



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Emery Papp, Senior Planner

MEETING DATE: July 9, 2024

SUBJECT: Consideration of Resolution 2024-113, a Resolution of the City Council of the City of Banning, California, Setting Aside and Vacating its Previous Approval of Tentative Parcel Map No. 38164, Approval of Design Review 21-7008 and Denial of the Appeal of the Planning Commission's Approval of Design Review 21-7008, and Adoption of an Addendum, All in Connection with the Banning Point Project, Doing so in Compliance with the Peremptory Writ of Mandate that Requires the City Council to Set Aside and Vacate those Decisions, and Rescinding City Council Resolution 2022-14

RECOMMENDATION:

Adopt Resolution 2024-113.

BACKGROUND:

The City Council adopted Resolution 2022-14 on February 17, 2022, which (1) approved Tentative Parcel Map No. 38164, allowing the subdivision of approximately 47 gross acres of vacant land into three parcels; (2) affirmed the Planning Commission's approval of Design Review 21-7008 and denied an appeal of that decision and permitted the construction of a proposed industrial warehouse building of 619,959 square feet (the "Banning Point Project"), including 10,000 square feet of office space, and six retail/commercial buildings totaling 34,000 square feet, on real property located within the boundaries of the Sun Lakes Village North Specific Plan area (APN: 419-140-057); and (3) adopted an addendum under the California Environmental Quality Act ("CEQA") and made findings in support thereof, including finding of consistency with the certified Environmental Impact Report prepared for Amendment No. 5 to the Sun Lakes Village North Specific Plan (SCH # 2020029074).

On April 18, 2022, a lawsuit (Petition for Writ of Mandate and Complaint for Injunctive Relief) ("Writ Petition") entitled Pass Action Group v. City of Banning, *et al.* (Riverside County Superior Court Case No. CVRI2201482) was filed, challenging the City Council's approval of the Banning Point Project by adoption of Resolution 2022-14 and generally asserting the following four claims:

1. The City violated Pass Action Group's right to a fair hearing because of bias on the part of former Councilmember Hamlin and Councilmembers Sanchez and Wallace;
2. The City violated CEQA by failing to consider whether the Project's cumulative environmental impacts necessitated further environmental review;
3. The City's findings in support of the project's approval were contrary to law and unsupported by substantial evidence; and
4. The Banning Point Project conflicts with the City's General Plan.

On March 15, 2024, the Court issued a Ruling Peremptory Writ of Mandate (“Writ”) granting the Writ Petition, in part, only due to Councilmember Hamlin’s bias, and denying the Writ Petition on all other grounds summarized in bullet points 1-4 above.

On April 3, 2024, the Court entered Judgment ordering, in relevant part, that a Writ shall issue (1) ordering the City to set aside and vacate all approvals of the Banning Point Project in which Councilmember Hamlin participated, including Resolution 2022-14, Tentative Parcel Map No. 38164, Design Review 21-7008, and the Addendum and related CEQA findings for the Banning Point Project within 90 days, and (2) instructing the City that any future hearing reconsidering approval of the Banning Point Project must be conducted without the participation of former Councilmember Hamlin. The Writ issued and was served on the City on May 7, 2024.

The City has reviewed the proposed activity for compliance with the California Environmental Quality Act (“CEQA”) and has determined that a resolution adopted to comply with a court order is not a “project” as defined under Section 15378 of the State CEQA Guidelines. Therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA and no environmental review is necessary.

JUSTIFICATION:

Resolution 2024-113 demonstrates the City’s compliance with the Writ by formally setting aside and vacating the City Council’s previous approval of Tentative Tract Map No. 38164, approval of Design Review 21-7008 and denial of the appeal of the Planning Commission’s approval of Design Review 21-7008, and adoption of an addendum, all in connection with the Banning Point Project, and rescinding City Council Resolution 2022-14, as directed by the Court.

FISCAL IMPACT:

There is no fiscal impact related to the City Council’s adoption of Resolution 2024-113.

ALTERNATIVES:

1. Adopt Resolution 2024-113.
2. Do not adopt Resolution 2024-113 and do not comply with the Judgment and Writ.

ATTACHMENTS:

1. [Resolution 2024-113](#)