undeveloped and is not a part of the Design Review application for the Banning Point Project. The Project is intended to be constructed in two phases. Phase 1 will consist of the construction of the industrial building. Phase 2 will consist of the construction of the retail/commercial buildings.

The Planning Commission voted on December 1, 2021, to approve DR No. 21-7008 and recommend approval of TPM No. 38614 to the City Council, and the City Council approved the Project on February 17, 2022, by way of adoption of Resolution No. 2022-14. A group, the Pass Action Group (PAG) filed a lawsuit to challenge approval of the Project. (Pass Action Group v. City of Banning, et al., Riverside County Superior Court Case No. CVRI2201482.) The lawsuit alleged that the City failed to provide a fair hearing due to alleged bias by certain Councilmembers. The lawsuit also contended that the City violated the California Environmental Quality Act (CEQA) and the City's General Plan in approving the Project, and that the findings in support of the Project were not supported by substantial evidence. Following

briefing and a hearing on the merits, the trial court issued a ruling finding only that the City did not provide a fair hearing based on the court's conclusion that then-Councilmember Mary Hamlin was biased in favor of the Project. The court rejected all claims of bias as to Councilmember Wallace and Councilmember Sanchez, stating in its ruling that "their statements do not overcome the presumption that they are unbiased. There has been no showing of a financial or personal interest in the Project and no specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias...." The court also rejected in its entirety all of PAG's substantive challenges, finding that the City fully complied with CEQA, that the Project is consistent with the City's General Plan, and that the City's findings were supported by substantial evidence, as discussed further below. As the court concluded in its ruling, the court "does not find that Petitioner [PAG] has carried its burden of proof on any remaining issue and would not grant the writ but for the fair hearing issue."

The court entered judgment and issued a writ of mandate directing the City to set aside the prior Project approval and to reconsider the Project without the participation of Councilmember Hamlin.

JUSTIFICATION:

TPM No. 38164 and DR No. 21-7008 were presented to the Planning Commission at a duly noticed public hearing on October 19, 2021, and again on December 1, 2021. During the Planning Commission's public hearings, Commissioners heard public testimony from dozens of Sun Lakes Village residents and others living in the vicinity of the Project and having an interest in the City's determination regarding the proposed Project. Much of the public testimony centered around several core issues and concerns. A summary of these concerns is provided below:

- Public Notice
- Traffic/Circulation
- Air Quality
- Noise
- Lighting
- Building location
- Future Job Growth
- Golf Cart Access
- Sun Lakes Blvd. Extension
- Health Impacts

Included in Attachment 3 (Planning Commission Packet, December 1, 2021) is an Issues of Concern & Response Matrix, which provides clarification and technical back-up to support the City's position on the topics of concern discussed during public comment.

PLANNING COMMISSION ACTION:

Upon conclusion of the public hearing, and considering all the evidence in the public record, the Planning Commission voted at the December 1, 2021, meeting to recommend approval of TPM No. 38164 and acted to approve DR No. 21-7008 by a vote of three Ayes and two Noes, with zero absent or abstaining.

A copy of the Planning Commission's Resolution providing for its determinations and action is attached to this Report.

APPEALS OF THE PLANNING COMMISSION'S DECISION AND HEARING DATES:

Pursuant to Banning Municipal Code Section 17.68.100, three applications seeking to appeal the Planning Commission's decision on the Project were received during the appeal period, following the Planning Commission's action. The first appeal application received was from Golden State Environmental Justice Alliance and was rejected as being incomplete because it did not state the grounds or reasons for its appeal, did not request a specific action, and incorrectly described the Project. A second appeal was filed by Supporters Alliance for Environmental Responsibility (SAFER). That

second appeal was later withdrawn on January 18, 2022, and SAFER subsequently announced its support for the Project. As a result, only the third appeal (Appeal) by PAG (Appellant) remains to be heard.

On January 11, 2022, the City Council received those appeals and set a joint hearing on TPM No. 38164 and DR No. 21-7008 for January 31, 2022. Notice of that hearing was published in the Record Gazette newspaper on January 21, 2022, and was mailed on January 20, 2022, to property owners within 1,000 feet of the Project site.

On January 25, 2022, at the request of both PAG and the Applicant, the City Council acted to postpone the City Council hearing on the Project from January 31, 2022, to February 17, 2022 at 5:00 p.m. Notice of the rescheduled public hearing was published in the Record Gazette newspaper on February 4, 2022, and mailed on February 3, 2022 to property owners within 1,000 feet of the Project site, providing 10 days' notice of the rescheduled hearing date.

For this remand hearing before the City Council, notice of the public hearing was published in the Record Gazette newspaper on May 17, 2024, and mailed on May 30, 2024, to property owners within 1,000 feet of the Project site, providing 10 days' notice of the hearing date.

The Project consists of applications for TPM No. 38164 and DR No. 21- 7008, and an Addendum/Consistency Determination pursuant to CEQA. The Project is located north of Sun Lakes Boulevard, east of Highland Springs Avenue, south of Interstate 10, and west of The Lakes Apartment Complex, and located in the Sun Lakes Village North Specific Plan area, as indicated in the attached exhibits.

TPM No. 38164:

TPM No. 38164, as shown in Figure 3 below, was submitted as part of the Project application review and proposes to subdivide the entire site (47-acres) into three (3) parcels. Parcel 1 will be approximately 6.9 acres in size and accommodate six (6) proposed retail/commercial buildings. Parcel 2 will be approximately 30.14 acres and the proposed industrial warehouse building. Parcel 3 is not intended for development at this time; however, it will share access with Parcel 2. Parcel 3 is approximately 9.96 acres in size and is labeled "Not A Part" (N.A.P.) of the Project. The City Engineer has determined that the proposed subdivision of the land is in conformity with the State Subdivision Map Act and the City's Subdivision Ordinance, and that all the proposed lots will have adequate access to public streets, sanitary sewer lines, water mains, fire hydrants, drainage structures and utilities.

The court found that "Substantial evidence supported the City's project approval findings," which includes the City's findings that "the tentative map and design review [are] consistent with the general plan and the specific plan amendment."

DR No. 21-7008:

The proposed industrial warehouse building measures 619,959 sf, which includes 10,000 square feet of office space to be built on Parcel 2 of the Map, as indicated in Figure 4, Site Plan below. The Project also proposes six retail/commercial buildings totaling approximately 34,000 sf., ranging in size from 1,600 sf to 8,400 sf. Building 1 will include a coffee restaurant with a drive-thru and the remaining five (5) buildings are intended for sit-down restaurant-type uses and other commercial and services uses. The SLVNSP land use and zoning designation provides for Business and Warehouse, Office and Professional, and Retail and Service, consistent with the proposed uses on each parcel. All of the proposed uses are permitted by right by the SLVNSP.

The proposed industrial building and uses will be located as far away from residents to the extent possible. The building is separated by approximately 800 feet from the nearest Sun Lakes Country Club residence. The industrial building will be screened by eight-foot to fourteen-foot-high screening walls, landscaping, 24-foot-wide drive aisles, the six retail/restaurant buildings adjacent and along frontage of

Parcel 2. The Project is also screened by Sun Lakes Boulevard and median and parkway landscaping in the Sun Lakes Boulevard right-of-way.

The court found that “Substantial evidence supported the City’s project approval findings,” which includes the City’s findings that “the tentative map and design review [are] consistent with the general plan and the specific plan amendment.”

Architectural Design:

The industrial warehouse building will be a contemporary styled concrete tilt-up building with painted and scored accents to provide shading interest. The elevations utilize a combination of materials and accents such as anodized aluminum windows and door frames with tempered glazing in a blue reflective color, metal canopies, and mullions.

The warehouse building will use Sherwin-Williams paint colors Extra White, with Gray Screen, Software, and Cyberspace for the main body of the building, and Heartthrob trim paint between the gray panels. The metal canopies will be Pure White with clear anodized mullions to accent the building. The proposed 14’ concrete tilt-up walls will screen the truck yards and the colors will match the paint and color variations of the warehouse building.

The main colors of the retail buildings will be Sherwin-Williams Extra White with White Brick, Warm Brick, and Metal Siding accents and trim colors. Storefront aluminum windows and door frames will use a blue reflective window glazing. Pure White metal canopies with clear anodized mullions will provide exterior accents and shade for the buildings.

Landscaping:

The SLVNSP requires projects to provide a minimum of 15% of the site to be covered with landscaping. Landscaping is provided along the parkway on Sun Lakes Boulevard, on the side and freeway setbacks adjacent to the property lines and buildings, and throughout the parking areas. The project proposes 39.7% of landscape coverage on Parcel 1 of TPM No. 38164 (the retail/restaurant parcel of the Project) and 16.23% of landscape coverage on Parcel 2 (the industrial site parcel of the Project). The existing median and parkway landscaping, in conjunction with the landscaping proposed for the commercial component, will effectively serve to buffer, and soften the prominence of the industrial warehouse building.

Streets/Circulation System:

The main access points for the Project are as follows:

- Access points off Sun Lakes Blvd: 40' wide driveway (at cul-de-sac) & 46' driveway (divided by 6' median) & 40' wide shared driveway
- Access points for retail: West side - 24' wide driveway off Sun Lakes Village Dr & East side - Two (2) 26' wide driveways off shared driveway
- Access points for warehouse: West side- 29'-10" wide driveway off Sun Lakes Village Dr & East side- Three (3) driveways 24' wide, 29' wide, 40' wide off shared driveway
- There are 24-foot-wide emergency vehicle access roads provided around the south and north sides of the retail buildings, throughout the north and south truck courts, around the industrial building and through all the parking areas of the site.

ENVIRONMENTAL DETERMINATION:

The Project has been reviewed in connection with the requirements of CEQA (Pub. Resources Code, § 21000 et seq.) and the State CEQA Guidelines (14 C.C.R. § 15000 et seq.).

The EIR prepared for Amendment No. 5 to the SLVNSP analyzed the potential development of 877,298 square feet of industrial and warehouse uses, 52,065 square feet of medical office uses, and 37,189 square feet of retail uses. The EIR analyzed the potential environmental impacts from this type of

development in the areas of aesthetics, air quality, biological resources, cultural resources, energy, geology and soils, greenhouse gas emissions, hydrology and water quality, land use and planning, noise, transportation, tribal cultural resources, and utilities and service systems. The EIR concluded that Amendment No. 5 to the SLVNSP had the potential to result in a net increase of building square footage and that certain air quality, greenhouse gas emissions, and traffic impacts would be significant and unavoidable even after the imposition of mitigation and regulatory compliance. The Draft EIR was made available for review and comment from September 11, 2020, through October 26, 2020. A Notice of Availability was distributed to project stakeholders requesting to be notified, responsible and trustee agencies, and published in the Record Gazette newspaper. The Draft EIR and Amendment No. 5 were posted on the City's website and at City Hall for viewing. Comments received on the Draft EIR and the City's response to comments were incorporated in the Final EIR. After hearing all the facts in evidence, the City Council determined that the benefits of Amendment No. 5 outweighed the Amendment's environmental impacts and adopted a Statement of Overriding Considerations on December 8, 2020. The EIR was certified on December 8, 2020, and was never challenged. It is now final, beyond challenge, and conclusive in all respects.

Amendment No. 5 to the SLVNSP was adopted on December 8, 2020, by way of City Council Resolution No. 2020-141. Ordinance 1571 provides that there shall be a textual reference to Amendment No. 5 to the SLVNSP included in the City's Zoning Code portion of the Municipal Code. That Ordinance was introduced on December 8, 2020, adopted on January 12, 2021, and became effective on February 11, 2021. The Certified EIR was never challenged and is now final, beyond challenge, and in effect for all purposes.

The Project proposes a smaller development than that analyzed in the EIR. The Project proposes 619,959 sf of industrial uses, which is split between 75% (or 464,969 sf) of high-cube fulfillment center warehouse use and 25% (or 154,990 sf) of high-cube cold storage warehouse use, and 34,000 square feet of retail/commercial uses, along with the associated utility, parking, roadway, and landscaping improvements. The Project does not include development of any of the office uses analyzed in the EIR.

The mitigation measures imposed as part of the prior EIR remain valid and applicable to the Project and are identified in the Mitigation Monitoring and Reporting Program, Section 5, Pages 97 through 109 of the Banning Point/Sun Lakes Village North Specific Plan EIR Addendum/Consistency Checklist. The same benefits described in the Statement of Overriding Considerations for Amendment No. 5 to the SLVNSP remain applicable to the Project.

The prior EIR, which was a "Program EIR," has been reviewed to determine if the Project is within the scope of what was analyzed in the EIR. Based on this review and analysis, an Addendum/Consistency checklist entitled "Banning Point Addendum to the Sun Lakes Village North Specific Plan Amendment No. 5 Environmental Impact Report" (updated version dated February 10, 2022) ("Addendum"), has been prepared pursuant to Public Resources Code Section 21166 and CEQA Guidelines Sections 15162, 15164, and 15168(c).

CEQA Guidelines Section 15164(a) provides that the lead agency "shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162, calling for preparation of a subsequent EIR have occurred." CEQA Guidelines Section 15164(c) further provides that an "addendum need not be circulated for public review but can be included in or attached to the final EIR" and CEQA Guidelines Section 15164(e) provides that a "brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included" in the addendum, the agency's findings, or elsewhere in the administrative record.

The Addendum evaluated the Project's potential environmental effects, in light of those effects previously disclosed in the prior EIR, to determine whether any of the conditions described in CEQA Guidelines Section 15162 calling for subsequent CEQA review have occurred.

All environmental impacts of Amendment No. 5 to the SLVNSP (including those impacts related to the development of industrial and warehouse uses, and retail uses, such as those proposed by the Project) were analyzed, disclosed, and mitigated as set forth in the EIR (SCH# 2020029074) that was certified on December 8, 2020; this conclusion is supported by the detailed Addendum and its supporting technical reports and data. Therefore, any potential environmental impacts resulting from the types of land development proposed by the Project already have been analyzed and disclosed in the certified EIR that is now final in all respects and is beyond challenge. Furthermore, a subsequent EIR is not required as discussed below.

Public Resources Code Section 21166 and the corresponding CEQA Guidelines Section 15162 provide that no subsequent EIR shall be prepared for a project unless, on the basis of substantial evidence in the light of the whole record, "major revisions" of the EIR are needed to reflect (i) substantial changes to the project involving new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (ii) substantial changes to the circumstances under which the project is undertaken involving new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or (iii) new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, showing that the project will have one or more significant effects not discussed in the previous EIR, or significant effects previously examined will be substantially more severe than shown in the previous EIR, or mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative, or mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative. At this point in the process, "in-depth review has already occurred, the time for challenging the sufficiency of the original EIR has long since expired, and the question is whether circumstances have changed enough to justify repeating a substantial portion of the process." (*Bowman v. City of Petaluma* (2008) 185 Cal.App.3d 1065, 1073, 1074.) As a result, any issues with the earlier EIR that were raised or could have been raised are barred from further consideration. (*Comm. for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 50).

No information has been presented to the City demonstrating that any of the criteria set forth in Public Resources Code Section 21166, or CEQA Guidelines Sections 15162 or 15163, are present.

(1) No information has been presented to the City to demonstrate that any substantial changes have occurred with respect to the Project involving new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Rather, the Project proposes the exactly the same type of land uses analyzed in the EIR and approved as part of Amendment No. 5 to the SLVNSP, only smaller in scope and footprint. The Project therefore serves to implement the vision for the commercial and industrial core of Highland Springs Avenue and the Interstate 10 freeway, which is described in detail within Amendment No. 5 to the SLVNSP and is consistent the land use envisioned in the SLVNSP and its accompanying EIR. Furthermore, the Addendum comprehensively analyzed the Project in comparison to the EIR in each environmental impact area and concluded that there are no new or substantially greater impacts than those previously disclosed, analyzed, and mitigated (to the extent feasible) in the EIR. City staff, acting as the Lead Agency, has independently reviewed the Addendum and finds that the Addendum, including its supporting technical reports, constitutes substantial evidence in support of this conclusion.

(2) No information has been presented to the City to demonstrate that any substantial changes have occurred with respect to the circumstances under which the Project is undertaken involving new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The Project remains consistent with the project described in the prior EIR for Amendment No. 5 to the SLVNSP and is smaller in scope than the development anticipated in that

document and approved in Amendment No. 5 to the SLVNSP. There have been no changes to the SLVNSP area that would alter the ability of the Project to remain consistent with the SLVNSP and the environmental impacts analyzed in the prior EIR.

(3) No information has been presented to the City to demonstrate that there is any new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete showing that the Project will have any significant or more severe effects than those discussed in the prior EIR, or that additional mitigation measures or alternatives would substantially reduce any significant effects on the environment disclosed in the prior EIR. No information, let alone substantial evidence, has been presented to suggest that the current Project has environmental impacts beyond those previously analyzed, disclosed, and mitigated as set forth in the EIR. No information regarding any purported greater environmental impacts, or the need for additional mitigation or alternatives, has been presented.

The court concurred with these conclusions. As the court stated in its ruling, “There is no dispute but that the differences between the original project [that described in Amendment No. 5 to the SLVNSP] and the current version of the Project do not result in new significant environmental impacts. Indeed, the current version of the Project is significantly smaller than the original project.” The court thus found that “substantial evidence supported the City’s decision ... to prepare an addendum instead of a supplemental or subsequent EIR for the Project.”

The City Staff finds, in the exercise of its independent judgment and based on substantial evidence in the whole of the record, that no further environmental review is required, including pursuant to Public Resources Code Section 21166, or CEQA Guidelines Sections 15162 or 15163 because (i) the Project will not have new or substantially more severe impacts than what was disclosed in the EIR; (ii) all applicable mitigation measures in the EIR remain applicable to the Project and are imposed on the Project as a condition of approval; and (iii) the Project will not require any new mitigation measures, all as documented in the Addendum. The Addendum and its supporting technical reports and memoranda constitute substantial evidence in support of this conclusion and the findings.

Multiple Species Habitat Conservation Plan (MSHCP).

The project is found to be consistent with the MSHCP. The project is located outside of any MSHCP criteria area and mitigation is provided through payment of the MSHCP Mitigation Fee.

RESPONSE TO APPELLANT’S LETTERS FROM DECEMBER 7, 2021, JANUARY 24, 2022, AND FEBRUARY 10, 2022:

On December 7, 2021, January 24, 2022, and February 10, 2022, the attorneys for the Pass Area Action Group (“Appellant”) submitted letters challenging the sufficiency of the 2020 Program EIR for use by the City in connection with approval of the proposed Project. Those Letters also made other assertions regarding accessibility of documents, public noticing, and issues related to the preparation of the 2020 Program EIR. Finally, the February 10, 2022, Letter asserted that certain councilmembers were biased in favor of the Project and should recuse themselves from decisions on the Project.

A. Adequacy and Sufficiency of the Program EIR for the Project is Documented in an addendum/Consistency Checklist Document and in CEQA Consultant’s Response to Comments.

The City caused an Addendum to be prepared which compared the potential impacts of the proposed Project to the project envisioned under the previously adopted the SLVNSP Amendment No. 5 and Certified Program EIR. The Addendum demonstrates that additional environmental review is not required for the Project beyond what was analyzed and disclosed in the now final EIR and in the Addendum. All environmental impacts of Amendment No. 5 to the SLVNSP (including those impacts related to the development of industrial and warehouse uses, and retail uses, such as those proposed by the Project) were analyzed, disclosed, and mitigated as set forth in the EIR (SCH# 2020029074) that was certified on December 8, 2020. This conclusion is supported by the detailed Addendum and its supporting technical reports and data. Therefore, any potential environmental impacts resulting from the types of land

development proposed by the Project already have been analyzed and disclosed in the certified EIR that is now final in all respects and is beyond challenge. In addition, the CEQA consultant responded to the Appellant's comments on this issue, providing further support for the sufficiency of the Addendum. The court agreed that substantial evidence supported the City's decision to proceed with an Addendum. The court also expressly rejected PAG's contention that the Sunset Crossings project constitutes a substantial change in the circumstances under which the Project is undertaken, or new information that has become available which could not have been known before, such that a subsequent EIR was required. As the court explained, the potential that the Sunset Crossing project might have significant impacts "is not substantial evidence that the proposed project's incremental effects are cumulatively considerable. CEQA Guidelines § 15064(h)(4). Accordingly, the Court concludes that substantial evidence supported the City's decision not to include cumulative impacts from the Project and Sunset Crossroads in the environmental documents for the Project and to prepare an addendum instead of a supplemental or subsequent EIR for the Project."

B. Incorporation of The Sun Lakes Village North Specific Plan Amendment No. 5 into the Banning Municipal Code.

PAG's letter also makes multiple statements which can be generally consolidated into three non-CEQA issues which are summarized below:

Appellant's letter asserts that the City had not properly updated its Municipal Code to reflect inclusion of the Sun Lakes Village North Specific Plan Amendment No. 5 into the Code. Accordingly, the letter asserts that it has been impossible for the public to appropriately review the Project for consistency with the Sun Lakes Village North Specific Plan Amendment No. 5.

The Sun Lakes Village North Specific Plan Amendment No. 5 was adopted by Ordinance 1571. The Specific Plan Amendment was included in the agenda packet for the November 4, 2020, Planning Commission meeting and the December 8, 2020, City Council meeting. The agenda packets for those meetings, including the Draft Sun Lakes Village North Specific Plan Amendment No. 5, have been and are currently available on the City's website on the page that provides those agendas and packets. In addition, Ordinance No. 1571, which approved the Specific Plan Amendment, is listed in the on-line Banning Municipal Code under Supplementary Ordinance Table with a link to the Ordinance. Furthermore, a copy of the final approved version of the Specific Plan Amendment was provided to members of the public who made requests for the Specific Plan, including representatives of the Appellant, which provided the Appellants sufficient time to review the Specific Plan Amendment and to address the Project's consistency with the Banning Municipal Code. A copy of the final adopted Sun Lakes Village North Specific Plan Amendment No. 5 is currently on file with the Banning City Clerk where is available for inspection by the public.

C. Public Notice for the December 2020 City Council Public Hearing on the Specific Plan Amendment

Appellant's letter also asserts that the City did not send out public hearing notices to property owners and residents within 300 feet of the Project site advising them of the Planning Commission and City Council public hearings on the Sun Lakes Village North Specific Plan Amendment No. 5 before that Amendment was adopted by the City Council on December 8, 2020. The letter attempts to reinforce this argument by pointing out that the City was unable to provide any certificate or affidavit from a staff person that the required public hearing notices were mailed out and that the residents of Sun Lakes do not recall having received notice.

City files contain a copy of the public hearing notice that was sent to property owners in advance of the November 4, 2020, Planning Commission meeting and the December 8, 2020, City Council meeting. Also included in the City's files is a copy of the mailing labels, which contain the names and addresses of all 108 property owners within 300 feet of the project, as required by the Banning Municipal Code and state law. Among the property owners to whom notices were sent, three of them were for properties owned by the Sun Lakes Country Club Homeowners Association and the single property owner of The

Lakes Apartment Complex, along with several individual property owners in the Sun Lakes Country Club neighborhood.

An Affidavit of Mailing is not legally required by state law and thus is not needed to comply with public noticing requirements. Moreover, the public hearing notices were advertised in the Record Gazette newspaper, a newspaper of general circulation in the City of Banning, published on October 23, 2020, for the Planning Commission hearing on November 4, 2020; and published on November 27, 2020, for the December 8, 2020, City Council meeting. Therefore, the City of Banning complied with state law and local ordinance to provide notice of the Sun Lakes Village North Specific Plan Amendment No. 5. Finally, no challenge was brought to those 2020 decisions regarding the Sun Lakes Village North Specific Plan Amendment No. 5 or the 2020 Program EIR. Pursuant to Section 15112 of the California Environmental Quality Act and CEQA Guidelines, the 180- day time to challenge the sufficiency of notice for the adoption of the Sun Lakes Village North Specific Plan Amendment No. 5 EIR has long since expired.

D. Notification to the SCAQMD and the California Air Resources Board when the 2020 Program EIR was Prepared

The Appellant asserts that the City should have provided notice to the South Coast Air Quality Management District (SCAQMD) and the California Air Resources Board (CARB) in connection with the consideration of this Project.

Notice was provided to both SCAQMD and CARB when the land uses considered for this Project were proposed as part of the Sun Lakes Village North Specific Plan Amendment No. 5. That occurred when the Notice of Preparation for the 2020 Program EIR was transmitted electronically to SCAQMD and was filed with the State Clearinghouse as required (SCH #2020029074), and through the State Clearinghouse, notices were provided to various resource and trustee agencies, including CARB and SCAQMD. In response to that Notice of Preparation, the SCAQMD provided a comment letter dated March 17, 2020, from Lijin Sun, J.D., Program Supervisor, CEQA IGR, Planning, Rule Development & Area Sources. Furthermore, SCAQMD received notice of the Draft EIR, through the State Clearinghouse, when advertised in October of 2020, and did not provide a reply or response to the city at any time during the 45-Day Notice of Availability (NOA)/Notice of Completion (NOC) timeframe. Because the City determined that the Project now under consideration is consistent with the project evaluated in the 2020 Program EIR, an Addendum was prepared indicating that no additional environmental review is required for this Project. Pursuant to the CEQA Guidelines, there is no obligation to circulate a draft Addendum to trustee agencies or to the public for public comment. Therefore, no new or special notice to SCAQMD or CARB is required in connection with the processing of the proposed Project.

E. Allegations of Bias by Certain Councilmembers

On February 10, 2022, the Appellant submitted a letter asserting that due to certain public comments made by councilmembers early in the process and before the matter was submitted to the City Council, that three councilmembers are biased in favor of the Project and should recuse themselves from decisions on the Project. As discussed above, the court issued a ruling finding only that the City did not provide a fair hearing based on the court's conclusion that then-Councilmember Mary Hamlin was biased in favor of the Project. The court rejected all claims of bias as to Councilmember Wallace and Councilmember Sanchez, stating in its ruling that "their statements do not overcome the presumption that they are unbiased."

ADDITIONAL PUBLIC COMMUNICATIONS:

The proposed Project was advertised in the Record Gazette newspaper on May 31, 2024. As of the date of this report, City staff had received several items of public communication for public hearings held before the Planning Commission on December 1, 2021, and before the City Council on February 17, 2022, which have been provided to the City Council under separate cover, and are attached to this staff report

FISCAL IMPACT:

There is no fiscal impact associated with this action.

ALTERNATIVES:

1. Adopt Resolution 2024-88, as recommended.
2. Adopt Resolution 2024-88, with modifications.
3. Do not adopt Resolution 2024-88 and provide direction to staff.

ATTACHMENTS:

1. [Resolution 2024-88, Banning Point.docx](#)
2. [Exhibit A - Conditions of Approval.docx](#)