

PLANNING COMMISSION AGENDA

REGULAR MEETING

Date: August 12, 2010

Time: 6:30 P.M.

COMMISSION MEMBERS

Chris Elvert, Chair

William A. Muller, Vice Chair

Joline Bell Hahn, Commissioner

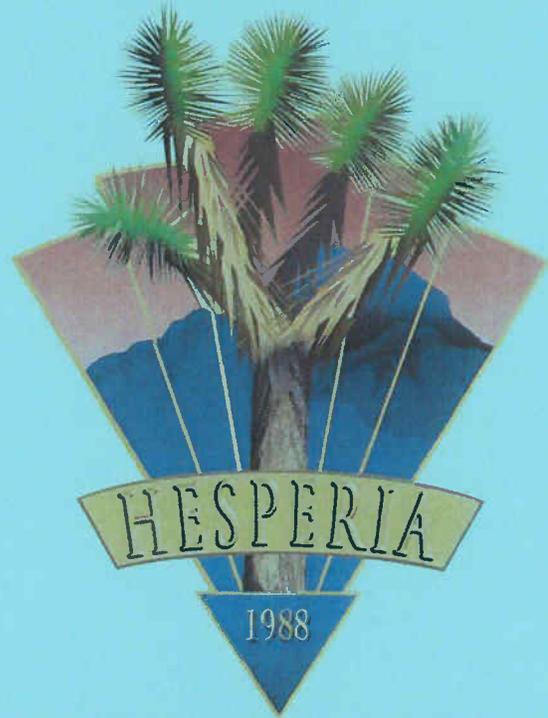
Stephen James, Commissioner

Julie Jensen, Commissioner

* - * - * - * - * - * - * - *

Dave Reno, Principal Planner

Jeff M. Malawy, Assistant City Attorney



CITY OF HESPERIA
9700 Seventh Avenue
Council Chambers
Hesperia, CA 92345
City Offices: (760) 947-1000

The Planning Commission, in its deliberation, may recommend actions other than those described in this agenda.

Any person affected by, or concerned regarding these proposals may submit written comments to the Planning Division before the Planning Commission hearing, or appear and be heard in support of, or in opposition to, these proposals at the time of the hearing. Any person interested in the proposal may contact the Planning Division at 9700 Seventh Avenue (City Hall), Hesperia, California, during normal business hours (7:30 a.m. to 5:30 p.m., Monday through Thursday, and 7:30 a.m. to 4:30 p.m. on Fridays) or call (760) 947-1200. The pertinent documents will be available for public inspection at the above address.

If you challenge these proposals, the related Negative Declaration and/or Resolution in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to the public hearing.

In compliance with the American with Disabilities Act, if you need special assistance to participate in this meeting, please contact Dave Reno, Principal Planner (760) 947-1200. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.10235.104 ADA Title 11]

Documents produced by the City and distributed less than 72 hours prior to the meeting regarding any item on the Agenda will be made available in the Planning Division, located at 9700 Seventh Avenue during normal business hours or on the City's website.

August 12, 2010

**AGENDA
HESPERIA PLANNING COMMISSION**

Prior to action of the Planning Commission, any member of the audience will have the opportunity to address the legislative body on any item listed on the agenda, including those on the Consent Calendar. PLEASE SUBMIT A COMMENT CARD TO THE COMMISSION SECRETARY WITH THE AGENDA ITEM NUMBER NOTED.

CALL TO ORDER

6:30 p.m.

- A. Pledge of Allegiance to the Flag
- B. Invocation
- C. Roll Call:

Chair Chris Elvert
Vice Chair William Muller
Commissioner Joline Bell Hahn
Commissioner Stephen James
Commissioner Julie Jensen

JOINT PUBLIC COMMENTS

Please complete a "Comment Card" and give it to the Commission Secretary. Comments are limited to three (3) minutes per individual. State your name and address for the record before making your presentation. This request is optional, but very helpful for the follow-up process.

Under the provisions of the Brown Act, the Commission is prohibited from taking action on oral requests. However, Members may respond briefly or refer the communication to staff. The Commission may also request the Commission Secretary to calendar an item related to your communication at a future meeting.

CONSENT CALENDAR

- D. Approval of Minutes: August 5, 2010 Planning Commission Meeting Draft Minutes.

-1-

PUBLIC HEARINGS

- 1. Consideration of Conditional Use Permit (CUP10-10155) to construct a 1,724 square foot auto repair and smog check facility and Variance (VAR10-10162) to allow a 15-foot encroachment into the required 20-foot side yard setbacks and a three parking space deficiency on 0.2 acres zoned Neighborhood Commercial, located 150 feet east of Second Avenue, on the south side of Yucca Street (Applicant: Curtis Kirchnavy; APN: 0413-063-16) (Staff Member: Daniel Alcayaga).

1-1

PRINCIPAL PLANNER'S REPORT

The Principal Planner or staff may make announcements or reports concerning items of interest to the Commission and the public.

2-1

- F. DRC Comments

- G. Major Project Update

PLANNING COMMISSION BUSINESS OR REPORTS

The Commission Members may make comments of general interest or report on their activities as a representative of the Planning Commission.

ADJOURNMENT

The Chair will close the meeting after all business is conducted.

I, Eva Heter, Planning Commission Secretary for City of Hesperia, California do hereby certify that I caused to be posted the foregoing agenda on Friday, August 6, 2010 at 5:30 p.m. pursuant to California Government Code §54954.2.



Eva Heter
Planning Commission Secretary

HESPERIA PLANNING COMMISSION
SPECIAL MEETING
August 5, 2010
MINUTES

The Special Meeting of the Planning Commission was called to order at 6:00 p.m. by Chair Elvert in the Council Chambers, 9700 Seventh Avenue, Hesperia, California.

CALL TO ORDER

6:30 p.m.

- A. Pledge of Allegiance to the Flag
- B. Invocation
- C. Roll Call:
Chair Chris Elvert
Vice Chair William Muller
Commissioner Joline Bell Hahn
Commissioner Stephen James
Commissioner Julie Jensen

Present: Chris Elvert
Joline Bell Hahn
Stephen James
Julie Jensen

Absent: William Muller

Motion by Stephen James to excuse the absence of Vice Chair Muller. , Seconded by Chris Elvert, passed with the following roll call vote:

AYES: Chris Elvert, Joline Bell Hahn, Stephen James, and Julie Jensen
NOES: None
absent: William Muller.

JOINT PUBLIC COMMENTS

No comments to consider.

CONSENT CALENDAR

- D. Approval of Minutes: July 8, 2010 Planning Commission Meeting Draft Minutes.
the Planning Commission minutes for the July 8, 2010 meeting.

Motion by Stephen James to approve the Planning Commission minutes for the July 8, 2010 meeting. , Seconded by Joline Bell Hahn, passed with the following roll call vote:

AYES: Chris Elvert, Joline Bell Hahn, Stephen James, and Julie Jensen
NOES: None
absent: William Muller.

PUBLIC HEARING

1. [Consideration of the 2010 General Plan Update, \(GPA10-10185\) including certification of an Environmental Impact Report, adoption of a Statement of Overriding Considerations, adoption of a Mitigation Monitoring and Reporting Program and adoption of a Climate Action Plan \(Applicant: City of Hesperia/Citywide\).](#)

Principal Planner, Dave Reno AICP gave a brief introduction, and introduced last minute updates. He introduced Hogle Ireland, Nelson Miller AICP to complete the staff presentation.

Hogle Ireland, Nelson Miller AICP introduced the GP Update with the use of a PowerPoint Presentation (See Attachment 1). He also introduced the additional items that were introduced as corrections (See Attachments 2 thru 7).

Principal Planner, Dave Reno AICP reviewed the various items presented for revision. (See Attachments 2 thru 7). He also reviewed some of the concerns that were presented to staff by the San Manuel Band of Mission Indians and discussed a letter that was submitted by the tribe (See Attachment 2). He also reviewed how staff addressed the concerns set forth by the San Manuel Band of Mission Indians referencing the "Cultural Resource Mitigations in a Programmatic EIR" memo presented to the Commissioners (See Attachment 3 thru 6). He stated that staff was obligated to write mitigations and considerations that would be applicable for every tribe.

Hogle Ireland, Nelson Miller AICP also introduced Frank Coyle the Principal of Michael Brandman and Associates, stating that Frank Coyle was also available for any questions. He continued to review the Environmental Impacts and various concerns presented by outside agencies (See Attachments 2 thru 7).

Principal Planner, Dave Reno AICP concluded the presentation for the GP Update and also reviewed supporting documents. He reviewed the process of approval for the EIR and the concerns that were presented to staff by outside agencies, citizens, and the San Manuel Band of Mission Indians. He also reviewed the facts and findings and overriding considerations for the Final EIR and the plan as it relates with the City and any projects that would be presented for future development. He discussed the three actions that staff was requesting.

Commissioner James questioned the Transfer of Development Rights (TDR) Program considering Open Space.

Principal Planner, Dave Reno AICP reviewed the TDR Program and future processes that would need to occur with respect to Open Space.

Commissioner Hahn questioned the designation of farmlands within the City, as well as the designation of a specific lot that was previously zoned for a church and was being designated as farmland in the General Plan Update.

Hogle Ireland, Nelson Miller AICP reviewed the area in question, stating that some designations were assigned according to "best use" of the specific location and according to state requirements.

Commissioner Hahn stated that the update of wells within the city was not current within the presented document, and she questioned the reasoning for the report being outdated.

Hogle Ireland, Nelson Miller AICP stated that the key aspect was to remember that the documents were created in 2006 and there had been some changes since the process had begun.

Commissioner Hahn questioned if there was a flood plain map.

Hogle Ireland, Nelson Miller AICP reviewed the various maps and overlays that were presented in the documentation. He also reviewed the various tools that would be implemented in order to utilize the maps.

Commissioner James questioned the feasibility of increasing the number of railroad grade separations.

Hogle Ireland, Nelson Miller AICP reviewed the circumstances surrounding the Rancho Road grade separation and other possible crossings within the City.

Chair Elvert Opened the Public Hearing: 7:26 PM

Anthony Madrigal, Representative of the San Manuel Band of Mission Indians, stated traditional land and territory of the Band was located within the City of Hesperia. He stated that he had submitted a letter to the Commission which was requesting a 30 day continuance (See Attachment 2). He stated that he had received the first notice regarding the General Plan update on May 27, 2010 and the San Manuel Band of Mission Indians had contacted staff and began the process of consultation and recommendation. He stated that a provision of State law, SB18, allows California Native American Tribes time for consultation. He stated that the tribe would like to discuss further the protection of land. He reviewed some of the proposals that had been submitted by the tribe and further comments in the letter submitted to the City of Hesperia. He also stated that delineation of lands that may be sensitive to cultural resources was also very important for both the tribe and the city.

Joan Schneider, Consulting Archeologist to the San Manuel Band of Mission Indians, stated information had been received for the Cultural Resource Appendix in February, 2006. She stated that the research reported was very general and did not address any of the local documentation for the area. She stated that a list was presented regarding important cultural resources that had not been used by staff. She also stated that the representation of cultural resources was both ill informed and inaccurate. She referenced the cultural resources listed on page 39 of the General Plan Update stating that house pits had been interpreted to imply habitat and she refuted that reference. She was most concerned about the appendix and that the comments were not based on a thorough research. She requested a continuance.

Commissioner Jensen questioned what further action the tribe wanted staff to take.

Anthony Madrigal, Representative of the San Manuel Band of Mission Indians, was concerned about the process of notification when artifacts are found. He further stated that the tribe would like to be more involved with the project approval process.

Chair Elvert closed the Public Hearing: 7:58 pm

Commissioner James stated that he had concerns regarding open space and the TDR program. He also would like to see the exploration of the land use issues and property rights for property owners. He stated concerns regarding the Main Street and Freeway Corridor density issues, and the Property Down Payment Plan program. He also discussed water run-off retention.

Motion by Joline Bell Hahn to approve the adoption of Resolution Nos. PC-2010-15, PC-2010-16, and PC-2010-17, as presented, recommending that the City Council: 1) Certify the Environmental Impact Report as being complete in compliance with the California Environmental Quality Act, adopt facts, findings and a statement of overriding considerations, as well as a mitigation monitoring and reporting program; 2) Adopt the 2010 General Plan Update and; 3) Adopt a Climate Action Plan. , Seconded by Julie Jensen, passed with the following roll call vote:

AYES: Chris Elvert, Joline Bell Hahn, Stephen James, and Julie Jensen
NOES: None
absent: William Muller.

PRINCIPAL PLANNER’S REPORT

- F. DRC Comments
- G. Major Project Update

Principal Planner, Dave Reno AICP, gave a brief update on DRC and major projects within the City.

PLANNING COMMISSION BUSINESS OR REPORTS

No comments to consider.

ADJOURNMENT

Chair Elvert Adjourned the Meeting: 8:04 pm

Chris Elvert
Chair

By: Eva Heter,
Commission Secretary

ATTACHMENT 1



City of Hesperia

General Plan Update

Planning Commission Public Hearing

August 5, 2010

General Plan Basics

- State law requires a comprehensive, long-term General Plan for the physical development of the City
- The General Plan is the “constitution” for future development

General Plan Basics

- The General Plan serves to:
 - Identify policies as they relate to land use & development
 - Provide a basis for local governmental decision-making
 - Provide citizens with opportunities to participate
 - Inform decision-makers, citizens, developers, and others of the ground rules that guide development

History of the City’s General Plan

- Prior to Incorporation of the City
 - Hesperia – Baldy Mesa Community Plan – 1974
- Incorporation of the City in 1988
 - Interim Plan – 1989
 - First City General Plan – 1991
 - Housing Element Update – 2002
 - Circulation Element Update - 2002

Why Update the General Plan?

- To reflect current conditions & new directions
 - Annexations - Area has grown from 50 to 75 sq. miles
 - Main Street/Freeway Corridor Specific Plan adopted
 - Current traffic modeling
- To be consistent with new laws & requirements
 - Housing Element Update
 - Positions the City to address greenhouse gases issues
- To resolve inconsistent land use designations
 - One-map system for General Plan & Zoning
- To provide environmental background & baseline information

Goals of the General Plan Update

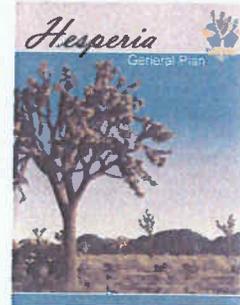
- Preserve existing neighborhoods & lot sizes
- Enhance the quality of life in residential areas with required standards & amenities
- Reinforce efforts for local job base & sales tax producing businesses
- Establish circulation system & standards
- Recognize greenways & mixed use developments in Main Street/Freeway Specific Plan
- Provide for housing alternatives for seniors & all income levels

Purpose of this Public Hearing

- ❑ To receive and review public comments on the proposed General Plan and Climate Action Plan
- ❑ To receive and review public comments on the Environmental Impact Report
- ❑ To provide recommendations to the City Council

Overview of the General Plan

- ❑ Two Volumes
 - ❑ Elements
 - ❑ Technical Reports



Technical Reports

- ❑ Integral part of the General Plan
- ❑ Provide in depth analysis of issues addressed in the General Plan Elements

| | | |
|------------------------|----------------|----------------------|
| ■ Land Use | ■ Circulation | ■ Open Space |
| ■ Noise | ■ Water Supply | ■ Cultural Resources |
| ■ Biological Resources | | |

Elements of the General Plan

- Seven elements mandated by State law:
 - ❑ Land Use
 - ❑ Circulation
 - ❑ Housing
 - ❑ Open Space
 - ❑ Conservation
 - ❑ Noise
 - ❑ Safety
- The policies and components of each element have equal status and must be internally consistent

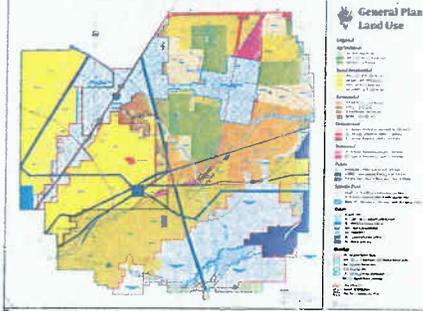
Organization of Elements

- ❑ Background
- ❑ Interrelationship with Other Statutes and Elements
- ❑ Issues
 - ❑ Goals
 - Implementation Policies
- ❑ Sustainable Goal/Policy =

Land Use Element

- ❑ Purpose
 - ❑ Correlates all land use issues into a set of coherent development policies
- ❑ Single Map System
 - ❑ General Plan Designations = Zoning Designations
- ❑ 8 Goals
 - ❑ 54 Implementation Policies

Land Use Element



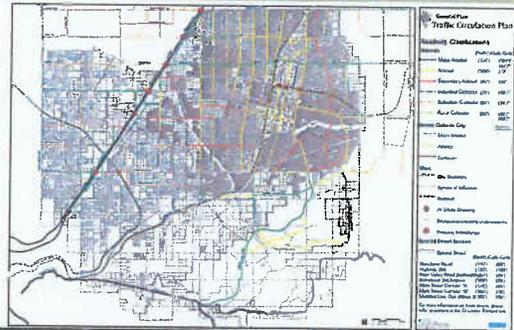
Circulation Element

- Purpose
 - Addresses the circulation of people, goods, energy, water, sewage, storm drainage, and communications
- Includes
 - Circulation Map
 - 17 Prototype Cross Sections
 - 7 Roadway Specific Cross Sections
- 5 Goals
 - 34 Implementation Policies

Circulation Element Final Roadway Plan

- Separated Roadway Plan & Non-Motorized Plan
- More clearly identified RR crossing, bridges & interchanges
- Clarified general alignments, especially for transitions & streets not yet built
- Modified roadways in Sphere to more closely align with Oak Hills Community Plan
- Added information on Special Street Sections
- Reduced some Roadway designations adequate for traffic projections

Circulation Element Final Roadway Plan



Circulation Element Draft Roadway Plan



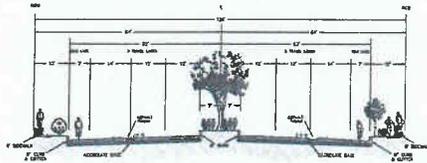
Circulation Element



Circulation Element

Example of Prototype Cross Section

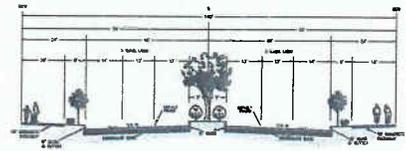
Major Arterial 128' ROW – with Bike Lane



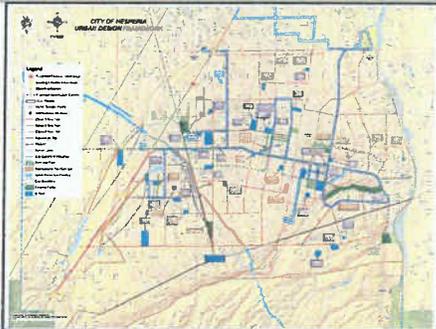
Circulation Element

Example of Roadway Specific Cross Section

Ranchero Road



Circulation Element



Housing Element

- Purpose
 - To adequately plan to meet existing and projected housing needs including share of regional housing needs
- Covers 2008 – 2014
- Subject to State Housing & Community Development Regulations
- 5 Goals
 - 19 Policies
 - 20 Programs

Housing Element

REGIONAL HOUSING NEEDS ASSESSMENT

| Income Categories | 2004 RHNA | Needs Already Met | Remaining RHNA |
|------------------------|-----------|-------------------|----------------|
| Extremely Low/Very Low | 2,135 | 213 | 1,922 |
| Low | 1,469 | 351 | 1,118 |
| Moderate | 1,707 | 194 | 1,513 |
| Above Moderate | 3,784 | 1,024 | 2,760 |
| Total | 9,095 | 1,782 | 7,313 |

Open Space Element

- Purpose
 - To guide the comprehensive and long-range preservation and conservation of open space land
- Issues
 - Threatened and Endangered Species
 - Resource Management
 - Recreation
 - Paths and Trails
- 6 Goals
 - 22 Implementation Policies

Conservation Element

- Purpose
 - To provide direction regarding conservation, development, and utilization of natural resources
- 8 Goals
 - 47 Implementation Policies

Conservation Element

- Issues
 - Water Resources
 - Rivers and Other Waters
 - Soils
 - Mineral Resources
 - Biological Resources
 - Historical, Paleontological, And Cultural Resources
 - Aesthetic Resources
 - Agricultural Resources
 - Energy
 - Global Climate Change
 - Air Quality

Noise Element

- Purpose:
 - To limit the exposure of the community to excessive noise levels.
- Issues:
 - Noise Mitigation
 - Site Planning
 - Barriers
 - Building design
- 2 Goals
 - 18 Implementation Policies

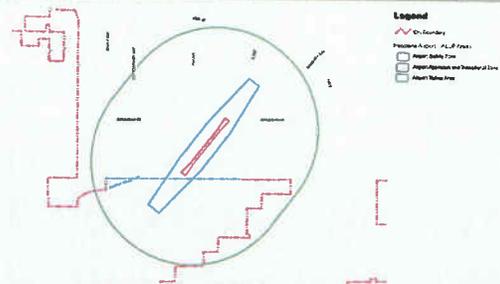
Noise Element

- Primary Noise Generators
 - Vehicular Traffic
 - Railroad
 - Aviation
 - Stationary Sources

Safety Element

- Purpose
 - To reduce the potential risk of death, injuries, property damage, and economic and social dislocation resulting from fires, floods, earthquakes, landslides, and other hazards.
- Issues
 - Seismic and Geologic Hazard
 - Fire Hazards
 - Disaster Preparedness, Response and Recovery
 - Flooding Hazards
 - Hazardous Materials
- 5 Goals
 - 48 Implementation Policies

Safety Element



Climate Action Plan



- Purposes
 - To outline actions to reduce greenhouse gas emissions 29 percent from "Business as Usual" by 2020, provide guidance to implement key provisions and establish implementation and monitoring framework.
- Appendix K of EIR
- Coordinates with Goals/Policies of General Plan
- 14 Policies
 - 72 Implementation Actions

Climate Action Plan



14 Strategy Areas

| | |
|-------------------------------|--|
| CEQA Compliance | Mixed Use Development |
| Transit Oriented Development | Compact Development |
| Pedestrian Connections | Bicycle Infrastructure |
| Traffic Calming | Parking Measures |
| Energy Efficiency | Water Conservation and Reuse |
| Waste Reduction and Recycling | Regional Cooperation |
| Government Operations | Climate Change Adaptation To Potential Increases In Wildfires And Flooding |

Environmental Impact Report



- A Program EIR, which evaluates the General Plan and related documents relating to broad policies and programs in the long term (20 years)
- Subsequent Projects Require CEQA Analysis, but can be "tiered" from the Program EIR which will focus and simplify future CEQA documents

Environmental Impact Report



- Potential Impacts
 - No Impact Or Less Than Significant Impact
 - 66 Thresholds
 - Mitigated To Less Than Significant
 - 8 Thresholds
 - Significant And Unavoidable
 - 6 Thresholds
 - Require Finding Of Overriding Considerations
- 19 Mitigation Measures
 - Also see "Green Sheet" items regarding revised Transportation and Cultural measures

Environmental Impact Report



SIGNIFICANT AND UNAVOIDABLE

AQ-2 Result in construction emissions that would contribute substantially to an existing or projected air quality violation.

AQ-3 Result in operational emissions that would contribute substantially to an existing or projected air quality violation

Environmental Impact Report



SIGNIFICANT AND UNAVOIDABLE

AQ-4 Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is nonattainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)

N-3 Result in a substantial permanent increase in ambient noise levels in the project vicinity

Environmental Impact Report



SIGNIFICANT AND UNAVOIDABLE

- T-1 Cause an increase in traffic, which is substantial in relation to the existing traffic load and capacity of the street system
- T-2 Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways

Environmental Impact Report



- Comments to Draft EIR
 - Mr. Al Vogler
 - Department of Water Resources
 - Department of Toxic Substances Control
 - San Manuel Band of Mission Indians
 - County Department of Public Works
 - Regional Water Quality Control Board
 - Morongo Band of Mission Indians
 - Southern California Association of Governments (SCAG)
 - Mojave Desert Air Quality District
 - Governor's Office of Planning and Research
 - California Energy Commission (late comment, but no new or significant issues raised) – see "Green Sheet" item

Environmental Impact Report



- Adequate Responses to Comments have been provided to the extent appropriate to a programmatic EIR and circulated for review
- Revisions to cultural mitigation measures have been prepared to address San Manuel tribe's concerns to the extent feasible in a programmatic EIR (see "Green Sheet" item)
- Findings are proposed for significant impacts which permit acceptance by the City

Environmental Impact Report



- Proposed Findings of Overriding Considerations: Impacts of the General Plan are outweighed by the benefits, which include that implementation of the General Plan will:
 - Comply with State requirements to adopt a comprehensive, long-term plan for the physical development of the City
 - Provide a foundation for making land use decisions addressing continuing change, growth, and development
 - Create a safe, efficient, and balanced transportation network
 - Preserve the character of existing neighborhoods and provide diversity of housing types
 - Identify resources to be preserved and outlines means to preserve resources

Environmental Impact Report



- Proposed Findings of Overriding Considerations: Impacts of the General Plan are outweighed by the benefits, which include that implementation of the General Plan will (continued):
 - Promote and support economic development to provide jobs
 - Regulate development so that density and intensity are appropriate
 - Protect and enhance quality of life by ensuring compatibility
 - Provide a guide regarding development proposals and annexation of areas in the Sphere of Influence

Conclusions



- Contents of the EIR comply with the requirements of the California Environmental Quality Act (CEQA)
- The General Plan Update
 - Describes the City past, present, and future
 - Affirms preservation of neighborhoods, while supporting new development
 - Includes the Main Street Freeway Corridor Specific Plan

Conclusions



- **The Climate Action Plan**
 - Addresses climate change issues as mandated by State law (AB 32)
 - Includes feasible measures available to the City
 - Provides a framework to be consistent with a Sustainable Communities Strategy to comply with SB 375
- The Final EIR, General Plan Update, and Climate Action Plan are complete and ready for Planning Commission action

Staff Recommendations



- ▶ Recommend certification of Environmental Impact Report with Findings of Overriding Considerations
- ▶ Recommend adoption of General Plan Update
- ▶ Recommend adoption of the Climate Action Plan

Questions & Public Input



Division of Land Use, Planning and Housing Services

San Manuel Band of Mission Indians

ATTACHMENT 2

August 3, 2010

Chris Elvert, Chair Planning Commission
William Muller, Vice Chair Planning Commission
Joline Bell Hahn, Commissioner
Stephen James, Commissioner
Julie Jensen, Commissioner

City of Hesperia Planning Commission
9700 Seventh Avenue
Hesperia, CA 92345

Re: City of Hesperia General Plan Update – Request for 30 day extension to provide specific comments as part of the Native American tribe consultation process

Dear Commissioners:

On behalf of the San Manuel Band of Mission Indians ("Tribe"), I write to respectfully request a 30 day extension to provide specific comments to the *Notice of Availability Draft Program Environmental Impact Report, Hesperia General Plan Update* ("General Plan") received by the Tribe through the City's consultant Michael Brandman Associates on May 27, 2010. These specific comments are intended to propose small, but significant additions to relevant portions of the General Plan that take into account the consideration and treatment of cultural resources. This request is consistent with our discussions with representatives from the City of Hesperia last month.

As you know, part of the Tribe's traditional and ancestral territory lies within the lands covered by the General Plan. These lands include known sites of historical and cultural significance and potential sites of significance that have yet to be discovered. We are committed to working cooperatively with the City of Hesperia to address issues that may arise in the course of activities that fall under the General Plan's provisions.

The Tribe responded by letter on July 8, 2010 invoking the government-to-government consultation on the General Plan update per Senate Bill 18.¹ The Tribe also submitted comments to the General Plan Draft Environmental Impact Report (DEIR), which has since been finalized. On July 27, 2010 tribal representatives met

¹ Senate Bill 18, found at Government Code 65352(b), 65352.3, 65562.5 and 65352.4, took effect in 2005 and provides that, prior to the adoption or any amendment to a General plan, the city or county shall conduct consultations with California Native American tribe for the purpose of preserving or mitigating impacts to cultural places located on land within the local government's jurisdiction. In addition Government Code 65352(b) provides that a Native American tribe receiving a proposed General Plan or amendment of a General Plan shall have 45 days from the date the referring agency mails it or delivers it in which to comment.

with City of Hesperia planning staff, Dave Reno, Scott Priester and Thomas Harp ("Planning Dept.") in the first of a series of these consultations. The parties exchanged information and agreed to continue the consultation process. We are aware of the intended timeline regarding the General Plan and assure you that the extension, if granted, would allow both parties to arrive at a consensus on these important issues.

As we said in our discussions with the City of Hesperia representatives, the Tribe's concerns fall under three categories:

- 1) Due diligence: Development in areas of sensitivity should be based on information that is as accurate as possible so developers will be on notice that a project area may impact cultural resources.
- 2) Consultation: Identify key events that would benefit the most from timely and meaningful consultation between the developer, the lead agency and a Native American tribe. It has been the Tribe's experience that engaging in good faith consultation during a project's development avoids potential and costly delays to all interested parties.
- 3) Mitigation: Identify best practices regarding the treatment and disposition of cultural resources. Although some measures may be more than what the law requires, they are intended to avoid costly litigation, delays and the unintentional destruction or desecration of cultural resources.

We address each category in more detail below.

Due Diligence

The Tribe's goal in promoting due diligence is to ensure that project proponents and impacted tribes receive sufficient notice that cultural resources may be impacted.

- 1) Insufficient References: We discovered that the research on which the cultural resource information was based consisted of a small handful of general publications that did not address the area covered by the General Plan ("covered area") specifically.

At our meeting with the Planning Dept., we provided a comprehensive reference list that contained publications that were either publicly available or available through the Archaeological Information Center ("AIC"). An accurate reference check should have revealed these publications, which would have resulted in a more accurate report of what areas may contain cultural resources.

The impact of this aspect is significant: a developer would not be on notice that an area could contain cultural resources, which could result in delayed consultation or insufficient treatment and disposition of cultural resources that may be located.

The Tribe recommends that the Planning Dept. (or its consultants) use these references and use the information collected to update all the relevant portions of the General Plan.

- 2) Sacred Lands Inquiry to Native American Heritage Commission: The Tribe recommends that at the same time an inquiry is directed to the AIC, project proponents should also submit an inquiry to the California Native American Heritage Commission. This inquiry may trigger a response that places the project proponent on notice that cultural resources may be impacted and will identify which Native American tribe should be notified. In some cases, no records will be located and the project will proceed accordingly.

It is incumbent on tribes to ensure that the Native American Heritage Commission has accurate records on file, and the Tribe is currently updating those records to maximize accurate information.

- 3) Delineation of areas of high cultural sensitivity: The Tribe has information that may allow the City of Hesperia to identify which areas are highly sensitive with respect to cultural resources. Current information within the General Plan does not reflect this information. At the same time, these areas may be so significant that the Tribe would like to protect from public scrutiny on a need-to-know basis until such time as a project proponent identifies the area as part of a potential project.

The Tribe is confident that, through consultation, the Planning Dept. and the Tribe can agree on a mutually acceptable solution that is consistent with the General Plan.

Consultation

As we stated earlier, meaningful consultation is critical to avoid costly delays to a project. The Tribe recommends that, using the 30-day extension, the Planning Dept. and Tribe work to develop key events that would trigger consultation with Native American tribes, and incorporate those events into the relevant portions of the General Plan.

The goal of consultation is to not only protect and preserve cultural resources through responsible treatment and disposition, but also to promote understanding between the parties involved. Early and meaningful consultation may also result in minimal disruptions in project timelines and goals and more effective mitigation measures.

Mitigation Measures

Mitigation measures result from both due diligence and consultation, as well as programmatic requirements intended to preserve historical and cultural resources, all of which are consistent with the General Plan's goals.

- 1) Open Space Designations - Collection of Information: Because of the numerous activities permitted in open space designations, the Tribe requested specific information regarding cultural sites and locations in areas that may be designated as Open Space. This request included General Plan Land Use and Cultural Resource Sensitivity GIS shapefiles, including Meta data. We are working with the Planning Dept. to obtain that information.

The Tribe's concern with open space designations is that in areas of high cultural sensitivity, certain activities, though permitted in open space areas, can be destructive or intrusive. Some activities even carry a risk of inadvertent discoveries of cultural deposits. In these areas, the Tribe may have specific recommendations that may limit what types of open space activities are permitted. This recommendation would be reflected in the mitigation measures identified throughout the plan. Again, the Tribe would work with the Planning Dept. to incorporate appropriate language.

- 2) Disposition and Treatment of Artifacts: At our meeting with the Planning Dept., the Tribe also stated it make specific recommendations regarding the disposition, handling, treatment and curation of cultural artifacts and collections. Some portions of the General Plan stated that those artifacts would normally go to a scientific organization for study, which may be highly inconsistent with cultural practices. We intend to provide some recommendations as to what may be more respectful of these practices, but also consistent with the General Plan's policy statements and objectives.

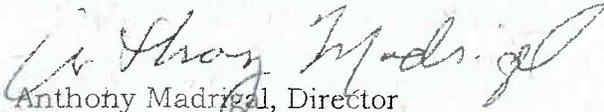
The Tribe advised the Planning Dept. that it would submit additional comments and recommendations to the General Plan at your Planning Commission meeting on August 5, 2010.

While we look forward to attending the Planning Commission meeting to present additional information, the Tribe expects that the consultation process will continue past the upcoming Planning Commission meeting to afford the parties the full opportunity to engage in meaningful government-to-government consultations to protect and preserve cultural places of California Indians, as required by SB 18.

The Tribe would greatly appreciate the Planning Commission's temporary delay of further actions on the General Plan for 30 days. Please contact me at (909) 864-8933 or by email at amadrigal@sanmanuel-nsn.gov if you have any questions. We look forward to seeing you August 5th.

Sincerely,

SAN MANUEL BAND OF MISSION INDIANS



Anthony Madrigal, Director
Policy and Cultural Resource Management Department

Cc: San Manuel Business Committee
City Council, City of Hesperia
Dave Reno, City Planner
Larry Myers, NAHC Manager
Ann Brierty, SMBMI



DATE: August 5, 2010
TO: Planning Commission
FROM: Dave Reno, AICP, Principal Planner
SUBJECT: Cultural Resource Mitigations in a Programmatic EIR

The following comments are from Michael Dice M.A., Senior Archaeologist with Michael Brandman Associates, regarding two issues raised by the San Manuel Band of Mission Indians during consultation with the City on July 27, 2010:

Are the studies cited in the DEIR sufficient to document the history and cultural resources of the area, and are they as good as the ones on the Tribe's list?

The Tribe has provided a list of references most of which are not cited in the EIR. A General Plan (GP) is defined by the State to be a compendium of City or County policies regarding the long term development of a City or County. Per CGC Section 65301, the GP must be approved by the City Council or Board of Supervisors. GP's have seven mandatory sections and it is possible to add additional sections after the mandatory seven. The analysis of the data that is included in the GP mandatory sections can be supported by a Program Environmental Impact Report (Program EIR), which is the EIR format chosen by the City for the GP Update. Goals and Policies in the GP are developed out of the Program EIR analysis. The Program EIR is a type of study defined in CEQA Guidelines Section 15168. Although there are many ways of constructing a Program EIR, the City has chosen a generalized approach to the EIR and GP because it is the City's intent to use the GP as a guide for mandating Project-level analyses. In the case of Cultural Resources, the City felt that a highly detailed approach in the Program EIR was not warranted because City exhibits a highly varied cultural landscape, topography and numerous historic and prehistoric sites. All developmental projects in the City will be related to very specific areas and, if warranted and under certain conditions, project-specific cultural reports must be written by qualified archaeologists or historians after a project is presented for planning review to the City. A generalized review of particular environmental subjects in the Program EIR is supported by CEQA Guidelines Section 15168(c)(1). The mitigation measures provided for in the Program EIR allow the City to create a project-specific checklist that can document project-related activities per CEQA Guidelines Section 15168(c)(4), and require City Planners to mandate more exhaustive consideration of effects to environmental resources per CEQA Guidelines Section 15168(b)(1).

The EIR section was written to provide City Planners with a generalized background of the history of their City and to provide the reasons for and reasons why further research on specific projects should be mandated during the planning process. The mitigation measures tell the City when a project requires specific technical reports by qualified archaeologists and historians. In support of this method of analysis, the citations in the historic background section consist of standard generalized citations (the citations found in the EIR provide reviews of other highly detailed ethnographic background research) about the Serrano Tribe and the historic era. The City recognizes and affirms that the Serrano were living in this area when the Spanish arrived in California. Citation of specific archaeological excavation projects or second-hand narratives is not needed to reach this conclusion. The cultural background data included in this section purposefully excludes specific tribal cultural background information (ie Serrano Band of Mission Indians) because as of 2010 the NAHC lists 8+ tribal governments and/or individuals that must be



consulted as part of a SB18 consultation, and 10+ tribal governments and/or individuals when a Sacred Lands search and consultation is undertaken. Because the GP will be used by the City for the next 25-30 years, and because archaeological and historical analyses are subjective to a temporal point of view of the archaeologists, tribal councils, and historians involved, it is crucial that the City adopt Goals and Policies that can be used with success for the next 25-30 years. If the Program EIR cultural resource analysis is highly exclusive to certain groups or opinions, new information derived from subsequent historic studies could negatively impact the process the City wishes to codify. Generalized information in the EIR better serves the intent of the GP and process the City has chosen. For these reasons, the cultural resource portion of the EIR section is considered adequate and fulfills the spirit of a Program EIR.

The GP requires that under certain conditions, Phase 1 archaeological survey reports and Sacred Lands searches must be undertaken by qualified archaeologists in support of a developmental project. With adoption of the proposed measures, 80% of all developmental projects that come before the City will need a modern Phase 1 CRM survey report. A Sacred Lands search must be undertaken at the same time. The remaining projects will not require a Phase 1 survey because the screening process will demonstrate none are needed.

The San Manuel Band expressed concern about access to cultural resources or remains and possible testing. Do the proposed revisions to CR-2a or CR-2b account for this? Or does the City need to add something to the mitigation measures?

There are several tribes and tribal individuals, not just the San Manuel Band, that may want to have a say in how any prehistoric cultural deposits are dealt with after they are uncovered. We believe that not making any statement about what is done with any uncovered artifacts is good policy because the City has no archaeological experts on staff and the conditions under which artifacts might be uncovered found can be quite varied. That issue should be left up to the qualified archaeological professional at the time the work is undertaken. The qualified professional will need to consult with Tribes if any artifacts are found, if any one Tribe asks for a project-level consultation, as part of the mitigation measures the City will adopt. In addition, Native American tribal groups typically have no interest in dealing with Historic-era materials if they are uncovered, so a professional would have to make a decision on what to do with such artifacts without direct tribal input.

Section 3.5, Cultural Resources

After conversation with the San Manuel Band of Mission Indians on July 27, 2010, information located within the Cultural Resources Section (Section 3.5) of the Draft has been modified to further support a process by which 1) the Native American Heritage Commission (NAHC) will be contacted after the AIC planning review records search is undertaken and 2) ~~when~~ tribes must be contacted if artifacts are found. See below for modified language.

Section 3.5, Cultural Resources, NOP Comment Letter, Pages 3.5-13 to 3.5-14

Information located within the Cultural Resources Section (Section 3.5) of the Draft EIR regarding the Native American Heritage Commission (NAHC) Notice of Preparation (NOP) comment letter has been modified to support NAHC's recommended series of methods to avoid or mitigate unanticipated discoveries once the Project is underway. See below for modified language:

NOP Comment Letter

The Native American Heritage Commission (NAHC) staff reviewed the notice of preparation (NOP) for the DEIR and submitted a comment letter on January 26, 2010. The NAHC performed a Sacred Lands File (SLF) search in the NAHC SLF Inventory, established by the Legislature pursuant to Public Resources Code §5097.94(a) and Native American Cultural resources were not identified within one-half mile of the APE - City Boundaries. However, there are Native American cultural resources in close proximity to the Hesperia City Limits. Consequently, the NAHC recommended **the best way a series of methods** to avoid **or mitigate for** unanticipated discoveries once the Project is underway.

Section 3.5, Cultural Resources, Impact CR-1, Pages 3.5-15 to 3.5-17

Additional language and mitigation has been provided to further clarify and support consistency with the Sacred Lands search request by a qualified Cultural Resource Management Professional. The added language and Mitigation Measure is modified to read as follows:

If a Planning Area is located in an area of "Low" sensitivity and has been determined exempt from consideration because of size, previous development, AIC recommendation or other considerations, the City need not have a field survey performed following Mitigation Measure CR-1. In parts of the City that exhibit "Low" cultural resource sensitivity, the City shall make certain that a AIC planning review records search is undertaken and a check of the Native American Heritage Commission Sacred Lands Inventory is conducted for projects that are five acres in size or more. In parts of the City that have been determined to have "Medium or "High" sensitivity, the City shall make certain that a planning review through the AIC has been undertaken and a check of the Native American Heritage Commission Sacred Lands Inventory is conducted before a field survey takes place. Under certain conditions, a cultural resources field survey may not be required following Mitigation Measure CR-2. In those areas of the City that exhibits "High" cultural resource sensitivity, CR-3 states that cultural resource monitoring shall occur unless the Planning Area has been graded previously.

Upon receipt of the NAHC Sacred Lands Search response, a qualified archaeological professional must send a scoping request letter and/or Verbally contact each tribal entity the NAHC lists. Documentation of this Sacred Lands scoping process must be provided for in the technical report.

Mitigation Measures

CR-1a Areas of the City have been determined to exhibit "Low" cultural resource

sensitivity in the technical report supporting the General Plan Update EIR. Prior to exempting a project in Low sensitivity areas from further cultural resource fieldwork, the AIC shall perform a planning review of the Planning Area and report the results of the review to the City. In addition the City will conduct a check of the NAHC sacred Lands Inventory. If, in addition, the particular project is located in a region deemed “Low” and exhibits the following three qualities, no further cultural resource research is necessary if:

1. The AIC determines that a field survey is not necessary or,
2. The Planning Area has been mass graded for modern construction purposes in the recent past or,
3. The Planning Area is less than 5 acres in size.
4. **There are no sites listed in the NAHC Sacred Lands Inventory** and the scoping request has not yielded any information as to the presence of cultural sites.

CR-1b In those areas of the City that exhibit “Medium” or “High” cultural resource sensitivity, a qualified Cultural Resource Management professional must undertake a Phase 1 cultural resource survey of the Planning Area as part of the CEQA environmental compliance process if and only if the AIC determines through its planning review that this must occur. In determining whether a cultural resource survey will be conducted a check of the NAHC Sacred Lands file shall first be undertaken by the City. Upon receipt of the NAHC Sacred Lands Search response, a qualified archaeological professional must send a scoping request letter and/or verbally contact each tribal entity the NAHC lists. Documentation of this Sacred Lands scoping process must be provided for in the technical report. Any information obtained from the check of the Sacred Lands Inventory shall be considered in determining whether a cultural resource survey will be conducted.

The survey must be conducted

following the SHPO-recommended ARMR research and reporting format. A cultural resource survey in the Medium and High sensitivity areas need not take place if the AIC planning review shows that:

1. The Planning Area has been surveyed by a qualified professional in the last ten years with negative results or,
2. The property has been mass graded for modern construction purposes in the recent past
3. There are no sites listed in the NAHC Sacred Lands Inventory and the scoping request has not yielded any information as to the presence of cultural sites.

CR-1c If the Phase I field survey shows that there are historical or archaeological resources in the developmental Planning Area, the City shall require that those cultural resource(s) be tested for historical or archaeological significance by a qualified Cultural Resource Management professional following modern guidelines unless a previous significance determination study has shown that the resource is not significant under CEQA Section 15064(a). If the Phase I survey report recommends that the City require cultural resource monitoring during construction of the project, the City shall require that the monitoring ~~specialist~~ be conducted by a qualified archaeological professional and a certified Native American monitor, in which each present his/her credentials to the City for review and approval.

- A. The City require that culturally affiliated certified Native American monitors be employed in 1) any and all phases of archaeological/cultural surveys that require and 2) as part of any approved 'mitigation measures/plan' for implementing proposed project(s);
- B. City determine a 'Pre-Excavation Agreement' listing the San Manuel Band of Serrano Mission Indians as the **Consulting Tribe of Record** and as the **Most Likely Descendant (MLD)** with NAHC approval in the event of an inadvertent discovery of Native American human remains as a result of project construction.

CR-1d If the City determines that a significant historical or archaeological ~~cultural~~ resource will be directly impacted by a proposed development such that the qualities that make the resource significant will be lost during the development, the significant cultural resource must be either avoided, or Phase III data collected by a qualified Cultural Resource Management professional following guidelines established for this type of research by the California SHPO. If the Phase II testing report recommends that the City require cultural resource monitoring during construction, the City shall require that the monitoring ~~specialist~~ be conducted by a qualified archaeological professional and a certified Native American monitor, in which each present his/her credentials to the City for review and approval.

- A. The City require that culturally affiliated certified Native American monitors be employed in 1) any and all phases of archaeological/cultural surveys that require and 2) as part of any approved 'mitigation measures/plan' for implementing proposed project(s);
- B. City determine a 'Pre-Excavation Agreement' listing the San Manuel Band of Serrano Mission Indians as the **Consulting Tribe of Record** and as the **Most Likely Descendant (MLD)** with NAHC approval in the event of an inadvertent discovery of Native American human remains as a result of project construction.

Section 3.5, Cultural Resources, Impact CR-2, Pages 3.5-18 to 3.5-19

Mitigation Measure CR-2a and CR-2b have been modified to further clarify and support consistency with the Sacred Lands search request by a qualified Cultural Resource Management Professional and to preserve archaeological resources within the Planning Area. The revised Mitigation Measures are modified to read as follows:

Mitigation Measures

Mitigation measures CR-1a, CR-1b and CR-1b.1 shall be applied to all developmental projects located in the Planning Area. If it is determined that the developmental project exhibits archaeological resources alone or in addition to any historical resources in the developmental Planning Area, mitigation measure CR-2a and CR-2b shall apply.

CR-2a If the Phase I field survey shows that there are archaeological cultural resources in the developmental Planning Area, the City must require that those cultural resource(s) be tested for historical or archaeological significance by a qualified Cultural Resource Management professional following modern guidelines unless a previous significance determination study has shown that the resource is not significant under CEQA Section 15064(a). *If testing must take place, the qualified professional shall contact each of the tribes listed by the NAHC in its Sacred Lands response letter and inform them of the testing event. Should one or more tribes request that they be contacted when artifacts are found during the testing event, the qualified professional shall do so.* If the Phase I survey report recommends that the City require cultural resource monitoring during construction, the City shall require that the monitoring ~~specialist~~ be conducted by a qualified archaeological professional and a certified Native American monitor, in which each present his/her credentials to the City for review and approval.

- A. The City require that culturally affiliated certified Native American monitors be employed in 1) any and all phases of archaeological/cultural surveys that require and 2) as part of any approved 'mitigation measures/plan' for implementing proposed project(s);

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CR-2b If the City determines that a significant historical or archaeological cultural resource will be directly impacted by a proposed development such that the qualities that make the resource significant will be lost during the development, the significant cultural resource **shall** be either avoided, or Phase III data collected by a qualified Cultural Resource Management professional following guidelines established for this type of research by the California SHPO. **If a Phase III excavation takes place, the qualified Cultural Resource Management Professional shall contact each of the tribes listed by the NAHC in its Sacred Lands response letter and inform them of the excavation event. Should one or more tribes request that they be contacted when artifacts are found during the excavation event, the qualified professional shall do so. The qualified professional shall seek and consider input from the tribe(s) regarding the disposition of the artifacts, after a tribe responds to the notice of the excavation event.** If the Phase II testing report recommends that the City require cultural resource monitoring during construction, the City shall require that the monitoring ~~specialist~~ be conducted by a qualified archaeological professional and a certified Native American monitor, in which each present his/her credentials to the City for review and approval.

- A. The City require that culturally affiliated certified Native American monitors be employed in 1) any and all phases of archaeological/cultural surveys that are required and 2) as part of any approved 'mitigation measures/plan' for implementing proposed project(s);
- B. City determine a 'Pre-Excavation Agreement' listing the San Manuel Band of Serrano Mission Indians as the **Consulting Tribe of Record** and as the **Most Likely Descendant (MLD)** with NAHC approval in the event of an inadvertent discovery of Native American human remains as a result of project construction.

ATTACHMENT 5

Section 3.5, Cultural Resources

After conversation with the San Manuel Band of Mission Indians on July 27, 2010, information located within the Cultural Resources Section (Section 3.5) of the Draft has been modified to further support a process by which 1) the Native American Heritage Commission (NAHC) will be contacted after the AIC planning review records search is undertaken and 2) when tribes must be contacted if artifacts are found. See below for modified language.

Section 3.5, Cultural Resources, NOP Comment Letter, Pages 3.5-13 to 3.5-14

Information located within the Cultural Resources Section (Section 3.5) of the Draft EIR regarding the Native American Heritage Commission (NAHC) Notice of Preparation (NOP) comment letter has been modified to support NAHC's recommended series of methods to avoid or mitigate unanticipated discoveries once the Project is underway. See below for modified language:

NOP Comment Letter

The Native American Heritage Commission (NAHC) staff reviewed the notice of preparation (NOP) for the DEIR and submitted a comment letter on January 26, 2010. The NAHC performed a Sacred Lands File (SLF) search in the NAHC SLF Inventory, established by the Legislature pursuant to Public Resources Code §5097.94(a) and Native American Cultural resources were not identified within one-half mile of the APE - City Boundaries. However, there are Native American cultural resources in close proximity to the Hesperia City Limits. Consequently, the NAHC recommended the best way a series of methods to avoid or mitigate for unanticipated discoveries once the Project is underway.

Section 3.5, Cultural Resources, Impact CR-1, Pages 3.5-15 to 3.5-17

Additional language and mitigation has been provided to further clarify and support consistency with the Sacred Lands search request by a qualified Cultural Resource Management Professional. The added language and Mitigation Measure is modified to read as follows:

If a Planning Area is located in an area of "Low" sensitivity and has been determined exempt from consideration because of size, previous development, AIC recommendation or other considerations, the City need not have a field survey performed following Mitigation Measure CR-1. In parts of the City that exhibit "Low" cultural resource sensitivity, the City shall make certain that a AIC planning review records search is undertaken for projects that are five acres in size or more. In parts of the City that have been determined to have "Medium or "High" sensitivity, the City shall make certain that a planning review through the AIC has been undertaken before a field survey takes place. Under certain conditions, a cultural resources field survey may not be required following Mitigation Measure CR-2. In those areas of the City that

exhibits “High” cultural resource sensitivity, CR-3 states that cultural resource monitoring shall occur unless the Planning Area has been graded previously.

If through the process of review the City determines that a field survey of any developmental project is required, the qualified Cultural Resource Management Professional that performs the study must send the NAHC a Sacred Lands search request. Upon receipt of the NAHC Sacred Lands Search response, the qualified professional must send a scoping request letter and/or verbally contact each tribal entity the NAHC lists. Documentation of this Sacred Lands scoping process must be provided for in the technical report.

Mitigation Measures

CR-1a Areas of the City have been determined to exhibit “Low” cultural resource sensitivity in the technical report supporting the General Plan Update EIR. Prior to exempting a project in Low sensitivity areas from further cultural resource fieldwork, the AIC shall perform a planning review of the Planning Area and report the results of the review to the City. If, in addition, the particular project is located in a region deemed “Low” and exhibits the following three qualities, no further cultural resource research is necessary if:

1. The AIC determines that a field survey is not necessary or,
2. The Planning Area has been mass graded for modern construction purposes in the recent past or,
3. The Planning Area is less than 5 acres in size.

CR-1b In those areas of the City that exhibit “Medium” or “High” cultural resource sensitivity, a qualified Cultural Resource Management professional must undertake a Phase 1 cultural resource survey of the Planning Area as part of the CEQA environmental compliance process if and only if the AIC determines through its planning review that this must occur. The survey must be conducted following the SHPO-recommended ARMR research and reporting format. A cultural resource survey in the Medium and High sensitivity areas need not take place if the AIC planning review shows that:

1. The Planning Area has been surveyed by a qualified professional in the last ten years with negative results or,
2. The property has been mass graded for modern construction purposes in the recent past

CR-1b.1 In the event that a cultural resource assessment is required under CR-1a and/or CR-1b, the qualified Cultural Resource Management professional performing the

study must undertake a NAHC Sacred Lands Search as part of the scoping process for the project. Upon receipt of the NAHC Sacred Lands Search response, the qualified professional must send a scoping request letter and/or verbally contact each tribal entity the NAHC lists. Documentation of this Sacred Lands scoping process must be provided for in the technical report.

CR-1c If the Phase I field survey shows that there are historical cultural resources in the developmental Planning Area, the City shall require that those cultural resource(s) be tested for historical significance by a qualified Cultural Resource Management professional following modern guidelines unless a previous significance determination study has shown that the resource is not significant under CEQA Section 15064(a). If the Phase I survey report recommends that the City require cultural resource monitoring during construction of the project, the City shall require that the monitoring specialist present his/her credentials to the City for review and approval.

CR-1d If the City determines that a significant historical cultural resource will be directly impacted by a proposed development such that the qualities that make the resource significant will be lost during the development, the significant cultural resource must be either avoided, or Phase III data collected by a qualified Cultural Resource Management professional following guidelines established for this type of research by the California SHPO. If the Phase II testing report recommends that the City require cultural resource monitoring during construction, the City shall require that the monitoring specialist present his/her credentials to the City for review and approval.

Section 3.5, Cultural Resources, Impact CR-2, Pages 3.5-18 to 3.5-19

Mitigation Measure CR-2a and CR-2b have been modified to further clarify and support consistency with the Sacred Lands search request by a qualified Cultural Resource Management Professional and to preserve archaeological resources within the Planning Area. The revised Mitigation Measures are modified to read as follows:

Mitigation Measures

Mitigation measures CR-1a, CR-1b and CR-1b.1 shall be applied to all developmental projects located in the Planning Area. If it is determined that the developmental project exhibits archaeological resources alone or in addition to any historical resources in the developmental Planning Area, mitigation measure CR-2a and CR-2b shall apply.

CR-2a If the Phase 1 field survey shows that there are archaeological cultural resources in the developmental Planning Area, the City must require that those cultural resource(s) be tested for historical significance by a qualified Cultural Resource

Management professional following modern guidelines unless a previous significance determination study has shown that the resource is not significant under CEQA Section 15064(a). If testing must take place, the qualified professional shall contact each of the tribes listed by the NAHC in its Sacred Lands response letter and inform them of the testing event. Should one or more tribes request that they be contacted when artifacts are found during the testing event, the qualified professional shall do so. If the Phase I survey report recommends that the City require cultural resource monitoring during construction, the City shall require that the monitoring specialist present his/her credentials to the City for review and approval.

CR-2b

If the City determines that a significant historical cultural resource will be directly impacted by a proposed development such that the qualities that make the resource significant will be lost during the development, the significant cultural resource shall be either avoided, or Phase III data collected by a qualified Cultural Resource Management professional following guidelines established for this type of research by the California SHPO. If a Phase III excavation takes place, the qualified Cultural Resource Management Professional shall contact each of the tribes listed by the NAHC in its Sacred Lands response letter and inform them of the excavation event. Should one or more tribes request that they be contacted when artifacts are found during the excavation event, the qualified professional shall do so. The qualified professional shall seek and consider input from the tribe(s) regarding the disposition of the artifacts, after a tribe responds to the notice of the excavation event. If the Phase II testing report recommends that the City require cultural resource monitoring during construction, the City shall require that the monitoring specialist present his/her credentials to the City for review and approval.

Section 3.15, Transportation and Circulation

Section 3.15-5, Project Impacts and Mitigation Measures, Page 3.15-33 through 3.15-35

Draft EIR Table 3.15-7 is revised. Additional language supporting the revised Table is modified to read as follows:

Existing and Proposed General Plan Build-out Comparison

In comparison to the existing General Plan build-out, implementation of the proposed General Plan will increase unacceptable LOS for the study intersections over the existing General Plan to LOS E or F at ~~seven~~ six (7 6) of the study intersections during the AM peak hour period. However, implementation of the proposed General Plan is projected to operate at decrease significantly impacted intersection under the existing General Plan to an acceptable LOS at ~~five~~ seven (5 7) study intersections during the PM peak hour period. ~~However, implementation of the proposed General Plan will reduce LOS for the study intersections over the existing General Plan to LOS E or F at three (3) of the study intersections during the AM peak hour period and are projected to operate at LOS E or F at twelve eleven (12 11) study intersections during the PM peak hour period.~~ The study area intersections are summarized in Table 3.15-7.

Table 1: Existing and Proposed General Plan Build-out Comparison

| No. | Intersection | Existing GP Build-out | | | | Project Build-out | | | |
|-----|------------------------------|-----------------------|-----|--------------|-----|-------------------|-----|--------------|-----|
| | | AM Peak Hour | | PM Peak Hour | | AM Peak Hour | | PM Peak Hour | |
| | | Delay | LOS | Delay | LOS | Delay | LOS | Delay | LOS |
| 1 | Summit Valley Rd at Hwy 138 | 344.5 | F | - | - | - | - | - | - |
| 5 | I-15 SB Ramp at Oak Hill Rd | - | - | - | - | - | - | - | - |
| 6 | I-15 NB Ramp at Mariposa Ave | - | - | - | - | - | - | - | - |
| 9 | Caliente at Rancho Rd | 96.9 | F | 187.9 | F | 87.1 | F | 156.8 | F |
| 11 | I-15 NB Ramp at Rancho Rd | - | - | 148.4 | F | - | - | - | - |
| 12 | Mariposa at Rancho Rd | - | - | 55.4 | E | 66.3 | E | 80.0 | E |
| 18 | Mariposa at Joshua St | - | - | 56.1 | E | - | - | - | - |
| 20 | Arrowhead Lake Rd at Main St | - | - | - | - | - | - | - | - |
| 21 | Baldy Mesa Dr at Phelan Rd | - | - | - | - | 109.8 | F | - | - |

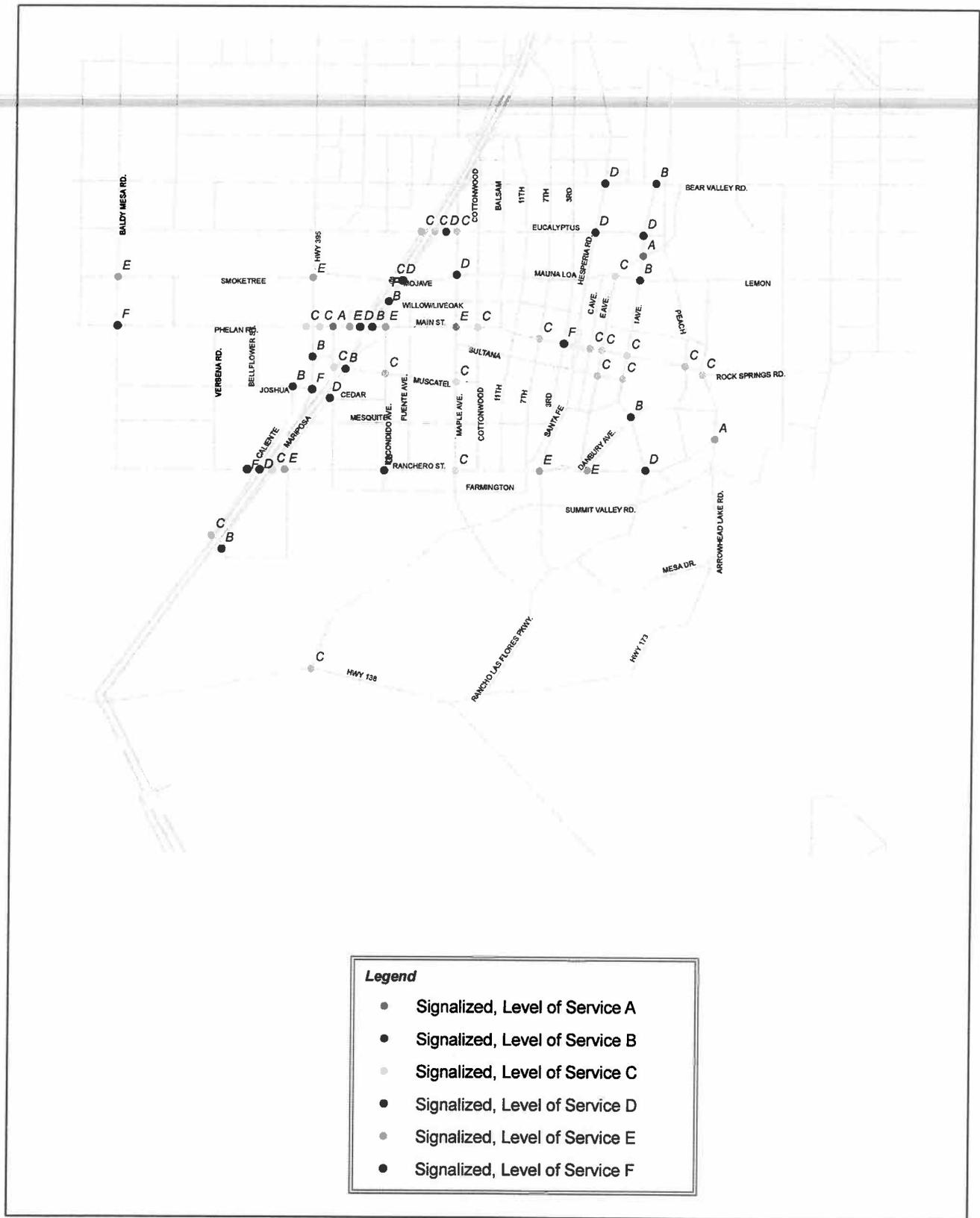
| | | | | | | | | | |
|----|-----------------------------------|------|---|--------------|----------|-------|---|--------------|----------|
| 22 | Hwy 395 at Phelan Rd | - | - | 215.4 | F | - | - | - | - |
| 26 | I-15 SB Ramp at Main St. | - | - | 87.0 | F | - | - | - | - |
| 29 | I Ave at Bear Valley Rd | - | - | - | - | - | - | - | - |
| 30 | 3rd Ave at Main St | - | - | 230.8 | F | 199.5 | F | <u>349.2</u> | <u>F</u> |
| 31 | C Ave at Main St | - | - | <u>104.7</u> | <u>F</u> | - | - | 167.4 | F |
| 32 | E Ave at Main St | - | - | - | - | - | - | - | - |
| 34 | Baldy Mesa Dr at Smoke Tree | - | - | - | - | 58.1 | E | - | - |
| 35 | Hwy 395 at Smoke Tree Rd | - | - | - | - | - | - | 151.5 | F |
| 36 | Mariposa at Mojave | - | - | 86.9 | F | 109.0 | F | 87.5 | F |
| 38 | I-15 SB Ramp at Mojave | - | - | 129.5 | F | - | - | - | - |
| 39 | I-15 NB Ramp at Mojave | - | - | 99.7 | F | - | - | - | - |
| 41 | Hesperia Rd at Bear Valley Rd | - | - | 86.7 | F | - | - | 83.6 | F |
| 43 | I Ave at Lemon St | - | - | - | - | - | - | - | - |
| 47 | Hesperia Rd at Eucalyptus St | - | - | - | - | - | - | - | - |
| 54 | Santa Fe East at Rancho Rd | 82.5 | F | 109.7 | F | 63.7 | E | 77.4 | E |
| 57 | Hwy 395 at Joshua St | - | - | 95.4 | F | 107.7 | F | 138.2 | F |
| 58 | I-15 NB Ramp at Main St | - | - | 147.5 | F | - | - | - | - |
| 77 | I Ave at Danbury Ave | - | - | - | - | - | - | - | - |
| 78 | Danbury Ave at Rancho Rd | - | - | - | - | 56.1 | E | - | - |
| 60 | I-15 NB Ramp at Muscatel (Future) | - | - | 88.5 | F | - | - | - | - |

Although the Hesperia General Plan's proposed Goals and Policies are consistent with the recommendations provided within the Transportation Technical Report, upon implementation of

the General Plan's proposed Goals and Policies roadways and intersections operating at Level of Service E to F, respectively, will be considered deficient unless located on freeway interchanges and major corridors (Bear Valley, Main Street/Phelan Road, Highway 395) then roadway segments and intersections located within freeway interchanges and major corridors operating at Level of Service F will therefore be considered deficient. The forecasted morning and afternoon peak hour LOS for the study intersections with recommended improvements are projected to have significant impacts at nine (9) study intersections during the AM peak hour period and ~~eight~~ nine (& 9) study intersections during the PM peak hour period. Therefore, implementation of the Project will have a significant impact to LOS upon build-out of the proposed General Plan Update.

Section 3.15, Transportation and Circulation, Exhibit 3.15-5, AM Peak Hour Intersection Level of Service, Preferred Scenario, Page 3.15-37

Exhibit 3.15-5 of the Draft EIR incorrectly placed Figure 2-5 (PM Peak Hour Intersection Level of Service, Existing Conditions) of the Transportation Technical Report for the Proposed Project's AM Peak Hour Intersection Level of Service. Consequently, Exhibit 3.15-5 has been revised accordingly to reflect the AM peak hour period shown within Figure 5-3 of the Transportation Technical Report. The revised Exhibit 3.15-5 is contained below.



Source: Kimley-Horn and Associates, Inc. (September 21, 2009).



Not To Scale

Michael Brandman Associates

23660023 • 08/2010 | 3.15-5_AMPHLoS_PS.ai

Exhibit 3.15-5 AM Peak Hour Intersection Level of Service Preferred Scenario

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



July 28, 2010

Dave Reno
City of Hesperia
9700 Seventh Avenue
Hesperia, CA 92345

Dear Mr. Reno:

The California Energy Commission has received the City of Hesperia's Draft EIR titled Hesperia General Plan Update, SCH 2010011011 that was submitted on 5/26/2010 for comments due by 7/9/2010. After careful review, the California Energy Commission has no comment at this time.

However, we would like to assist in reducing the energy usage involved in your project. Please refer to the enclosed Appendix F of the California Environmental Quality Act for how to achieve energy conservation.

In addition, the Energy Commission's *Energy Aware Planning Guide* is also available as a tool to assist in your land use planning and other future projects. For further information on how to utilize this guide, please visit www.energy.ca.gov/energy_aware_guide/index.html.

Thank you for providing us the opportunity to review/comment on the City of Hesperia's Draft EIR. We hope that comments will serve helpful in your project's environmental review process.

If you have any further questions, please call Gigi Tien at (916) 651-0566.

Sincerely,

A handwritten signature in blue ink that reads "Bill Pfanner".

BILL PFANNER
Supervisor, Local Energy & Land Use Assistance Unit
Special Projects Office
Fuels and Transportation Division
California Energy Commission
1516 Ninth Street, MS 23
Sacramento, CA 95814

Enclosure

Appendix F

ENERGY CONSERVATION

I. Introduction

The goal of conserving energy implies the wise and efficient use of energy. The means of achieving this goal include:

- (1) decreasing overall per capita energy consumption,
- (2) decreasing reliance on natural gas and oil, and
- (3) increasing reliance on renewable energy sources.

In order to assure that energy implications are considered in project decisions, the California Environmental Quality Act requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy.

Energy conservation implies that a project's cost effectiveness be reviewed not only in dollars, but also in terms of energy requirements. For many projects, lifetime costs may be determined more by energy efficiency than by initial dollar costs.

II. EIR Contents

Potentially significant energy implications of a project should be considered in an EIR. The following list of energy impact possibilities and potential conservation measures is designed to assist in the preparation of an EIR. In many instances, specific items may not apply or additional items may be needed.

A. Project Description may include the following items:

1. Energy consuming equipment and processes which will be used during construction, operation, and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment required for the project.
2. Total energy requirements of the project by fuel type and end use.
3. Energy conservation equipment and design features.
4. Initial and life-cycle energy costs or supplies.
5. Total estimated daily trips to be generated by the project and the additional energy consumed per trip by mode.

B. Environmental Setting may include existing energy supplies and energy use patterns in the region and locality.

C. Environmental Impacts may include:

1. The project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project's life cycle including construction, opera-

tion, maintenance and/or removal. If appropriate, the energy intensiveness of materials may be discussed.

2. The effects of the project on local and regional energy supplies and on requirements for additional capacity.
3. The effects of the project on peak and base period demands for electricity and other forms of energy.
4. The degree to which the project complies with existing energy standards.
5. The effects of the project on energy resources.
6. The project's projected transportation energy use requirements and its overall use of efficient transportation alternatives.

D. Mitigation Measures may include:

1. Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.
2. The potential of siting, orientation, and design to minimize energy consumption, including transportation energy.
3. The potential for reducing peak energy demand.
4. Alternate fuels (particularly renewable ones) or energy systems.
5. Energy conservation which could result from recycling efforts.

E. Alternatives should be compared in terms of overall energy consumption and in terms of reducing wasteful, inefficient and unnecessary consumption of energy.

F. Unavoidable Adverse Effects may include wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated.

G. Irreversible Commitment of Resources may include a discussion of how the project preempts future energy development or future energy conservation.

H. Short-Term Gains versus Long-Term Impacts can be compared by calculating the energy costs over the lifetime of the project.

I. Growth Inducing Effects may include the estimated energy consumption of growth induced by the project.

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DATE: August 12, 2010
TO: Planning Commission
FROM: Dave Reno, AICP, Principal Planner
BY: Daniel S. Alcayaga, AICP, Senior Planner
SUBJECT: CUP10-10155 and VAR10-10162; Applicant: Curtis Kirchnavy; APN: 0413-063-16

RECOMMENDED ACTION

It is recommended that the Planning Commission adopt Resolution Nos. PC-2010-18 and PC-2010-19, approving CUP10-10155 and VAR10-10162.

BACKGROUND

Proposals: A conditional use permit to allow a 1,724 square foot auto repair and smog check facility and variance to allow a 15-foot encroachment into the required side yard setback and a three parking space deficiency (Attachments 1).

Location: 150 feet east of Second Avenue on the south side of Yucca Street.

Current General Plan, Zoning and Land Uses: Planned Mixed Use (PMU) General Plan Land Use designation and zoned Neighborhood Commercial (NC). The surrounding land is designated and zoned as noted on Attachment 2. The site as well as the properties to the north and south are vacant. A car sales lot exists to the east and an existing apartment building exists to the west (Attachment 3).

ISSUES/ANALYSIS:

Land Use: The proposed project involves construction of a 1,724 square foot auto repair and smog check facility. Vehicle repair facilities (minor) are permitted with a Conditional Use Permit by the Main Street and Freeway Corridor Specific Plan. Fifteen percent of the site will be developed with landscaping. The drive aisle is 27 feet wide, allowing for two-way traffic. Architectural features on the building include roof variation, horizontal and vertical projections, and ledge stone along the base of the building. The proposed building architecture meets the City's architectural guidelines (Attachments 4 and 5). The lot size is 5,600 square feet (50 feet wide and 112 feet long).

The building is proposed with a 5-foot setback on the sides. A variance is being requested to allow a 15-foot encroachment into the required 20-foot side yard setback. After applying the required side setbacks, only 10 feet of the lot width could be developed. Therefore, the property cannot be effectively developed without approval of the variance. The required findings for a variance can be made, as the setback regulations result in a practical difficulty and deprive the applicant of privileges enjoyed by other properties. The project can comply with the required 25-foot front and 10-foot rear yard setbacks.

The code requires three parking spaces for each bay door and four spaces for each 1,000 square feet of non-service area. There are two bay doors and 436 square feet of non-service area. Consequently, eight parking spaces are required. A variance is proposed for a three parking space deficiency, as the development proposes five parking spaces, including one handicap parking space. Four spaces are proposed in front of the property. One parallel parking space is proposed at the rear of the property. Three parking spaces are also proposed to be 6-inches shorter in width, by proposing 8 feet, 6-inches (width) and 18 feet (length) parking stalls. The standard is 9 feet by 18 feet.

The required findings for a parking variance can be made because of the small size and shape of the property. When compared to adjacent properties and other properties in the same zone, the property is small in size, and considered long and narrow. The site is also surrounded by existing developments on larger lots. Requiring the three additional parking spaces would decrease the size of the building by half. The standard parking requirements restrict and deprive the use of the property by making the site infeasible and impractical to develop.

Drainage: The developer will use an underground retention/detention basin to retain the additional drainage created by the development. The retention system will be located along the northeast portion of the development underneath the parking area. In a major storm event which exceeds a 100 year storm, the overflow from the system will be discharged to the street.

Water and Sewer: The property has existing water and sewer lines along Yucca Street and the alley. The development will connect to an existing 8-inch PVC water line in Yucca Street. The development will connect to an existing 8-inch PVC sewer line in the alley.

Street Improvements: Yucca Street is currently paved. Curb and gutter, as well as matching up with existing pavement, is required to be constructed across the project frontage. In the alley, the applicant is required to construct 16 feet wide asphalt along the rear property line and match up with existing asphalt to the east.

Traffic/Circulation: The project is expected to generate approximately five vehicle trips in a peak hour. This does not conflict with the parking variance, as five parking spaces are provided, which does not include parking in the service area. The City has established a Traffic Impact Mitigation Fee Program as part of the Development Impact Fee (DIF) to fund the construction of traffic improvements to maintain adequate levels of service. The Development Impact Fees are imposed on new development and collected as part of the building permit process. The developer is required to pay all applicable City Development Impact Fees towards the improvements.

Environmental: The project is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15332. The project is considered an infill development on property less than five acres. A pre-construction survey for the burrowing owl will be conducted prior to the issuance of a grading permit.

Conclusion: The project conforms to the policies of the City's General Plan and development of the site will comply with municipal codes, standards, and policies, with approval of the variance.

FISCAL IMPACT

The development will also be subject to payment of development impact fees.

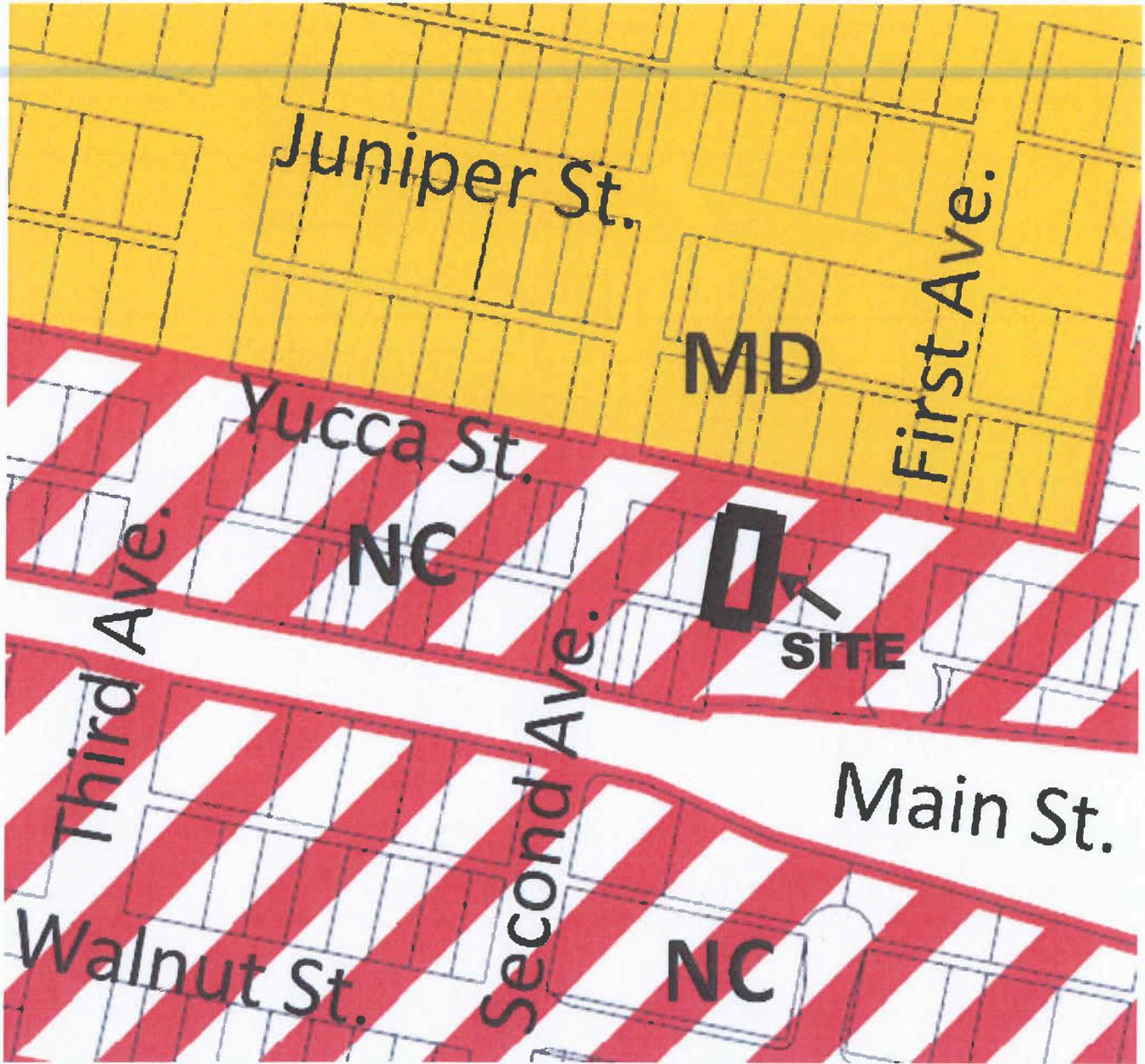
ALTERNATIVE

1. Provide alternative direction to staff.

ATTACHMENTS

1. Site plan
2. Zoning map
3. Aerial photo
4. Floor Plan
5. Architectural rendering
6. Resolution No. PC-2010-18, with conditions of approval (Conditional Use Permit)
7. Resolution No. PC-2010-19 (Variance)

ATTACHMENT 2



APPLICANT(S):
CURTIS KIRCHNAVY

FILE NO(S):
CUP10-10155

LOCATION:
ON THE SOUTH SIDE OF YUCCA STREET, 150 FEET EAST OF SECOND AVENUE

APN: 0413-063-16

PROPOSAL:
A CONDITIONAL USE PERMIT TO ALLOW AN AUTO REPAIR AND SMOG CHECK FACILITY AND A VARIANCE TO ALLOW A 15-FOOT ENCROACHMENT INTO THE REQUIRED 20-FOOT SIDE YARD SETBACKS AND A THREE PARKING SPACE DEFICIENCY



ZONING MAP

ATTACHMENT 3



APPLICANT(S):
CURTIS KIRCHNAVY

FILE NO(S):
CUP10-10155

LOCATION:
ON THE SOUTH SIDE OF YUCCA STREET, 150 FEET EAST OF SECOND AVENUE

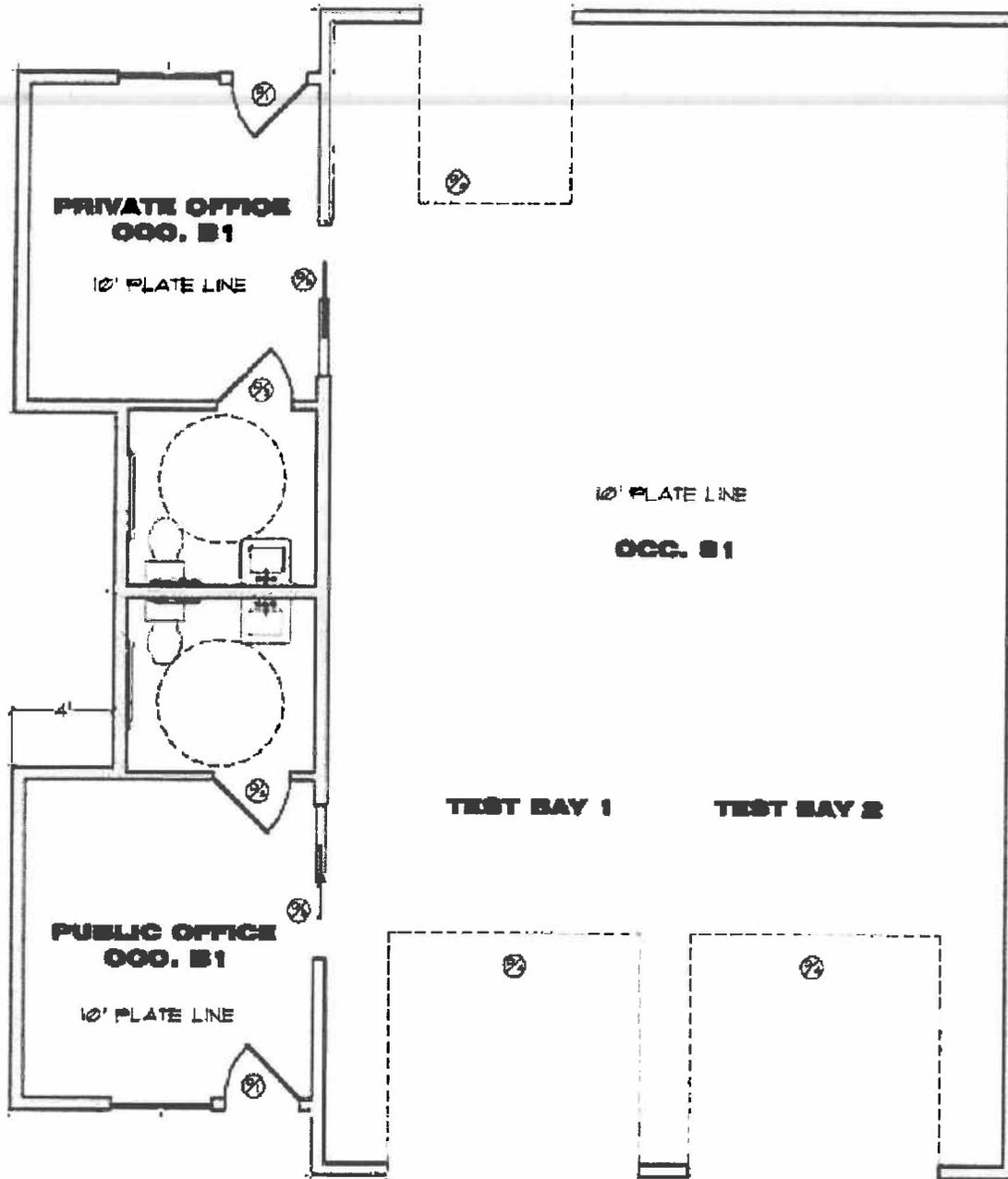
APN: 0413-063-16

PROPOSAL:
A CONDITIONAL USE PERMIT TO ALLOW AN AUTO REPAIR AND SMOG CHECK FACILITY AND A VARIANCE TO ALLOW A 15-FOOT ENCROACHMENT INTO THE REQUIRED 20-FOOT SIDE YARD SETBACKS AND A THREE PARKING SPACE DEFICIENCY



AERIAL PHOTO

ATTACHMENT 4



APPLICANT(S):
CURTIS KIRCHNAVY

FILE NO(S):
CUP10-10155

LOCATION:
ON THE SOUTH SIDE OF YUCCA STREET, 150 FEET EAST OF SECOND AVENUE

APN: 0413-063-16

PROPOSAL:
A CONDITIONAL USE PERMIT TO ALLOW AN AUTO REPAIR AND SMOG CHECK FACILITY AND A VARIANCE TO ALLOW A 15-FOOT ENCROACHMENT INTO THE REQUIRED 20-FOOT SIDE YARD SETBACKS AND A THREE PARKING SPACE DEFICIENCY



FLOOR PLAN

ATTACHMENT 5



APPLICANT(S):
CURTIS KIRCHNAVY

FILE NO(S):
CUP10-10155

LOCATION:
ON THE SOUTH SIDE OF YUCCA STREET, 150 FEET EAST OF SECOND AVENUE

APN: 0413-063-16

PROPOSAL:
A CONDITIONAL USE PERMIT TO ALLOW AN AUTO REPAIR AND SMOG CHECK FACILITY AND A VARIANCE TO ALLOW A 15-FOOT ENCROACHMENT INTO THE REQUIRED 20-FOOT SIDE YARD SETBACKS AND A THREE PARKING SPACE DEFICIENCY



ARCHITECTURAL RENDERING

ATTACHMENT 6

RESOLUTION NO. PC-2010-18

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HESPERIA, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT TO CONSTRUCT A 1,724 SQUARE FOOT AUTO REPAIR AND SMOG CHECK FACILITY ON APPROXIMATELY 0.2 ACRES ZONED NEIGHBORHOOD COMMERCIAL, LOCATED 150 FEET EAST OF SECOND AVENUE, ON THE SOUTH SIDE OF YUCCA STREET (CUP10-10155)

WHEREAS, Curtis Kirchnavy, has filed an application requesting approval of Conditional Use Permit CUP10-10155 to allow an auto repair and smog check facility on a 0.2 gross acre lot (hereinafter referred to as "Application").

WHEREAS, the property is located 150 feet east of Second Avenue on the south side of Yucca Street and consists of Assessor's Parcel Numbers 0413-063-16; and

WHEREAS, Curtis Kirchnavy, has also filed an application requesting approval of Variance VAR10-10162 to allow a 15-foot encroachment into the required 20-foot side yard setback and a three parking space deficiency; and

WHEREAS, the site as well as surrounding properties to the north and south are currently vacant. A car sales lot exists to the east and an existing apartment building exists to the west; and

WHEREAS, the subject property as well as surrounding properties are currently designated Planned Mixed Use (PMU) on the City's Land Use map; and

WHEREAS, the subject property is currently zoned Neighborhood Commercial (NC) by the Main Street and Freeway Corridor Specific Plan. The property to the south, east and west are also zoned NC. The properties to the north is zoned Medium Density Residential (MDR); and

WHEREAS, the project is categorically exempt from the requirements of the California Environmental Quality Act by Section 15332, In-fill Development Projects; and

WHEREAS, on August 12, 2010, the Planning Commission of the City of Hesperia conducted a duly noticed public hearing pertaining to the proposed Application, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF HESPERIA PLANNING COMMISSION AS FOLLOWS:

Section 1. The Planning Commission hereby specifically finds that all of the facts set forth in this Resolution are true and correct.

Section 2. Based upon substantial evidence presented to this Commission during the above-referenced August 12, 2010, hearing, including public testimony and written and oral staff reports, this Commission specifically finds as follows:

- (a) The site for the proposed use is adequate in size and shape to accommodate the proposed use. The site is approximately 0.2 gross acres and can accommodate the 1,724 square foot auto repair and smog check facility, with approval of a variance. On-site improvements required by the Hesperia Development Code can be constructed on the property including 5 parking spaces, a minimum 26-foot wide drive aisle, landscaping area, and a trash enclosure. The proposed project also meets all of the San Bernardino County Fire Department standards for access and fire hydrants. The proposed development also complies with all state and federal regulations, including the Americans with Disability Act (ADA). The project is designed with an underground on-site retention/detention system to accommodate the required capacity of a 100-year storm.
- (b) The proposed use will not have a substantial adverse effect on abutting properties, or the permitted use thereof because the proposed project is consistent with the City's PMU General Plan Land Use designation. The project is designed with a retention/detention system to accommodate the required capacity of a 100-year storm. The City has established Traffic Impact Mitigation Fee Program to fund the construction of traffic improvements to maintain adequate levels of service standards. The developer is required to pay all applicable City development impact fees towards these improvements.
- (c) The proposed project is consistent with the goals, policies, standards and maps of the adopted Zoning, Specific Plan, Development Code and all applicable codes and ordinances adopted by the City of Hesperia because the development complies with standards for landscaping, driveway aisle, building height, fire access, and trash enclosure. The development complies with Americans with Disability Act (ADA) by providing one accessible parking spaces with loading area and a 4-foot-wide path of travel to the street, parking space, and building. The development will be constructed pursuant to the California Building and Fire Codes and adopted amendments. The development must comply with the project's condition of approval for off-site and on-site improvements required prior to grading and building construction and prior to issuance of a Certificate of Occupancy.
- (d) The site for the proposed use will have adequate access based upon the site's current accessibility to Yucca Street. Yucca Street has access to Hesperia Road and Third Avenue. The development will have one drive approach. The developer is required to construct curb, gutter, and sidewalk along the frontage of the property. The City has established a Traffic Impact Mitigation Fee Program as part of

the Development Impact Fee (DIF) to fund the construction of traffic improvements to maintain adequate levels of service. The developer is required to pay all applicable City development impact fees towards these improvements.

Section 3. Based on the findings and conclusions set forth in this Resolution, this Commission hereby approves Conditional Use Permit CUP10-10155, subject to the Conditions of Approval as set forth in ATTACHMENT "A."

Section 4. That the Secretary shall certify to the adoption of this Resolution.

ADOPTED AND APPROVED this 12th day of August 2010.

Chris Elvert, Chair, Planning Commission

ATTEST:

Secretary, Planning Commission

ATTACHMENT 'A'

List of Conditions for Conditional Use Permit CUP10-10155

Approval Date: August 12, 2010
Effective Date: August 24, 2010
Expiration Date: August 24, 2013

This list of conditions apply to Conditional Use Permit to construct a 1,724 square foot auto repair and smog check facility on 0.2 acres zoned Neighborhood Commercial, located 150 feet east of Second Avenue, on the south side of Yucca Street. The project includes Variance VAR10-10162 to allow a 15-foot encroachment into the required 20-foot side yard setbacks and a three parking space deficiency. (Applicant: Curtis Kirchnavy; APN: 0413-063-16)

The use shall not be established until all conditions of this conditional use permit application have been met. This approved conditional use permit shall become null and void if all conditions have not been completed within three (3) years of the effective date. Extensions of time of up to twelve (12) months may be granted upon submittal of the required application and fee prior to the expiration date.

(Note: The "Init" and "Date" spaces are for internal city use only).
Init Date

SUBMITTAL OF PUBLIC IMPROVEMENT PLANS SHALL INCLUDE THE FOLLOWING:

- _____ 1. **Drainage Study.** The Developer shall submit a Final Hydrology / Hydraulic study identifying the method of collection and conveyance of tributary flows from off-site as well as the method of control for increased run-off generated on-site. (E)

- _____ 2. **Geotechnical Report.** The Developer shall provide two copies of the soils report with the grading plan. The soils report shall substantiate with all grading, building, and public improvement plans. In addition, a percolation report shall be performed to substantiate the percolation of the on-site drainage retention areas. Include "R" value testing and pavement recommendations for public streets (E, B)

- _____ 3. **Title Report.** The Developer shall provide a complete title report 90 days or newer from the date of submittal. (E)

- _____ 4. **Erosion Control.** The Developer shall provide an erosion control plan with the improvement plans submittal per City Standards. (E)

- _____ 5. **Utility Non-interference / Quitclaim Document(s)**. The Developer shall provide non-interference and or quitclaim letter(s) from *any* applicable utility agencies for *any* utility easements that affect the proposed project. All documents shall be subject to review and approval by the Engineering Department and the affected utility agencies. **Grading permits will not be issued until the required documents are reviewed and approved by all applicable agencies. Any fees associated with the required documents are the Developer's responsibility.** (E)
- _____ 6. **Plan Check Fees**. Along with improvement plan submittal, the Developer shall pay applicable plan-checking fees. **Improvement Plans and requested studies shall be submitted as a package.** (E)
- _____ 7. **Irrevocable Offer of Dedication**. (Handicap Path of Travel).The Developer shall submit an "Offer of Dedication" to the City's Engineering Department for review and approval. At time of submittal the developer shall complete the City's "application for document review" and pay all applicable fees. (E)
- _____ 8. **Building Construction Plans**. Five complete sets of construction plans, prepared and wet stamped by a California licensed Civil or Structural Engineer or Architect, shall be submitted to the Building Division with the required application fees for review. (B)
- _____ 9. **Indemnification**. As a further condition of approval, the Applicant agrees to and shall indemnify, defend, and hold the City and its officials, officers, employees, agents, servants, and contractors harmless from and against any claim, action or proceeding (whether legal or administrative), arbitration, mediation, or alternative dispute resolution process), order, or judgment and from and against any liability, loss, damage, or costs and expenses (including, but not limited to, attorney's fees, expert fees, and court costs), which arise out of, or are in any way related to, the approval issued by the City (whether by the City Council, the Planning Commission, or other City reviewing authority), and/or any acts and omissions of the Applicant or its employees, agents, and contractors, in utilizing the approval or otherwise carrying out and performing work on Applicant's project. This provision shall not apply to the sole negligence, active negligence, or willful misconduct of the City, or its officials, officers, employees, agents, and contractors. The Applicant shall defend the City with counsel reasonably acceptable to the City. The City's election to defend itself, whether at the cost of the Applicant or at the City's own cost, shall not relieve or release the Applicant from any of its obligations under this Condition. (P)

CONDITIONS REQUIRED PRIOR TO GROUND DISTURBING ACTIVITY:

- _____ 10. **Approval of Improvement Plans**. All required improvement plans shall be prepared by a registered Civil Engineer per City standards and per the City's improvement plan checklist to the satisfaction of the City Engineer. Five sets of improvement plans shall be submitted to the Development

Services Department and Engineering Department for plan review with the required plan checking fees. All Public Works plans shall be submitted as a complete set. (E)

- _____ 11. **Grading Plan.** The Developer shall design a Grading Plan with existing contours tied to an acceptable City of Hesperia benchmark. The grading plan shall indicate building “footprints” and proposed development of the retention basins, as a minimum. The site grading and building pad preparation shall include the recommendations provided by the Preliminary Soils Investigation. All proposed walls shall be indicated on the grading plans showing top of wall (tw), top of footing (tf), and the finish grade (fg) elevations. (E)
- _____ 12. **On-site Retention.** The Developer shall design / construct on-site retention facilities, which have minimum impact to ground water quality. This shall include maximizing the use of horizontal retention systems and minimizing the application of dry wells / injection wells. All dry wells / injection wells shall be 2-phase systems with debris shields and filter elements. All dry wells / injection wells shall have a minimum depth of 30’ with a max depth to be determined by soils engineer at time of boring test. Per Resolution 89-16 the Developer shall provide on-site retention at a rate of 13.5 Cu. Ft per every 100 Sq. Ft. of impervious materials. **Any proposed facilities, other than a City approved facility that is designed for underground storage for on-site retention will need to be reviewed by the City Engineer. The proposed design shall meet City Standards and design criteria established by the City Engineer. A soils percolation test will be required for alternate underground storage retention systems.** (E)
- _____ 13. **Street Improvement Plan.** The Developer shall design street improvements in accordance with City standards and as indicated below. (E)
- _____ 14. **Yucca St.** Saw-cut (2-foot min.) and match-up asphalt pavement on Yucca Street across the project frontage, based on City’s 60-foot Local Roadway Standard. The curb face is to be located at 22’ from the approved centerline to match the existing curb face of the adjacent property. The design shall be based upon an acceptable centerline profile extending a minimum of three hundred (300) feet beyond the project boundaries where applicable. These improvements shall consist of:
- A. 8” Curb and Gutter per City standards.
 - B. Sidewalk (width = 6 feet) per City standards.
 - C. Roadway drainage device(s).
 - D. Commercial driveway approaches per City standards.
 - E. Pavement transitions per City Standards.
 - F. Design roadway sections per existing, approved street sections and per “R” value testing with a traffic index of 8 and per the soils report.
 - G. Cross sections every 50 feet per City standards.
 - H. Traffic control signs and devices as required by the traffic study and/or the City Engineer.

I. It is the Developer's responsibility to obtain any off-site dedications for transition tapers including acceleration / deceleration tapers per City standards.

J. Relocate existing utilities as required. The Developer shall coordinate with affected utility companies.

_____ 15. **Alleyway.** Construct 16' full width alleyway to match up with property to the east. These improvements shall consist of 4" AC pavement and be provided along the project rear property line.

_____ 16. **Utility Plan.** The Developer shall design a Utility Plan for service connections and / or private hydrant and sewer connections. **Any existing water, sewer, or storm drain infrastructures that are affected by the proposed development shall be removed / replaced or relocated and shall be constructed per City standards at the Developer's expense.** (E)

A. A remote read automatic meter reader shall be added on all meter connections as approved by the City Engineer.

B. The Developer shall design a Utility Plan for service connections. Domestic and fire connections shall be made from the 8" PVC water line in Yucca Street per City Standards.

C. It is the Developer's responsibility to connect to sewer and pay the appropriate fees. The Developer will be required to connect to the existing size 8" PVC sewer main located in the alley per City standards.

D. Complete V.V.W.R.A.'s "Wastewater Questionnaire for Commercial / Industrial Establishments" and submit to the Engineering Department. **The Wastewater Questionnaire is only required if the project is required to connect to sewer.**

_____ 17. **Cultural Resources.** If cultural resources are found during grading, then grading activities shall cease and the applicant shall contract with a City approved archaeologist or paleontologist to monitor grading prior to resuming grading. All cultural resources discovered shall be handled in accordance with state and federal law. A report of all resources discovered as well as the actions taken shall be provided to the City prior to issuance of a Certificate of Occupancy. (P)

_____ 18. **Pre-construction Survey.** A pre-construction survey for the burrowing owl shall be conducted by a City approved and licensed biologist, no more than 30 days prior to ground disturbance. (P)

_____ 19. **Pre-construction Meetings.** Pre-construction meetings shall be held between the City, the Developer, grading contractors, and special inspectors to discuss permit requirements, monitoring and other applicable environmental mitigation measures required prior to ground disturbance and prior to development of improvements within the public right-of-way. (B, P)

- _____ 20. **Design for Required Improvements.** Improvement plans for off-site and on-site improvements shall be consistent with the plans approved as part of this site plan review application with the following revisions made to the improvement plans: (E, P)
- A. The trash enclosure shall access the alley while maintaining as much separation from the alley as possible. The location and configuration of the trash enclosure shall be subject to approval by Planning staff;
 - B. Wheel stops shall be installed two feet from the end of the four parking spaces to prevent vehicular encroachment into the four-foot wide handicapped accessible route of travel as approved by Planning staff.
- _____ 21. **Driveway Easement.** An access easement shall be recorded which allows for the perpetual use of the driveway for the benefit of the adjacent property to the west. The easement and the required application and fees shall be submitted to the Planning Division prior to review and approval by the City for recordation. (P)
- _____ 22. **Survey.** The Developer shall provide a legal survey of the property. All property corners shall be staked and the property address posted. (B)

CONDITIONS REQUIRED PRIOR TO BUILDING PERMIT ISSUANCE:

- _____ 23. **Construction Waste.** The developer or builder shall contract with the City's franchised solid waste hauler to provide bins and haul waste from the proposed development. At any time during construction, should services be discontinued, the franchise will notify the City and all building permits will be suspended until service is reestablished. The construction site shall be maintained and all trash and debris contained in a method consistent with the requirements specified in Hesperia Municipal Code Chapter 15.12. All construction debris, including green waste, shall be recycled at Advance Disposal and receipts for solid waste disposal shall be provided prior to final approval of any permit. (B)
- _____ 24. **Landscape Plans.** The Developer shall submit four sets of landscape and irrigation plans to the Building Division with the required application fees. Plans shall utilize xeriscape landscaping techniques in conformance with the Landscaping Ordinance. The number, size, type and configuration of plants approved by the City shall be maintained in accordance with the Development Code. (P)
- _____ 25. **Development Fees.** The Developer shall pay required development fees as follows:
- A. School Fees (B)
- _____ 26. **AQMD Approval.** The Developer shall provide evidence of acceptance by the Mojave Desert Air Quality Management District. (B)

- _____ 27. **Light and Landscape District Annexation.** Developer shall annex property into the lighting and landscape district administered by the Hesperia Recreation and Parks District. The required forms are available from the Building Division and once completed, shall be submitted to the Building Division. (RPD)
- _____ 28. **Haz-Mat Approval.** The applicant shall contact the San Bernardino County Fire Department/Hazardous Materials Division (909) 386-8401 for review and approval of building plans, where the planned use of such buildings will or may use hazardous materials or generate hazardous waste materials. [F]

CONDITIONS REQUIRED PRIOR TO CERTIFICATE OF OCCUPANCY:

- _____ 29. **As-Built Plans.** The Developer shall provide as-built plans. (E)
- _____ 30. **Public Improvements.** All public improvements shall be completed by the Developer and approved by the Engineering Department. Existing public improvements determined to be unsuitable by the City Engineer shall be removed and replaced. (E)
- _____ 31. **Development Fees.** The Developer shall pay required development fees as follows:
- A. Development Impact Fees (B)
 - B. Utility Fees (P)
- _____ 32. **Utility Clearances.** The Building Division will provide utility clearances after required permits and inspections and after the issuance of a Certificate of Occupancy on the building. Utility meters shall be permanently labeled. Uses shall require issuance of a Certificate of Occupancy prior to establishment. (B)
- _____ 33. **On-Site Improvements.** All on-site improvements as recorded in these conditions, and as shown on the approved site plan shall be completed in accordance with all applicable Title 16 requirements. The building shall be designed consistent with the design shown upon the approved materials board and color exterior building elevations identified as Exhibit "A." Any exceptions shall be approved by the Deputy Director of Development Services / Community Development. (P)
- _____ 34. **KNOX Box[®].** An approved Fire Department key box is required. The KNOX Box[®] shall be provided with a tamper switch and shall be monitored by a Fire Department approved central monitoring service. [F]
- _____ 35. **Fire Extinguishers.** Hand portable fire extinguishers are required. The location, type, and cabinet design shall be approved by the Fire Department. [F]

**IF YOU NEED ADDITIONAL INFORMATION OR ASSISTANCE REGARDING THESE
CONDITIONS, PLEASE CALL THE APPROPRIATE DIVISION LISTED BELOW:**

| | | |
|--------------|--|-----------------|
| (P) | Planning Division | 947-1200 |
| (B) | Building Division | 947-1300 |
| (E) | Engineering Division | 947-1414 |
| (F) | Fire Prevention Division | 947-1012 |
| (RPD) | Hesperia Recreation and Park District | 244-5488 |

ATTACHMENT 7

RESOLUTION NO. PC-2010-19

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HESPERIA, CALIFORNIA, APPROVING A VARIANCE TO ALLOW A 15-FOOT ENCROACHMENT INTO THE REQUIRED 20-FOOT SIDE YARD SETBACKS AND A THREE PARKING SPACE DEFICIENCY LOCATED 150 FEET EAST OF SECOND AVENUE, ON THE SOUTH SIDE OF YUCCA STREET (VAR10-10162)

WHEREAS, Curtis Kirchnavy, has filed an application requesting approval of Variance VAR10-10162 to allow a 15-foot encroachment into the required 20-foot side yard setback and a three parking space deficiency (hereinafter referred to as "Application").

WHEREAS, the property is located 150 feet east of Second Avenue on the south side of Yucca Street and consists of Assessor's Parcel Numbers 0413-063-16; and

WHEREAS, Curtis Kirchnavy, has also filed an application requesting approval of Conditional Use Permit CUP10-10155 to allow an auto repair and smog check facility on a 0.2 gross acre lot; and

WHEREAS, the site as well as surrounding properties to the north and south are currently vacant. A car sales lot exists to the east and an existing apartment building exists to the west; and

WHEREAS, the subject property as well as surrounding properties are currently designated Planned Mixed Use (PMU) on the City's Land Use map; and

WHEREAS, the subject property is currently zoned Neighborhood Commercial (NC) by the Main Street and Freeway Corridor Specific Plan. The property to the south, east and west are also zoned NC. The properties to the north is zoned Medium Density Residential (MDR); and

WHEREAS, the project is categorically exempt from the requirements of the California Environmental Quality Act by Section 15332, In-fill Development Projects; and

WHEREAS, on August 12, 2010, the Planning Commission of the City of Hesperia conducted a duly noticed public hearing pertaining to the proposed Application, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF HESPERIA PLANNING COMMISSION AS FOLLOWS:

Section 1. The Planning Commission hereby specifically finds that all of the facts set forth in this Resolution are true and correct.

Section 2. Based upon substantial evidence presented to this Commission during the above-referenced August 12, 2010, hearing, including public testimony and written and oral staff reports, this Commission specifically finds as follows:

- (a) The strict or literal interpretation and enforcement of the specified regulations would result in practical difficulties or unnecessary physical hardships because the property is only 50 feet wide. A 20-foot setback on both sides of the property would limit development to 10 feet of the lot's width. The size and shape of the property substantially limits development of the property, necessitating a parking space deficiency. Compliance with standard parking requirements would cut the size of the building in-half and making the property not feasible to develop.
- (b) There are exceptional circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties in the same zone because the property is generally smaller in size and shaped differently when compared to surrounding properties and properties within the Neighborhood Commercial zone.
- (c) The strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties in the same zone because adjacent properties are developed and are substantially larger in size. The property is limited by the lot size, and is long and narrow.
- (d) The granting of the variance would not constitute a grant of a special privilege inconsistent with the limitations on other properties classified in the same zone because the property cannot be developed without the side yard setback variance. The parking deficiency is necessary to develop the property as the property is small in size, and long and narrow. The property is also surrounded by developed properties on larger lots.
- (e) The granting will not be detrimental to the public health, safety, or welfare, nor it will be materially injurious to the property in the vicinity, as the proposed sign does not pose a sight distance hazard.

Section 3. Based on the findings and conclusions set forth in this Resolution, this Commission hereby approves Variance VAR10-10162.

Section 4. The Secretary shall certify to the adoption of this Resolution.

ADOPTED AND APPROVED this 12th day of August 2010.

Chris Elvert, Chair, Planning Commission

ATTEST:

Secretary, Planning Commission

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CITY OF HESPERIA



CITY OF HESPERIA DEVELOPMENT REVIEW COMMITTEE

City Hall Joshua Room
9700 Seventh Avenue
Hesperia, CA 92345
BEGINNING AT 10:00 A.M.
WEDNESDAY, August 4, 2010

A. PROPOSALS:

1. Terri Basse (SPR10-10177)

Proposal: Consideration of a revised site plan review to install a ground-mounted solar energy system in the rear yard.

Location: 10533 Riverview Street (APN: 0399-011-36)

Planner: Lisette Sanchez-Mendoza

Action: Administrative Approval

2. Tom Cole (ME10-10178)

Proposal: Consideration of a minor exception to allow a 300 square foot expansion of an existing 2,581 square foot office building resulting in a three parking space deficiency.

Location: 18231 Bear Valley Road (APN: 0399-143-25)

Planner: Daniel Alcayaga

Action: Administrative Approval

3. Alain Fricker (ME10-10170)

Proposal: Consideration of a minor exception to construct a 3,200 square foot accessory building with T-11 exterior siding exceeding the five percent accessory building area limitation.

Location: 18144 Cherry Street (APN: 0411-111-25)

Planner: Stan Liudahl

Action: Administrative Approval

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