



City of Los Banos

At the Crossroads of California

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AGENDA

PLANNING COMMISSION

CITY HALL COUNCIL CHAMBERS
520 J Street
Los Banos, California

WEDNESDAY, DECEMBER 9, 2015

If you require special assistance to attend or participate in this meeting, please call the Planning Secretary @ (209) 827-7000 extension 118 at least 48 hours prior to the meeting.

The City of Los Banos complies with the Americans with Disabilities Act (ADA) of 1990.

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Si requiere asistencia especial para atender o participar en esta junta por favor llame a la oficina de la Secretaria del Departamento de Planificación al (209) 827-7000 extensión 118 a lo menos de 48 horas previas de la junta.

La Ciudad de Los Banos cumple con la Acta de Americanos con Deshabilidad (ADA) de 1990.

Any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda will be made available for public inspection at the meeting and in the Planning Department's office located at City Hall, 520 J Street, Los Banos, California during normal business hours. In addition, such writings and documents may be posted on the City's website at www.losbanos.org.

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Cualquier escritura o los documentos proporcionaron a una mayoría del Departamento de Planificación con respecto a cualquier artículo en este orden del día será hecho disponible para la inspección pública en la reunión y en la oficina del Secretaria del Departamento de Planificación del City Hall, 520 J Street, Los Banos, California durante horas de oficina normales. Además, tales escrituras y los documentos pueden ser anunciados en el website de la Ciudad en www.losbanos.org.

1. CALL TO ORDER. **7:00 PM**
2. PLEDGE OF ALLEGIANCE.
3. ROLL CALL: (Planning Commission Members)
Baker __, Cates __, Faktorovich __, Hammond __, McCoy __, Spada __,
Toscano __

4. APPROVAL OF AGENDA.

Recommendation: Approve the agenda as submitted.

5. CONSIDERATION OF APPROVAL OF THE ACTION MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING OF NOVEMBER 12, 2015.

Recommendation: Approve the minutes as submitted.

6. PUBLIC FORUM: Members of the public may address the Commission on any item of public interest that is within the jurisdiction of the Commission, including agenda and non-agenda items. No action will be taken on non-agenda items. Speakers are limited to a five (5) minute presentation.

7. PUBLIC HEARINGS: If you challenge the proposed action as described herein in court, you may be limited to raising only those issues you or someone else raised at the public hearing described herein or in written correspondence delivered to the City at, or prior to, the public hearing.

- A. Public Hearing – to Consider Vesting Tentative Tract Map #2015-01, Final Development Plan #2015-01, and Associated Development Agreement for Southpointe at Regency Park, Consisting of Subdividing 109 Acres into 510 Single-Family Residential Lots, Open Space, and a Detention Basin Located East of Place Road and Overland Avenue, North of Verona Estates, and West of Ward Road, More Specifically Identified as Assessor's Parcel Numbers: 424-120-009 and 073-220-015 **(Continue to a Date Uncertain)**.

Recommendation: Open the continued public hearing, receive public comment, close the public hearing, and continue the item to a date uncertain.

- B. Public Hearing – to Consider Vesting Tentative Tract Map #2015-02, Final Development Plan #2015-02, and Associated Development Agreement for Northpointe at Regency Park, Consisting of Subdividing 111 Acres into 596 Single-Family Residential Lots Located East of Westminster Way, South of San Simeone Way, and West of the San Luis Canal, More Specifically Identified as Assessor's Parcel Numbers: 424-010-002, 005, and 006 **(Continue to a Date Uncertain)**.

Recommendation: Open the continued public hearing, receive public comment, close the public hearing, and continue the item to a date uncertain.

- C. Public Hearing – to Consider and Make a Recommendation to the Los Banos City Council to Adopt a Proposed Ordinance Imposing an Express Ban on Marijuana Cultivation, Marijuana Processing, Marijuana Delivery, and Marijuana Dispensaries in the City of Los Banos.

- 1) Planning Commission Resolution No. 2015-50 – Recommending to the City Council Adoption of an Ordinance Imposing an Express Ban on Marijuana Cultivation, Marijuana Processing, Marijuana Delivery, and Marijuana Dispensaries in the City of Los Banos.

Recommendation: Receive staff report, open the public hearing, receive public comment, close the public hearing, and adopt the resolution as submitted.

- D. Public Hearing – to Consider a Conditional Use Permit and Site Plan Review for the Development of a 1,914 Square Foot Telecommunication Headend Facility for Comcast Located in the Professional Office Zoning District at 604 Texas Avenue, More Specifically Identified as Assessor's Parcel Number: 027-211-001.

- 1) Planning Commission Resolution No. 2015-46 – Approving Conditional Use Permit #2015-13 to Allow the Operation of a Headend Facility at 604 Texas Avenue, More Specifically Identified as Assessor's Parcel Number: 027-211-001.
- 2) Planning Commission Resolution No. 2015-47 – Approving Site Plan #2015-07 for the Replacement and Construction of a 1,914 Square Foot Headend Facility Located at 604 Texas Avenue, More Specifically Identified as Assessor's Parcel Number: 027-211-001.

Recommendation: Receive staff report, open the public hearing, receive public comment, close the public hearing, and adopt the resolutions as submitted.

- E. Public Hearing – to Consider a Conditional Use Permit to Allow the Use of a Type 86 Alcohol License for the Instructional Tasting of Alcoholic Beverages Onsite for Wal-Mart Stores, Inc. Located at 1575 W. Pacheco Boulevard, More Specifically Identified as Assessor's Parcel Number: 430-010-012.

- 1) Planning Commission Resolution No. 2015-48 – Recommending Approval of Conditional Use Permit #2015-10 to the Los Banos City Council for the Use of a Type 86 Alcohol License, "Instructional Tasting", for Wal-Mart Located at 1575 West Pacheco Boulevard.

Recommendation: Receive staff report, open the public hearing, receive public comment, close the public hearing, and adopt the resolution as submitted.

- F. Public Hearing – to Consider a Conditional Use Permit to Allow the Use of a Type 40 Alcohol License for the On-sale of Beer in Conjunction with the Availability of Snacks for Aqua Entertainment Center Located at 923 W. Pacheco Boulevard, More Specifically Identified as Assessor's Parcel Number: 431-020-002.

- 1) Planning Commission Resolution No. 2015-49 – Recommending Approval of Conditional Use Permit #2015-11 to the Los Banos City Council for the On-sale of Beer for Aqua Entertainment Center Located at 923 West Pacheco Boulevard.

Recommendation: Receive staff report, open the public hearing, receive public comment, close the public hearing, and adopt the resolution as submitted.

8. COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT REPORT.
9. COMMISSIONER REPORTS.
 - A. Baker
 - B. Cates
 - C. Faktorovich
 - D. Hammond
 - E. McCoy
 - F. Spada
 - G. Toscano
10. ADJOURNMENT.

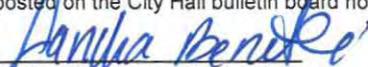
APPEAL RIGHTS AND FILING PROCEDURES

Any person dissatisfied with an act or determination of the Planning Commission may appeal such act or determination to the Planning Commission by filing written notice with the Planning Commission Secretary not later than five (5) business days (excluding holidays) after the day on which the act or determination was made. An appeal must state the act or determination which is being appealed, the identity of the applicant and his/her interest in the matter, and set forth in concise statement(s) the reasons which render the Commission's decision unjustified or inappropriate. (Los Banos Municipal Code Section 9-3.2326)

Concerning an action taken by the Planning Commission related to Chapter 2 Articles 1 through 17 of the Los Banos Municipal Code "Subdivisions", if a subdivider or other affected property owner is dissatisfied with any action of the Commission with respect to a tentative map or the nature and extent of improvements recommended or required he/she may within fifteen (15) days after such action appeal to the Planning Commission Secretary for a public hearing on the matter. An appeal must state the action being appealed, identify the agenda item by agency number or project title, and set forth in concise statement(s) the reasons for the appeal. (Los Banos Municipal Code Sections 9-2.807)

Appeals must be in writing and include the appellant's name and address and original signature. A filing fee of \$150.00 must accompany the notice of appeal.

I hereby certify under penalty of perjury under the laws of the State of California that the foregoing agenda was posted on the City Hall bulletin board not less than 72 hours prior to the meeting.


Sandra Benetti, Planning Technician

Dated this 4th day of December 2015

**CITY OF LOS BANOS
PLANNING COMMISSION MEETING MINUTES
NOVEMBER 12, 2015**

ACTION MINUTES – These minutes are prepared to depict action taken for agenda items presented to the Planning Commission. For greater detail of this meeting refer to the electronic media (CD and/or audio) kept as a permanent record.

CALL TO ORDER. Chairperson Spada called the Planning Commission Meeting to order at the hour of 7:00 p.m.

PLEDGE OF ALLEGIANCE. The pledge of allegiance was led by Commissioner Cates.

ROLL CALL – MEMBERS OF THE PLANNING COMMISSION PRESENT: Planning Commission Members John Cates, Arkady Faktorovich, Palmer McCoy, Tom Spada, and Susan Toscano; Todd Baker and Stephen Hammond Absent.

STAFF MEMBERS PRESENT: Planning Technician Sandra Benetti and City Attorney William Vaughn.

CONSIDERATION OF APPROVAL OF AGENDA. Motion by McCoy, seconded by Cates to approve the agenda as submitted. The motion carried by the affirmative action of all Planning Commission Members present, Baker and Hammond absent.

CONSIDERATION OF APPROVAL OF THE ACTION MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING OF OCTOBER 28, 2015. Motion by Faktorovich, seconded by McCoy to approve the minutes as submitted. The motion carried by the affirmative action of all Planning Commission Members present, Baker and Hammond absent.

PUBLIC FORUM: MEMBERS OF THE PUBLIC MAY ADDRESS THE CITY COUNCIL MEMBERS ON ANY ITEM OF PUBLIC INTEREST THAT IS WITHIN THE JURISDICTION OF THE CITY; INCLUDES AGENDA AND NON-AGENDA ITEMS. NO ACTION WILL BE TAKEN ON NON-AGENDA ITEMS. SPEAKERS ARE LIMITED TO A FIVE (5) MINUTE PRESENTATION. DETAILED GUIDELINES ARE POSTED ON THE COUNCIL CHAMBER INFORMATIONAL TABLE. Chairperson Spada opened the public forum. No one came forward to speak and the public forum was closed.

PUBLIC HEARING – TO CONSIDER SITE PLAN REVIEW #2015-08 FOR THE REMODEL OF THE FORMER LOWE’S HOME IMPROVEMENT WAREHOUSE FROM AN EXISTING SINGLE TENANT RETAIL BUILDING OF APPROXIMATELY 171,070 SQUARE FEET ON APPROXIMATELY 12.75 ACRES TO A MULTI-TENANT RETAIL

BUILDING OF APPROXIMATELY 165,850 SQUARE FEET LOCATED WITHIN THE HIGHWAY COMMERCIAL ZONING DISTRICT IN THE STONECREEK PLAZA AT 1301 W. PACHECO BOULEVARD, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR'S PARCEL NUMBER: 430-010-019. City Attorney Vaughn presented the staff report, which included a PowerPoint presentation, noting that representatives for the applicant were present to answer any questions.

Commissioner Faktorovich inquired if we have identified the main tenant for the largest space.

City Attorney Vaughn stated that no application has come forward that would identify them.

Commissioner Faktorovich inquired who would have the largest space with the largest signage panel identifying the space.

City Attorney Vaughn stated that the applicant can speak to those questions.

Chairperson Spada opened up the public hearing. Russ Tuttle, Ethan Conrad Properties, thanked staff for all their work, spoke of how they want to divide this space into five separate tenants, how it is difficult to lease the large space to one tenant, and how they are currently negotiating with large retailers.

Chairperson Spada inquired if there would be changes to the back side service for deliveries.

Mr. Tuttle responded that there would be no changes on backside because the delivery space already exists.

City Attorney Vaughn stated that the trash enclosures are conditioned.

Chairperson Spada suggested that the back area should be screened and perhaps the buffer should be beefed up.

City Attorney Vaughn commented that we don't want to create a traffic hazard for people using the ingress/egress in the back of the unit.

Commissioner McCoy questioned if the fire alarm box and fire sprinkler systems could accommodate all units.

Mr. Tuttle spoke of the one riser in the front of the building being sufficient.

City Attorney Vaughn commented that the condition was written by the Fire Chief regarding the fire sprinklers and allows for the Fire Chief to approve the ultimate setup.

Commissioner McCoy commented that the building was going from having five bell towers down to three bell towers.

Mr. Tuttle stated that the architect intentionally did that because it looked better with the three bell towers.

Commissioner Faktorovich spoke of the monotony of the architecture, how he can't understand the architectural thought, understands the need to stay in budget, this being not that impressive, suggested bringing the signage of the main tenant about three feet higher so it would break up the monotony, understanding money and time, not trying to impose hardships, his desire for this building to be leased, and how it is not that difficult or expensive to accent the main tenant.

City Attorney Vaughn asked for clarification if Commissioner Faktorovich was looking to make a suggestion or a condition.

Commissioner Faktorovich stated that it was a suggestion.

Chairperson Spada agreed that this proposal didn't impress him.

Commissioner McCoy spoke of other retailers in the shopping center that have the bell tower and commented that Target did not.

City Attorney Vaughn stated that Target had resisted the bell tower idea and wanted to keep their branding style.

Commissioner McCoy stated that target has more of a layering on the building.

Chairperson Spada inquired if when the tenant improvements come forward there would be a different façade.

City Attorney Vaughn stated that this is the façade they would see.

Commissioner Toscano inquired if there was a reason they are removing the main façade.

Mr. Tuttle stated that it would look confusing for having separate tenants.

Commissioner Faktorovich suggested adding an arch and spoke of how this reminds him of an industrial building and even military barracks.

Mr. Tuttle stated that he'll have to talk to the architect and Ethan Conrad himself to discuss this.

Chairperson Spada stated that here we are removing the existing reveals and going to plain building when we made Sleep Train match the center.

Commissioner McCoy inquired if they could add a condition that there be no new monument signs.

City Attorney Vaughn stated the Condition of Approval #32 mirrors the municipal code and it can be removed.

Mr. Tuttle stated that they are negotiating with four tenants right now.

Kathy Ballard, Los Banos, inquired why the staff report lists four spaces and the site plan shows five spaces.

Mr. Tuttle stated that there are four spaces in the floor plan and the fifth space is the garden center.

City Attorney Vaughn stated that the consensus he's gathered from the Commission is that they would like to eliminate Condition of Approval #32 and add a condition that gives the Community & Economic Development Department the ability to alter the site plan in line with the discussion of the monotony of the architectural detail in which staff can entertain another proposal in light of this discussion.

No one else came forward to speak and the public hearing was closed.

Motion by McCoy, seconded by Faktorovich to adopt Planning Commission Resolution No. 2015-45 - Approving Site Plan #2015-08 for the Remodel of the Former Lowe's Home Improvement Warehouse from a Single Tenant Building to a Multi-tenant Retail Building Located at 1301 W. Pacheco Boulevard in the Stonecreek Plaza with the amendment to remove Condition of Approval #32 and add a condition to allow the Community & Economic Development Department Director to administratively make changes to the site plan in regards to the architectural detail. The motion carried by the affirmative action of all Planning Commission Members present, Baker and Hammond absent.

DESIGN REVIEW STUDY SESSION – DEVELOPMENT OF A 1,914 SQUARE FOOT HEADEND FACILITY ON A 0.55 ACRE LOT LOCATED AT 604 TEXAS AVENUE IN THE PROFESSIONAL-OFFICE ZONING DISTRICT. City Attorney Vaughn presented the staff report, which included a PowerPoint presentation, noting that the applicant was present to answer any questions.

Mr. Kevin Fattal, the applicant, handed out 3D renderings of the interior of the building to the Commissioners.

Chairperson Spada inquired about screening for the cooling equipment.

Mr. Alan chambers stated that it will be screened behind the trellises.

Chairperson Spada suggested putting a concrete enclosure in front of the generator for the benefit of the residential units in the area.

Mr. Fattal spoke of how they could go from a level 4 to a level 5, how a CMU enclosure magnifies the sound, and spoke of the trellises and screening.

City Attorney Vaughn stated that the sound would be more of an issue for the residential units to the south.

Chairperson Spada inquired if the air district have any special requirements for them since they are near a school.

Mr. Fattal responded that they do not have any special requirements other than having to do the proper noticing.

City Attorney Vaughn passed around the color and material sample for the Commissioners.

Chairperson Spada inquired if there were security cameras.

Mr. Fattal responded that there are security cameras that would be monitored 24 hours/day.

Chairperson Spada asked the applicant to make sure the parapet is high enough to cover any equipment on the roof.

Commissioner Toscano inquired if there was any signage.

Mr. Fattal responded that there would not be any signage.

City Attorney Vaughn inquired what would happen with the existing structure.

Mr. Fattal stated that his recommendation to Comcast will be to remove it.

Commissioner McCoy inquired if the new fence will be in the way of what the City will take as far as improvements.

City Attorney Vaughn stated that he thinks the fence is behind the line, how it would be part of the approval process to include deferral agreements for improvements, and how the cooling units hooked to the building will have minimal noise even though it will be running all time.

Mr. Fattal stated that they are trying to be energy efficient as possible.

Chairperson Spada recommended the addition of a level five enclosure for the generator.

COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT REPORT. City Attorney Vaughn reported that Planning Technician Benetti has been working feverishly, thanked her for her work, and spoke of the items coming forward for the next Planning Commission meeting taking place on December 9, 2015.

Commissioner Toscano inquired what's going on with Presidential Estates East Annexation.

City Attorney Vaughn responded that the applicant is working with the northern property owner and the Merced County Local Agency Formation Commission (LAFCO) as well as working on General Plan Amendment and Zone Change for Low Density Residential.

Commissioner McCoy inquired about the Vineyard Drive extension.

Planning Technician Benetti responded that the extension and any applicable traffic controls would be triggered by the build out of Northpointe.

PLANNING COMMISSION MEMBER REPORTS.

BAKER: Absent.

CATES: Spoke of how he is happy to see the buiding of the 99 Cent Only Store.

FAKTOROVICH: No report.

HAMMOND: Absent.

McCOY: Suggested that the City should seriously consider amending the 50% shade tree requirement and the Lowe's remodel should have came forward as a workshop for Design Review.

SPADA: Thanked Planning Technician Benetti for her work.

TOSCANO: No report.

ADJOURNMENT. The meeting was adjourned at the hour of 8:45 p.m.

APPROVED:

Tom Spada, Chairperson

ATTEST:

Sandra Benetti, Planning Technician



City of
Los Banos
At the Crossroads of California

PLANNING COMMISSION STAFF REPORT

TO: CHAIRMAN SPADA AND COMMISSIONERS

FROM: STACY SOUZA ELMS, SENIOR PLANNER,
WILLIAM A. VAUGHN, CITY ATTORNEY,
GARY BRIZZEE, POLICE CHIEF

FOR: PLANNING COMMISSION MEETING OF DECEMBER 9, 2015

SUBJECT: AN ORDINANCE IMPOSING AN EXPRESS BAN ON MARIJUANA CULTIVATION, MARIJUANA PROCESSING, MARIJUANA DELIVERY, AND MARIJUANA DISPENSARIES IN THE CITY OF LOS BANOS

RECOMMENDATION

That the Planning Commission conducts the public hearing and adopts the following:

1. Open the public hearing to receive public testimony.
2. Close Public Hearing.
3. Motion to Adopt Resolution 2015-__ recommending that the City Council adopt an ordinance amending Article 35 of the Los Banos Municipal Code, to prohibit medical marijuana dispensaries, the cultivation, delivery, and processing of medical marijuana within the City of Los Banos.

BACKGROUND

In 1996, California voters approved Proposition 215 entitled "The Compassionate Use Act of 1996" or "CUA" to enable seriously ill Californians, under the care of a physician, to legally possess, use, and cultivate marijuana for medical use under state law. The CUA provides a limited defense from prosecution for cultivation and possession of marijuana. (*City of Claremont v. Kruse*, 177 Cal.App.4th 1153 (2009)).

In 2003, the California Legislature adopted Senate Bill 420 entitled the Medical Marijuana Program ("MMP") which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code. The MMP provides qualified persons, primary caregivers, and holders of valid identification cards a defense to certain enumerated marijuana-related state crimes (*City of Claremont v. Kruse*, 177 Cal.App.4th 1153 (2009)).

In 2006 the Los Banos City Council adopted Ordinance No. 1028 prohibiting medical marijuana dispensaries in the City.

In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. . . .” The California Supreme Court confirmed a city’s ability to prohibit medical marijuana dispensaries within its boundaries. (*City of Riverside*, 56 Cal.4th 729 (2013)). The court found that the CUA and MMP do not preempt a city’s local regulatory authority.

Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that “there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .” The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority. Rather, the statutes set up limited defenses to state criminal prosecution. Like the Supreme Court’s decision in *City of Riverside*, the *Maral* court similarly found that the CUA and MMP do not preempt a city’s regulatory authority to prohibit all cultivation in the city, if the city so chooses.

In short the foregoing cases hold that neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction.

On October 9, 2015 Governor Brown signed three bills into law (AB 266, AB 243, and SB 643) which collectively are known as the Medical Marijuana Regulation and Safety Act (“Act”). The Act becomes effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical marijuana to qualified patients throughout the state. The Act contains statutory provisions that allow local governments to enact ordinances prohibiting marijuana cultivation, processing, delivery, and dispensaries.

Assembly Bill 266 established a dual licensing structure requiring state and local licenses or permits to establish marijuana businesses.

Assembly Bill 243 includes a provision stating that cities that do not have an ordinance regulating or prohibiting cultivation by March 1, 2016, will lose the authority to regulate or ban cultivation within their city limits.

Assembly Bill 643 established criteria for the licensing of medical marijuana businesses, regulating physicians, and recognizing local authority to levy taxes and fees.

Not to be overlooked, the manufacture, distribution, or possession of marijuana remains unlawful and a federal crime under the Federal Controlled Substance Act (21 U.S.C. §§ 812, 841, 844) and subject to federal prosecution without regard to a claimed medical need.

DISCUSSION

A number of California cities have reported negative impacts to the public health, safety, and welfare resulting from marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests. The City of Los Banos has experienced some of the negative impacts as well.

Citywide prohibition is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities.

The Los Banos Municipal Code only expressly prohibits medical marijuana dispensaries. To avoid having federally prohibited activities that are permitted by the Act, the attached ordinance expressly prohibits the establishment and operation of marijuana cultivation, processing, delivery, and dispensary activities within the City of Los Banos.

ENVIRONMENTAL REVIEW

Pursuant to Section 15061(b) (3) of the California Environmental Quality Act (“CEQA”) the draft ordinance is exempt because it does not involve a particular project, application, or activity. Any future project, application or activity related to the Ordinance must satisfy CEQA requirements on its own merits. A Notice of Exemption has been prepared pursuant to CEQA Guidelines section 15061(b) (3), which provides that CEQA applies only to projects that have the potential to cause a significant effect on the environment; and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

ATTACHMENTS

Resolution
Proposed Ordinance
Reference Materials

RESOLUTION NO. 2015-50

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS BANOS RECOMMENDING TO THE CITY COUNCIL ADOPTION OF AN ORDINANCE IMPOSING AN EXPRESS BAN ON MARIJUANA CULTIVATION, MARIJUANA PROCESSING, MARIJUANA DELIVERY, AND MARIJUANA DISPENSARIES IN THE CITY OF LOS BANOS

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the " Medical Marijuana Regulation and Safety Act" (" Act"), which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643, into law;

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The Act also contains new statutory provisions that:

1. Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362. 777(c)(4));
2. Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));
3. Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and
4. Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a));

WHEREAS, a number of California cities have reported negative impacts to the public health, safety, and welfare resulting from marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests.

WHEREAS, the City of Los Banos has experienced some of the negative impacts as well;

WHEREAS, based on the experiences of the City of Los Banos and other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing and distribution activities;

WHEREAS, the Los Banos Municipal Code currently prohibits medical marijuana dispensaries within the City of Los Banos;

WHEREAS, based on the findings above, it is in the interest of the City, its residents, and its lawfully permitted businesses that City adopts this ordinance to expressly prohibit the establishment and operation of marijuana cultivation, processing, delivery, and dispensary activities in the City.

WHEREAS, on December 9, 2015, the Planning Commission conducted a duly noticed public hearing on a proposed ordinance imposing an express ban on marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries in the City of Los Banos at which time all individuals desiring to comment on the proposed ordinance were heard; and

WHEREAS, the proposed ordinance is attached hereto and incorporated herein by this reference as Attachment A; and

WHEREAS, the proposed ordinance does not propose any changes to City policies or regulations that would result in a direct or indirect physical environmental impact; therefore it has been determined that the proposed ordinance is covered by the general rule that the California Environmental Quality Act applies only to projects which have the potential for causing a significant effect on the environment pursuant to CEQA guidelines Section 15061 (b)(3) and is not subject to environmental review.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Los Banos does hereby find that the above recitals are true and correct and recommends that the City Council of the City of Los Banos consider and approve the attached ordinance entitled "An Ordinance Of The City Of Los Banos Imposing an Express Ban on Marijuana Cultivation, Marijuana Processing, Marijuana Delivery, and Marijuana Dispensaries in the City of Los Banos."

The foregoing Resolution was introduced at a regular meeting of the Planning Commission of the City of Los Banos held on the 9th day of December 2015, by Planning Commissioner _____ who moved its adoption, which motion was duly seconded by Planning Commissioner _____ and the Resolution adopted by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

Tom Spada, Planning Commission Chairman

ATTEST:

Sandra Benetti, Planning Commission Secretary

ORDINANCE NO. __

AN ORDINANCE OF THE CITY OF LOS BANOS RECOMMENDING TO THE CITY COUNCIL ADOPTION OF AN ORDINANCE IMPOSING AN EXPRESS BAN ON MARIJUANA CULTIVATION, MARIJUANA PROCESSING, MARIJUANA DELIVERY, AND MARIJUANA DISPENSARIES IN THE CITY OF LOS BANOS

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the " Medical Marijuana Regulation and Safety Act" ("Act"), which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643, into law;

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The Act also contains new statutory provisions that:

1. Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));
2. Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));
3. Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and
4. Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a));

WHEREAS, a number of California cities have reported negative impacts to the public health, safety, and welfare resulting from marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests.

WHEREAS, the City of Los Banos has experienced some of the negative impacts as well;

WHEREAS, based on the experiences of the City of Los Banos and other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to

occur, in the City due to the establishment and operation of marijuana cultivation, processing and distribution activities;

WHEREAS, the Los Banos Municipal Code currently prohibits medical marijuana dispensaries within the City of Los Banos;

WHEREAS, based on the findings above, it is in the interest of the City, its residents, and its lawfully permitted businesses that City adopts this ordinance to expressly prohibit the establishment and operation of marijuana cultivation, processing, delivery, and dispensary activities in the City.

WHEREAS, on December 9, 2015, the Planning Commission conducted a duly noticed public hearing on a proposed ordinance imposing an express ban on marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries in the City of Los Banos at which time all individuals desiring to comment on the proposed ordinance were heard and on December 9, 2015 the Planning Commission recommended that the City Council adopt an ordinance imposing an express ban on marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries in the City of Los Banos; and

WHEREAS, the City Council conducted a duly noticed public hearing on the proposed ordinance on January 6, 2016 and January 20, 2016 at which time all individuals desiring to comment on the proposed ordinance were heard; and

WHEREAS, the proposed ordinance does not propose any changes to City policies or regulations that would result in a direct or indirect physical environmental impact; therefore it has been determined that the proposed ordinance is covered by the general rule that the California Environmental Quality Act applies only to projects which have the potential for causing a significant effect on the environment pursuant to CEQA guidelines Section 15061 (b)(3) and is not subject to environmental review.

THE CITY COUNCIL OF THE CITY OF LOS BANOS DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Los Banos hereby finds that the above recitals are true and correct and are incorporated into the substantive portion of this ordinance.

Section 2. The City Council hereby repeals Article 35 of the Los Banos Municipal Code in its entirety and reenacts Article 35 “Medical Marijuana” to read as follows:

9-3.3501. Legislative Findings and Statement of Purpose.

A. The City Council finds that the prohibitions on marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community. The City Council's prohibition of such activities is within the authority conferred upon the City Council by state law.

B. On October 9, 2015, the governor signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law. The Act becomes effective January 1, 2016 and contains new statutory provisions that:

1. Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));
2. Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));
3. Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and
4. Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)).

C. The City Council finds that this Article: (1) expresses its intent to prohibit the cultivation of marijuana in the City and to not administer a conditional permit program pursuant to Health & Safety Code section 11362.777 for the cultivation of marijuana in the City; (2) exercises its local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this Article; (3) exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community; and (4) expressly prohibits the delivery of marijuana in the City.

9-3.3502. Definitions.

For purposes of this Article, the following definitions shall apply:

A. "Marijuana" means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term "marijuana" shall also include medical marijuana" as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety

Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

B. "Marijuana Cultivation" means growing, planting, harvesting, drying, curing, grading, trimming, or processing of marijuana.

C. "Marijuana Processing" means any method used to prepare marijuana or its byproducts for commercial retail and/ or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

D. "Marijuana Dispensary" or "Marijuana Dispensaries" means any business, office, store, facility, location, retail storefront or wholesale component of any establishment, cooperative or collective that delivers (as defined in Business & Professions Code section 19300.5(m) or any successor statute thereto) whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California, or for the purposes set forth in California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

E. "Medical marijuana collective" or "cooperative or collective" means any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

9-3.3503. Prohibited Use and Activities.

(a) Marijuana dispensaries are expressly prohibited in all zoning districts within the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of a marijuana dispensary in the City, and no person or entity including primary caregivers and qualified patients, collectives, cooperatives or dispensaries shall otherwise establish or conduct such activities in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity for which the use permit, variance, building permit, or any other entitlement, license, or permit is sought.

(b) Marijuana delivery is expressly prohibited in all zoning districts within the City, including deliveries that originate or terminate within the City, except where the City is

preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the delivery of marijuana in the City, and no person or entity including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, shall otherwise conduct such activity in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity for which the use permit, variance, building permit, or any other entitlement, license, or permit is sought.

(c) Marijuana cultivation is expressly prohibited in all zoning districts within the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the cultivation of marijuana in the City, and no person or entity including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, shall otherwise conduct such activity in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity for which the use permit, variance, building permit, or any other entitlement, license, or permit is sought.

(d) Marijuana processing is expressly prohibited in all zoning districts within the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the processing of marijuana in the City, and no person or entity including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, shall otherwise conduct such activity in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity for which the use permit, variance, building permit, or any other entitlement, license, or permit is sought.

9-3.3504. Public Nuisance. Any violation of this Article is hereby declared to be a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure 731 or any other remedy available to the City.

9-3.3505. Administrative Penalties. In addition to any other remedy or penalty set forth in this Chapter or this Code, administrative penalties may be imposed pursuant to applicable provisions of Chapter 11 Title 4 of this Code against any responsible party, in violation of any of the provisions of this Chapter. Imposition, enforcement, collection and administrative review of administrative penalties imposed shall be conducted pursuant to Chapter 11 Title 4 of this Code.

Section 3. To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

Section 4. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

Section 5. The proposed amendments to the Los Banos Municipal Code do not propose any changes to City policies or regulations that would result in a direct or indirect physical environmental impact; therefore it has been determined that this ordinance amendment is covered by the general rule that the California Environmental Quality Act applies only to projects which have the potential for causing a significant effect on the environment pursuant to CEQA guidelines section 15601(b)(3) and is not subject to environmental review.

Section 6. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member _____ and seconded by Council Member _____ on the ____ day of _____, 2016.

Passed on the ____ day of _____, 2016 by the following vote:

AYES: Council Members
NOES:
ABSENT:

APPROVED:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk

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Medical Marijuana Regulation and Safety Act

Background

Resources

In the News

Ordinances

In a historic move, Gov. Jerry Brown signed a comprehensive package of bills to establish a regulatory structure around the state's multi-billion dollar medical marijuana industry. For the first time since voters passed Proposition 215 in 1996, multiple stakeholders including local government, law enforcement, unions and portions of the industry, came to an agreement on what the regulatory structure should look like. Together, AB 266, AB 243, and SB 643 comprise the Medical Marijuana Regulation & Safety Act.

AB 243 (Wood) Medical Marijuana

- Places the Department of Food and Agriculture (DFA) in charge of licensing and regulation of indoor and outdoor cultivation sites. Creates a Medical Cannabis Cultivation Program within the department.
- Mandates the Department of Pesticide Regulation (DPR) to develop standards for pesticides in marijuana cultivation, and maximum tolerances for pesticides and other foreign object residue.
- Mandates the Department of Public Health (DPH) to develop standards for production and labelling of all edible medical cannabis products.
- Assigns joint responsibility to DFA, Department of Fish and Wildlife (DFW), and the State Water Resources Control Board (SWRCB) to prevent illegal water diversion associated with marijuana cultivation from adversely affecting California fish population.
- Specifies that DPR, in consultation with SWRCB, is to develop regulations for application of pesticides in all cultivation.
- Specifies various types of cultivation licenses.
- Directs the multi-agency task force headed by DFW and SWRCB to expand its existing enforcement efforts to a statewide level to reduce adverse impacts of marijuana cultivation, including environmental impacts such as illegal discharge into waterways

and poisoning of marine life and habitats.

AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood) Medical Marijuana

- Protects local control as it establishes a statewide regulatory scheme, headed by the Bureau of Medical Marijuana Regulation (BMMR) within the Department of Consumer Affairs (DCA).
- Provides for dual licensing: state will issue licenses, and local governments will issue permits or licenses to operate marijuana businesses, according to local ordinances. State licenses will be issued beginning in January 2018.
- Revocation of a local license or permit will unilaterally terminate the ability of the business to operate in that jurisdiction.
- Expressly protects local licensing practices, zoning ordinances, and local constitutional police power.
- Caps total cultivation for a single licensee at four acres statewide, subject to local ordinances.
- Requires local jurisdictions that wish to prevent delivery services from operating within their borders to enact an ordinance affirmatively banning this activity. No specific operative date for the ban is specified.
- Specifies that DCA will issue the following licenses: Dispensary, Distributor, Transport, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Specifies various sub-categories of licensees (indoor cultivation, outdoor cultivation, etc.)
- Limits cross-licensing to holding a single state license in up to two separate license categories, as specified. Prohibits medical marijuana licensees from also holding licenses to sell alcohol.
- Grandfathers in vertically integrated businesses (i.e. businesses that operate and control their own cultivation, manufacturing, and dispensing operations) if a local ordinance allowed or required such a business model and was enacted on or before July 1, 2015. Also requires such businesses to have operated in compliance with local ordinances, and to have been engaged in all the covered activities on July 1, 2015.
- Requires establishment of uniform health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product.
- Specifies a standard for certification of testing labs, and specified minimum testing requirements. Prohibits testing lab operators from being licensees in any other category, and from holding a financial or ownership interest in any other category of licensed business.
- Includes a labor peace agreement under which unions agree not to engage in strikes, work stoppages, etc. and employers agree to provide unions reasonable access to employees for the purpose of organizing them. Specifies that such an agreement does not mandate a particular method of election.
- Provides for civil penalties for unlicensed activity, and specifies that applicable criminal penalties under existing law will continue to apply.
- Specifies that patients and primary caregivers are exempt from the state licensing requirement, and provides that their information is not to be disclosed and is

confidential under the California Public Records Act.

- Phases out the existing model of marijuana cooperatives and collectives one year after DCA announces that state licensing has begun.
- Preserves enforcement authority of the city of Los Angeles with respect to Measure D, the local regulatory structure for medical marijuana within the city limits.

SB 643 (McGuire) Medical Marijuana

- Directs the California Medical Board to prioritize investigation of excessive recommendations by physicians.
- Imposes fines (\$5000.00) against physicians for violating prohibition against having a financial interest in a marijuana business.
- Recommendation for cannabis without a prior examination constitutes unprofessional conduct.
- Imposes restrictions on advertising for physician recommendations.
- Places DFA in charge of cultivation regulations and licensing, and requires a track and trace program.
- Codifies dual licensing (state license and local license or permit), and itemizes disqualifying felonies for state licensure.
- Places DPR in charge of pesticide regulation; DPH in charge of production and labelling of edibles.
- Upholds local power to levy fees and taxes.

In 2014, the League and the California Police Chiefs Association cosponsored SB 1262 by Sen. Lou Correa (D-Santa Ana).

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MEDICAL MARIJUANA REGULATION AND SAFETY ACT¹

What Cities Need to Know About the New Law and Delivery Services

OVERVIEW

Here's what you need to know:

- **Local prohibition or regulation:** Cities may prohibit or regulate medical marijuana businesses within their jurisdictions. **Local authority remains intact under the new law.**
- **State license required:** All medical marijuana businesses – dispensary sales, delivery service, cultivation, or transport – must have a State license².
- **State license not enough:** A medical marijuana business in any city may only operate if it has permission from the State **and** permission from the city (“dual licensing”).
- **Enforcement:** Revocation of local permission to operate means a medical marijuana business must terminate operation because the new law requires dual licensing. Upon approval of the State, a city may enforce State law.
- **State law penalties for unlicensed activity:** There are civil penalties and criminal penalties for operating without a State license.

DELIVERY

Here's what you need to know:

If a city does not expressly prohibit the delivery of medical marijuana within its jurisdiction, delivery will be allowed (with a State dispensary license). This means that if your city wishes to prohibit the delivery of medical marijuana within its jurisdiction, the city must adopt an ordinance expressly prohibiting delivery services and mobile dispensaries.

DELIVERY

Here's what you need to do:

- Determine whether your city currently bans delivery services for medical marijuana.
- If you have a ban, determine whether it is an express ban, or a ban enacted via permissive zoning (i.e., it is not listed in your zoning or other codes as a permitted activity within the city limits).
- If you have an express ban specifically identifying marijuana deliveries as a prohibited activity, you do not need to take further action.
- If you wish to prohibit delivery services but do not have an express ban, **you need to take further action.**

ACTION REQUIRED: Adopt an ordinance expressly banning deliveries within your jurisdiction. If you do not adopt an express ban ordinance before the State begins issuing any State licenses, a State-licensed dispensary will be able to deliver medical marijuana within your jurisdiction. You may adopt an ordinance expressly banning deliveries after the State begins to issue licenses. However, it may be difficult to terminate the State licensee's deliveries at that time. Therefore, best practice is for an ordinance to be in place before the State begins issuing State licenses. The State currently estimates that it will begin issuing dispensary licenses in January 2018, but that could certainly happen sooner.

- A ban enacted via permissive zoning is not an express ban.

Be sure to consult with your city attorney before taking any of the actions recommended in this document.

¹ AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016.

² The Department of Consumer Affairs estimates it will begin issuing State licenses in January 2018. The Department of Food and Agriculture and the Department of Public Health also have licensing authority under the new law. Businesses operating in compliance with local ordinances will get priority in the State licensing application process.

MEDICAL MARIJUANA REGULATION AND SAFETY ACT¹

What Cities Need to Know About the New Law and Cultivation

OVERVIEW

Here's what you need to know:

- **Local prohibition or regulation:** Cities may prohibit or regulate medical marijuana businesses within their jurisdictions. **Local authority remains intact under the new law.**
- **State license required:** All medical marijuana businesses – dispensary sales, delivery service, cultivation, transport or distribution – must have a State license².
- **State license not enough:** A medical marijuana business in any city may only operate if it has permission from the State and permission from the city (“dual licensing”).
- **Enforcement:** Revocation of local permission to operate means a medical marijuana business must terminate operation because the new law requires dual licensing. Upon approval of the State, a city may enforce State law.
- **State law penalties for unlicensed activity:** There are civil penalties and criminal penalties for operating without a State license.

CULTIVATION

Here's what you need to know:

If your city does **not** have a land use ordinance in place regulating or prohibiting the cultivation of marijuana, *either expressly or otherwise under the principles of permissive zoning*, or chooses not to administer a conditional permit program, then commencing **March 1, 2016**, the State Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation applicants.

1 AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016.

2 The Department of Consumer Affairs estimates it will begin issuing State licenses in January 2018. The Department of Food and Agriculture and the Department of Public Health also have licensing authority under the new law. Businesses operating in compliance with local ordinances will get priority in the State licensing application process.

October 27, 2015

CULTIVATION

Here's what you need to do:

Determine if your city fits within City #1 or City #2 as described below:

- **City #1:** Municipal Code that does not expressly prohibit nor expressly regulate cultivation of medical marijuana and is not a “permissive zoning” code. **Need to take action.**

ACTION REQUIRED: Adopt a land use ordinance regulating or prohibiting the cultivation of medical marijuana. The ordinance must be effective by February 28, 2016. The ordinance may be adopted as an “urgency ordinance,” or second reading must occur on or before January 29, 2016.

- **City #2:** Municipal Code that is a “permissive zoning” code and does not enumerate cultivation of medical marijuana as a permitted or conditional use. **Need to take action.**

ACTION REQUIRED: (1) Check and confirm that your city’s zoning code is adopted and implemented under the principles of permissive zoning. If not, take action recommended for City #1. (2) If confirmed, adopt a resolution that includes the following provisions:

- States that Health & Safety Code section 11362.777(b)(3) provides that the Department of Food and Agriculture may not issue a State license to cultivate medical marijuana within a city that prohibits cultivation under principles of permissive zoning;
- Re-affirms and confirms that the Zoning Code is adopted and operates under the principles of permissive zoning;
- States this means that cultivation of marijuana is not allowed within City #2 because it is not expressly permitted; and
- Therefore, the State is not allowed to issue a license for the cultivation of medical marijuana within City #2.

Be sure to consult with your city attorney before taking any of the actions recommended in this document.



Frequently Asked Questions (FAQs)

Medical Marijuana Regulation and Safety Act¹

Topic #1: Cultivation

*The State will be the sole licensing authority for the commercial cultivation of medical marijuana unless a city adopts land use regulations or ordinances regulating or prohibiting the cultivation of marijuana -- either expressly or otherwise under the principles of permissive zoning -- prior to **March 1, 2016.***²

1. **Question:** If a city wants to enact a total ban on cultivation, can the ban include cultivation for personal use?

Answer: Yes. Under *Live Oak*³, a city can ban all marijuana cultivation -- even cultivation of small amounts by qualified patients. The *Live Oak* ban had no exceptions for personal use by a qualified patient. The new legislation does not change the law in this regard.

2. **Question:** Must a city's ordinance prohibiting cultivation make an exception for personal medical marijuana cultivation of up to 6 mature or 12 immature plants?⁴

Answer: No. In the *Live Oak* case, the California Court of Appeal upheld the city's total ban on all marijuana cultivation. That authority is preserved under the new legislation.

3. **Question:** Is a person who cultivates marijuana for his or her personal medical use required to get a cultivation license from the State?

¹ AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016. Please consult your City Attorney before taking action to implement the MMRSA. The answers to these FAQs may be different in your city based upon your municipal code, regulations, and policies. The answers do not constitute legal advice from the League of California Cities®.

² Health & Safety 11362.777(c).

³ *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975.

⁴ Health & Safety Code 11362.77 allows a qualified patient to cultivate 6 mature or 12 immature plants without criminal liability.

Answer: No, if the area used for cultivation does not exceed 100 square feet, or 500 square feet for a primary caregiver with no more than five patients.⁵ If the areas exceed these limits, then a State license is required. The exemption from the State licensing requirements does not prevent a city from regulating or banning cultivation by persons exempt from State licensing requirements.⁶

4. **Question:** Can a city prevent the State from becoming the sole licensing authority for cultivation by adopting an ordinance that permits the cultivation of six plants per residence prior to March 1, 2016?

Answer: Yes. The State becomes the sole licensing authority for cultivation as of March 1, 2016 if a city does not have a land use regulation or ordinance "regulating or prohibiting the cultivation of marijuana." An ordinance permitting cultivation under certain specific conditions (not more than six plants per residence) is an ordinance "regulating" marijuana cultivation and therefore qualifies. However, in order to be completely clear, the City Attorney may wish to determine whether it is advisable to prohibit all other types of cultivation as part of the ordinance.

5. **Question:** Must the cultivation prohibition be adopted as part of a city's zoning code? Could it be adopted instead under the city's business licenses and regulations?

Answer: It's not possible to answer "yes" or "no." AB 243 requires a "land use regulation or ordinance." Whether the phrase "land use" requires a zoning ordinance is a question for the city attorney to answer based on the particular language of the city's municipal code.

6. **Question:** Can a city ban large growers but still allow qualified patients to cultivate a small amount of medical marijuana in their private residences?

Answer: Yes. There's nothing in the legislation that requires a total ban. The most important consideration is to clearly identify cultivation that is prohibited and cultivation that is allowed and to do so before March 1, 2016.

7. **Question:** Is a temporary land use moratorium (under Government Code section 65858) on medical marijuana cultivation that is effective in a city by March 1, 2016 sufficient to prevent the State from having sole licensing authority under the new law for medical marijuana cultivation applicants in that city?

⁵ Business & Professions Code 19319; Health & Safety 11362.777(g).

⁶ Health & Safety Code 11362.777(g).

Answer: Probably not. The new law requires a land use regulation or ordinance that prohibits or regulates cultivation. Because a moratorium adopted under Government Code 65858 would only temporarily prohibit cultivation, it may not qualify as a land use ordinance that “prohibits” cultivation.

8. **Question:** Can a local medical marijuana cultivation ordinance be enacted on an urgency basis in order to comply with the March 1, 2016 deadline in the new legislation?

Answer: Yes, with urgency findings relating to the statutory deadline.

Topic #2: Delivery

*Deliveries of medical marijuana can only be made by a State-licensed dispensary in a city that does not explicitly prohibit deliveries by local ordinance. If a city wants to prevent deliveries within its jurisdiction, it must adopt an ordinance expressly prohibiting them.*⁷

9. **Question:** Is there a deadline for adopting an ordinance explicitly prohibiting deliveries?

Answer: There is no deadline in the new law. However, best practice would be to adopt the ordinance prior to the date the State begins issuing licenses allowing deliveries so as to reduce the risk of confusion and to avoid the process of requesting the State to terminate the operations of a dispensary making deliveries within the city. The legislation does not specify a deadline for the State to begin issuing any category of license. The State is generally expected to begin issuing licenses on January 1, 2018, but it could begin sooner.

10. **Question:** What are the quantities that delivery services will be authorized to transport?

Answer: The amount that local delivery services will be authorized to carry will be determined by the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs. The determination will be based on security considerations, cash value, and other factors. The amount will be a statewide threshold, authorized for delivery primarily to patients, primary caregivers, and testing labs. Larger amounts will not be considered “delivery” but rather “transport” triggering heightened security requirements while the product is being moved.

⁷ Health & Safety 19340.

Topic 3: Dispensaries and Retail Operations

11. **Question:** Will cities still be able to ban dispensaries?

Answer: Yes. Cities currently have the ability to enact bans on dispensaries and other marijuana retail operations. The new law will not change that, and in fact requires a local permit and a State license before a marijuana business can begin operations within a specific jurisdiction. Cities will retain the discretion to deny permits or licenses to marijuana dispensaries.

12. **Question:** Can a city allow dispensaries and prohibit delivery services?

Answer: Yes. But cities should be aware that if they wish to prohibit delivery services, an ordinance prohibiting delivery services is required.

Topic #4: Other Questions

13. **Question:** Does the new legislation make any distinction between “not-for-profit” and “for profit” medical marijuana businesses?

Answer: No. There is no distinction in the new legislation between medical marijuana businesses that operate “for profit” and those that operate on a “not-for-profit” basis. The new law does not mandate that dispensaries or other businesses operate under either business model.

14. **Question:** Are marijuana edibles covered under the new legislation? Is there a separate designation for them under the new law, with additional State regulatory requirements?

Answer: The new legislation directs the State Department of Public Health (DPH) to develop standards for the production and labeling of all edible medical cannabis products (Business & Professions Code section 19332(c)). A license is required from DPH to “manufacture” edibles. The DPH standards are “minimum standards.” A city may adopt additional stricter standards, requirements and regulations regarding “edibles” (Business & Professions Code section 19316(a)). Cities also retain their ability to license and regulate edible sales or distribution.

15. **Question:** The new law says: “upon approval of the state, cities may enforce state law”. If an existing medical marijuana dispensary does not have both licenses (State and city), then must a city wait for the State to approve shutting the dispensary down

before a city can cite the dispensary or otherwise seek to shut it down under the city's ordinances and regulations?

Answer: No. A city may enforce its own ordinances and regulations against the dispensary since a medical marijuana dispensary cannot operate lawfully unless it complies with all local ordinances and regulations.

16. **Question:** Does a P.O. Box qualify as a medical marijuana business location? Is that considered a "use" in a city?

Answer: The answer to this question depends upon a city's municipal code. The State law prohibits a person from engaging in commercial cannabis activity without possessing both a State license and a local permit, license or other authorization. A State licensee may not commence activity under the authority of a State license until the applicant has complied with all requirements of the applicable local ordinance (Business & Professions Code section 19320). A city's municipal code will determine whether a "use" includes a post office box.

17. **Question:** Does the new law address extraction of THC, butane or other substances from marijuana?

Answer: The new law does not specifically address the issue of extraction at all – other than to acknowledge very generally that extraction falls within the definition of manufacturing, and that medical marijuana or a product derived from it may contain extracts.

18. **Question:** Since patients and primary caregivers are exempt from the licensing requirement under specified circumstances, how will that work if they are also owners of a dispensary or cultivation site?

Answer: A primary caregiver or qualified patient who seeks to operate a dispensary or cultivation site is subject to the same State licensing requirements and local permitting requirements as any other person.

19. **Question:** What types of medical marijuana businesses require a State license?

Answer: The new law creates six State licensing categories: Dispensary, Distributor, Transport, Cultivation, Manufacturing, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Any person or entity wishing to operate under a State license must also comply with all local requirements.

20. **Question:** Several initiative measures to legalize recreational marijuana have been filed with the Attorney General in advance of the November 2016 ballot. Should a city be considering prohibiting or regulating recreational marijuana at this time?

Answer: No. The new law does not address recreational use of marijuana. It adds a licensing structure for businesses that wish to serve those qualified patients and primary caregivers who use medical marijuana for their personal use. The League of California Cities is following the various recreational marijuana initiative measures that have been filed with the Attorney General. There is no need for a city to take any action at this time. If a city is interested in following these measures, more information can be found at: <https://www.oag.ca.gov/initiatives/active-measures>.

21. **Question:** Does the new law protect the privacy of patients and primary caregivers?

Answer: Yes. Patient and primary caregiver information is confidential and not subject to disclosure under the California Public Records Act, except as necessary for employees of the State or any city to perform official duties.

22. **Question:** Is there a provision in the new law giving business operators priority for State licensing if they can show that they are in compliance with local ordinances? If so, what is the purpose of this provision?

Answer: Yes. The State licensing authority is required to prioritize any facility or entity that can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016. This provision is intended as an incentive for business operators to be in compliance with local ordinances, to ease any difficulties local governments may have in launching their local regulatory structures, and to help expedite the initial phase of issuing state licenses.

23. **Question:** Does the new law address food trucks that sell marijuana edibles?

Answer: No. The operation of food trucks are within the control and regulation of cities and county health departments.

PLEASE NOTE: This document will be updated periodically, as needed, and will remain available at www.cacities.org. As noted above, each city should consult with its city attorney on all of these issues. The answers to these FAQs do not constitute legal advice from the League of California Cities®.

AN ANALYSIS OF CALIFORNIA'S MEDICAL MARIJUANA REGULATION & SAFETY ACT

The Medical Marijuana Regulation & Safety Act is embodied in three bills, which were “triple-joined.” In other words, all three bills have to be signed into law for any of them to go into effect. Those three bills are Senate Bill 643, by Senator McGuire, Assembly Bill 266, by Assembly Members Bonta, Cooley, Lackey and Jones-Sawyer, and Assembly Bill 243, by Assembly Member Wood.

In order to provide the reader with an understanding of the act, this document will describe the major changes by subject matter and then indicate the bill in which that particular change can be found. In this fashion, the reader will be able to comprehend the totality of the act.

DOCTOR RECOMMENDATIONS

The Act:

Requires that only a patient's attending physician may recommend medical marijuana. Currently there is no such requirement, which has resulted in dubious recommendation practices having no real medical context. Further, the Act also directs the Medical Board to prioritize investigations into allegations of excessive medical marijuana recommendations by physicians. Finally, the Act specifies that recommendation of medical marijuana to a patient without a prior examination is deemed to constitute unprofessional conduct. (Senate Bill 643).

Prohibits physicians from having a financial interest in any other medical marijuana enterprise and provides for a \$5,000 fine for violation of this section (Senate Bill 643).

Enumerates restrictions on physician advertising and prohibits the offering of discounts in those advertisements (Senate Bill 643).

PUBLIC SAFETY

The Act:

Establishes a unique identifier and track and trace program to be administered by the Department of Food and Agriculture. The program will track and report the movement of medical marijuana items throughout the distribution chain while utilizing a unique identifier (SB 643).

Establishes uniform safety standards and security requirements at dispensaries as well as for transport of the product (AB 266).

Limits vertical integration by requiring third party transportation, distribution and testing (AB 266).

Provides that state licenses may be denied for any past criminal conviction that is substantially related to the operation of a medical marijuana enterprise. Leaves the enumeration of such

offenses to the state licensing entity except that all felony convictions involving trafficking in controlled substances, all serious or violent felonies, and all felony convictions involving fraud, deceit or embezzlement are deemed to be substantially related offenses. (SB 643).

Requires licensees to maintain records and allows for premise inspections during business hours (AB 266).

Requires the development of a study that identifies the impact and impairing effect that marijuana has on motor skills (AB 266).

ADMINISTRATION OF THE ACT

The act establishes a statewide regulatory scheme that is headed by the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs (AB 266). Although the state will issue licenses, the Act provides for a system of dual licensing: The state will issue licenses, but local governments will issue permits or licenses to operate medical marijuana enterprises. Anyone operating a medical marijuana enterprise must have BOTH a state license and a local permit (AB 266). If the local jurisdiction revokes or suspends the local permit, the enterprise must be shuttered (AB 266). Jurisdictions with bans on cultivation or sales will be able to maintain them.

Local permitting practices, zoning ordinances and local regulations may impose more stringent standards on medical marijuana enterprises than the state (AB 266).

The Department of Consumer Affairs will issue licenses for Dispensaries, Distributors, and Transporters (AB 266). The Department of Food and Agriculture is in charge of licensing and regulation of indoor and outdoor cultivation sites (AB 243); the Department of Pesticide Regulation is mandated to develop standards for pesticides in marijuana cultivation with maximum tolerance standards and other foreign object residue. The Department of Pesticide Regulation is also mandated to develop regulations for the application of pesticides in all cultivation and are required to consult with the State Water Resources Control Board in developing these regulations (AB 243); Joint responsibility is assigned to the Department of Food and Agriculture, the Department of Fish and Wildlife and the State Water Resources Control Board to prevent illegal water diversion associated with marijuana cultivation from adversely affecting California fish population (AB 243).

The Department of Public Health is placed in charge of standards for production and labeling of all edible medical marijuana products. (AB 243, SB 643)

LICENSING AND ENFORCEMENT

Local jurisdictions are permitted to have more stringent permitting conditions (SB 643).

The act provides that patients and caregivers are exempted from licensing provisions, but limits the number of patients a caregiver may have to five patients (AB 266).

Provides for the termination of the existing model of marijuana cooperatives and collectives one year after the Department of Consumer Affairs announces that state licensing has commenced (AB 266).

Any unlicensed activity is subject to civil penalties and is also subject to all applicable criminal penalties under existing law (AB 266).

Local entities have unfettered right to enforce all local laws and may be given specific delegation to the state to enforce state laws (AB 643).

DELIVERY SERVICES

The Act:

Permits local governments to prohibit any delivery services upon enactment of a local ordinance prohibiting that activity (AB 266).

Requires that delivery services be affiliated with the dispensary and prohibits free-standing "Uber"- like delivery services. All delivery service personnel must be employees of the dispensary (AB 266).

HEALTH AND SAFETY

The Act:

Specifies a standard for certification of testing labs, with specified minimum testing requirements. Test lab operators may not be licensees nor may they have a financial or ownership interest in any licensed business (AB 266).

Requires uniform health and testing standards (AB 266)

Specifies strict standards for the packaging, labeling or presentation of edible products and specifically prohibits any portion of that activity from appealing to children (AB 266).



City of
Los Banos
At the Crossroads of California

**COMMUNITY AND ECONOMIC
DEVELOPMENT DEPARTMENT**

Date: November 27, 2015

Regarding: Notice of Public Hearing

Proposal: Proposed Ordinance – Marijuana Cultivation, Processing, Delivery & Dispensaries

NOTICE IS HEREBY GIVEN THAT a Public Hearing will be held by the Los Banos Planning Commission to consider and make a recommendation to the Los Banos City Council to adopt a proposed ordinance imposing an express ban on marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries in the City of Los Banos.

A PUBLIC HEARING on this matter will be held at the next scheduled meeting of the Los Banos Planning Commission on Wednesday, December 9, 2015 at 7:00 p.m. in the Council Chambers of Los Banos City Hall located at 520 J Street.

All persons are invited to be present at the public hearing. Written and oral testimony is invited. Notice is hereby further given that if you challenge the above described Ordinance 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.

Additional information may be obtained from Community & Economic Development Department at 520 J Street, Los Banos, California. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (209) 827-7000. Notification at least 72 hours prior to the public hearing will enable the City to make reasonable arrangements to allow participation at this hearing

THE CITY OF LOS BANOS

Sandra Benetti
Planning Technician



City of
Los Banos
At the Crossroads of California

PLANNING COMMISSION STAFF REPORT

TO: CHAIRMAN SPADA AND COMMISSIONERS

**FROM: STACY SOUZA-ELMS, SENIOR PLANNER
WILLIAM A. VAUGHN, CITY ATTORNEY**

FOR: DECEMBER 9, 2015

**SUBJECT: CONDITIONAL USE PERMIT #2015-13
SITE PLAN REVIEW #2015-07
COMCAST HEADEND FACILITY
APPLICANT: KEVIN FATTAL, COMM/NET SYSTEMS**

RECOMMENDATION:

That the Planning Commission adopts Resolution No. 2015-46 approving Conditional Use Permit #2015-13 and Resolution No. 2015-47 approving Site Plan Review #2015-07 for the for the construction and operation of a Headend Facility at 604 Texas Avenue more specifically identified as Assessor's Parcel Number: 027-211-001.

PROJECT BACKGROUND/DESCRIPTION/DESIGN:

The applicant, Kevin Fattal, of Comm/net Systems, on behalf of Comcast, has applied for an approval of Site Plan Review and Conditional Use Permit for the construction and operation of a 1,914 sq. ft. headend facility on a .55-acre lot located at 604 Texas Avenue. The headend facility would house routers and related electronic equipment for the distribution of cable, telephone and cellular data throughout the region. The proposed facility would replace an existing headend facility for Comcast currently located on the property.

Planning Commission approval of a Site Plan review is required for the construction of a new non- residential structure. The operation of the proposed headend facility is permitted in the professional office zoning district under the public utility use category with Planning Commission approval of a conditional use permit. The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15302 of the CEQA Guidelines, Replacement or Reconstruction and Section 15303 New Construction of Small Facilities or Structures. Staff is

recommending approval of the requested Site Plan Review and Conditional Use permit as shown on the project plans in Exhibit "A" and based on findings and subject to the conditions contained in Resolutions 2015-46 and 2015-47.

This project was previously reviewed by the Planning commission at a study session on November 12, 2015. Project Review Board review occurred on November 3, 2015.

Use:

The majority of the new headend building would be utilized to house telecommunications related equipment. The remainder of the building would serve as office space for staff to maintain and monitor the equipment. The headend equipment does not require an operator to be present, but one or more technicians would typically be on site ten to twenty hours per week to monitor the equipment.

The proposed new headend building will be 1,914 sq. ft. consisting primarily of the headend equipment with DC battery back-up with a small portion for office support staff. The building is to be constructed of exterior concrete masonry walls with a plaster band veneer with steel beam roof structure and concrete slab floor. There will be four wall-mounted HVAC units to regulate the headend portion of the building. A roof-mounted HVAC unit will heat and cool the office portion of the building. The headend and battery room will require extensive cooling for the equipment with the HVAC units located inside the building.

Architecture:

The exterior of the building will be primarily concrete masonry finish utilizing split face, precision (smooth) and fluted finish in natural gray color. A plaster finish color band will occur at corners and top and bottom of the building. The building will feature a parapet roof; canopied entry doors; metal trellis screens; three exterior paint colors (Swiss Coffee, Forest Green, and Silver Trophy. Both the height of the building (25'4") and the footprint (1,914 sq. ft.) meet the standards for the P-O zoning district.

Site Plan:

The headend communications building will be located just north of the existing headend building and generator (generally in the center of the lot). The footprint of the new structure will be rectangular with sides of approximately 28 feet by 70 feet. A new generator and fuel storage pad, approximately 10 by 30 feet, will be constructed just to the east of the proposed headend building. Other improvements will include a small paved entrance driveway and three parking stalls on the south side of the headend building. Additionally there will be one back-up generator that will support the headend equipment located to the east of the proposed building. The overall purpose of the generator is to provide back-up power in case of loss of power to support the local emergency services for 911. A trash enclosure will be located on the southern portion of the lot.

A six-foot high wrought iron fence will surround the building, with a rolling gate to allow ingress/egress. The existing headend building will be demolished.

Landscaping:

The project site will be fully landscaped. The main planting areas along H Street and Texas Avenue will consist of trees, shrubs, perennials, vines and other ground cover species.

Utilities:

The proposed building site is located adjacent to a major street where existing utilities are available for connection. The specific connections to these utilities would be reviewed at the building permit stage.

Traffic and Circulation:

The project site is located on a developed section of Texas Avenue, which provides adequate vehicular and pedestrian access to the site. The proposed use is not anticipated to generate a significant number of vehicle trips to the site because significant staffing is not required to operate the facility and the general public would not be permitted access. The applicant will be required to replace or repair the existing sidewalks on the Texas Avenue and H Street frontages. The applicant will also be required to enter into a deferred improvement agreement for the purpose of future street dedication on the H Street frontage and street and intersection improvements.

Noise:

The proposed headend equipment would not generate noise at a level which would be perceptible outside of the building. The generators outside of the building would not create noise levels disruptive to surrounding land uses.

Grading:

The existing topography of the project site is relatively flat. Grading would be minimal to accommodate the proposed structure.

Parking:

Parking will be located on the south side of the headend building providing three spaces with one ADA accessible space.

LOCATION AND ACCESS:

The project site is located at 604 Texas Avenue at the intersection of Texas Avenue and H Street. The project property is approximately .55 acres. The project site is mostly undeveloped with a small headend facility located in on the southwest corner of the property. The current headend facility consists of a small fenced in non-descript building (cyclone fencing with a rolling gate), portable toilet, and a graveled driveway.

The ground surrounding the building is bare ground that has been disced to presumably keep down the vegetation (weeds).

The project site is bounded to the north by H Street. Further north is the railroad tracks and industrial park. The project site is bounded to the west by Texas Avenue. Further to the west is La Morenita Tortillera and Grocery Store. To the south of the project site is bare ground that has been disced. Further to the south are single family dwellings facing Madrone Avenue. To the east of the project site is bare ground that has been disced.

The proposed site is depicted in the map below outlined in yellow.



LAND USE:

Property	Land Use	Zone	General Plan
Project Site	Headend Facility	P-O	P-O
North	Vacant Industrial	I	I
South	Residential	R-1	LDR
East	Vacant	P-O	P-O
West	Grocery Store/ Tortilla Factory	P-O	N-C

P-O = Professional Office I = Industrial
 R-1 = Low Density Residential LDR = Low Density Residential
 N-C = Neighborhood Commercial

ENVIRONMENTAL ASSESSMENT:

Pursuant to the California Environmental Quality Act (CEQA) and the City of Los Banos Environmental Quality Guidelines, this project is categorically exempt from the provisions of CEQA – Class 2 - Section 15302, consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced - Class 3 - Section 15303, new construction of small facilities or structures.

ANALYSIS:

The proposed Conditional Use Permit and Site Plan Review have been analyzed for consistency with the City's 1) General Plan and 2) Zoning Ordinance.

A) General Plan.

The existing General Plan land use designation for the project site is Professional Office, which permits small scale offices and campus-like office complex development, including professional and medical offices, research and development activities. This designation may also allow small restaurants, support services, and convenience retail activities. The proposed headend facility is consistent with the purpose of the Professional Office designation because the facility would play a critical role in providing the cable, cellular and telephone services, which are utilized by individuals and businesses in the City on a daily basis.

The following specific General Plan Goals, Objectives and Policies are applicable to the proposed project:

ECONOMIC DEVELOPMENT POLICY ED-G-1:

Help create jobs and improve job quality for existing and future Los Banos residents.

ECONOMIC DEVELOPMENT POLICY ED-G-2

Facilitate the development of new businesses, and/or expansion of existing businesses through site availability, infrastructure investments, and labor force preparedness.

ECONOMIC DEVELOPMENT POLICY ED-G-3

Make Los Banos an ideal place to do business by fostering a business friendly climate.
Analysis: The proposed headend facility would serve a critical role in transmitting cable, telephone and cellular data to individuals and businesses in the City. A functional communications network is necessary to attract and maintain businesses in the City. Allowing Comcast to locate the new headend facility in close proximity to the existing headend facility would facilitate the transition process, and minimize interruption to existing cable, telephone and cellular service.

SAFETY POLICY S-G-5

Maintain and enhance the city's capacity for law enforcement.

SAFETY POLICY S-G-6

Improve current police and fire response times and staffing ratios.

Analysis: The proposed headend facility would facilitate emergency response by supporting the telephone and cellular networks where emergency calls would be placed. The facility would also support the reverse 911 and emergency alert systems, which provide emergency notifications to the citizens of Los Banos and the region.

B) Zoning Ordinance.

The subject property is currently zoned P-O, Professional Office. As set forth in Section 9-3.1003 (b) of the Los Banos Municipal Code, public utility uses are allowed in the P-O zoning district subject to securing a conditional use permit. Pursuant to LBMC Section 9-3.2316, Site Plan approval is required for the construction of a new building or structure requiring a building permit.

C) Required findings LBMC Section 9-3.2320 – site plan.

The Planning Commission shall approve a site plan if it makes all of the following findings:

- 1. That the proposed development is consistent with the general plan, any specific plans, and any design standards adopted by the City Council;***

The proposed use is consistent with the General Plan in that the proposed headend facility is consistent with the land use element of the general plan as a support service to other use within the Professional Office land use designation. This project would further the goals of the Los Banos General Plan as detailed above.

- 2. That the design and location of the proposed development and its relationship to existing or proposed developments and traffic in the vicinity thereof is such that it will not impair the desirability of investment or occupation in the neighborhood; and that it will not unreasonably interfere with the use and enjoyment of existing or proposed developments in the vicinity thereof, and that it will not create traffic hazards or congestion;***

Access to the site will be from the Texas Avenue driveway entrance to the project site. Based on the statement of operations and hours of operation the use will not significantly increase traffic in the area.

- 3. That the design of the proposed development is in keeping with the character of the surrounding neighborhood and is not detrimental to the harmonious, orderly, and attractive development contemplated by this ordinance and the general plan of the City;***

The proposed structure is a relatively small service building. Architectural elements and landscaping have been incorporated into the site plan as to provide an attractive building and overall attractive development of the parcel. The architecture and siting will compliment future development of the surrounding area in keeping with the purpose of the P-O zoning district.

- 4. That the design of the proposed development would provide a desirable environment for its occupants, as well as for its neighbors, and that it is aesthetically of good composition, materials, textures, and colors;**

The proposed structure is a relatively small service building. Architectural elements and landscaping have been incorporated into the site plan as to provide an attractive building and overall attractive development of the parcel. The architecture and siting will compliment future development of the surrounding area in keeping with the purpose of the P-O zoning district. Complimentary colors and the building materials will provide an aesthetically pleasing development.

- 5. That the proposed use complies with all applicable requirements of the zoning district in which it is located and all other applicable requirements; and**

As conditioned, the proposed use is consistent with the Los Banos Municipal Code.

- 6. That the overall development of the subject property is designed to ensure the protection of the public health, safety, and general welfare.**

The proposed use will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area, impair the utility or value of property of other persons located near the site, or be detrimental to public health, safety or general welfare. The proposed headend equipment is located within a 1914 sq. ft. building which is situated away from nearby residences. Potential impacts to the surrounding areas would be minimal.

D) Required findings LBMC Section 9-3.2326(a) –conditional use permits.

Before any use permit may be approved the Planning Commission shall make the following findings:

- 1. That the proposed use and project is consistent with the City of Los Banos general plan, and this Code;**

The proposed use is consistent with the General Plan in that the proposed headend facility is consistent with the land use element of the general plan as a support service to other use within the Professional Office land use designation. This project would further the goals of the Los Banos General Plan as detailed

above. As conditioned the proposed use is consistent with the Los Banos Municipal Code as further detailed below.

- 2. That the proposed use or project will not be a nuisance or detrimental to the public health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use;**

The proposed use will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area, impair the utility or value of property of other persons located near the site, or be detrimental to public health, safety or general welfare. The proposed facility is located within a 1,914 sq. ft. building and is situated away from nearby residences. As conditioned, the proposed use would not generate any negative impacts that would affect residents or tenants working or residing within the vicinity of the project site.

- 3. That the proposed use is compatible with the adjacent uses, properties and neighborhoods and will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.**

As conditioned, the proposed use would not generate any negative impacts that would affect residents or tenants working or residing within the vicinity of the project site.

PUBLIC COMMENT:

A public hearing notice was published in the Los Banos Enterprise and notices were provided to adjacent property owners within a 300 foot radius of the subject property on November 27, 2015. As of the date of this report, no comments have been received.

APPLICABLE ORDINANCES/GUIDELINES:

Los Banos General Plan

Los Banos Municipal Code – Sections 9-3.2320 and 9-3.2326(a).

CONCLUSION:

As discussed above, the City is able to make the required findings for approval of the requested Conditional Use Permit and Site Plan Approval for the construction and operation of a Headend Facility at 604 Texas Avenue at the stated location. Approval is recommended subject to the findings and conditions contained in the attached resolutions.

ATTACHMENTS:

1. Resolution #2015-46
 - Exhibit A CEQA Findings
 - Exhibit B Project Findings
 - Exhibit C Conditions of Approval
2. Resolution #2015-47
 - Exhibit A CEQA Findings
 - Exhibit B Project Findings
 - Exhibit C Conditions of Approval
3. Applicant materials
4. Photos
5. Public Hearing Notice

RESOLUTION NO. 2015-46

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS BANOS APPROVING CONDITIONAL USE PERMIT #2015-13 TO ALLOW THE OPERATION OF A HEADEND FACILITY AT 604 TEXAS AVENUE, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR'S PARCEL NUMBER: 027-211-001

APPLICANT: Kevin Fattal, of Comm/net Systems, on behalf of Comcast

OWNER: Comcast of San Joaquin, Inc.

WHEREAS, the applicant has requested that the City of Los Banos consider a Conditional Use Permit to allow the operation of a Headend Facility located at 604 Texas Avenue further identified as Assessor's Parcel Number: 027-211-001; and

WHEREAS, a public hearing was duly noticed for December 9, 2015, in accordance with California Government Code Section 65091 by advertisement in the Los Banos Enterprise and by mail to property owners within 300 feet of the project boundaries on November 27, 2015 to consider and take testimony regarding the Conditional Use Permit for a Headend Facility; and

WHEREAS, the Los Banos Planning Commission has held a public hearing and received public testimony, reviewed said Conditional Use Permit request including the staff report and related documents, has studied the compatibility of the applicant's request with adjacent land uses and has considered this request in accordance with the Use Permit criteria established in the Los Banos Municipal Code; and

WHEREAS, the applicant proposes to construct and operate a 1,914 square foot headend facility, located in the Professional Office Zoning District; and

WHEREAS, the project is categorically exempt from the provisions of CEQA per Class 2 - Section 15302, consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced - Class 3 - Section 15303, new construction of small facilities or structures.

WHEREAS, the Planning Commission of the City of Los Banos hereby makes the appropriate findings set forth in Exhibit A (California Environmental

Quality Act (CEQA) Findings), and Exhibit B (Findings for Approval), attached hereto and incorporated herein by this reference.

BASED UPON THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, the Planning Commission of the City of Los Banos does hereby make the findings set forth in Exhibit A (CEQA Findings), and Exhibit B (Findings of Approval), attached hereto and incorporated herein by this reference.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Los Banos does hereby approve Conditional Use Permit #2015-13 to permit a Headend Facility located at 604 Texas Avenue subject to the Conditions of Approval set forth in Exhibit C, attached hereto and incorporated herein by this reference.

The foregoing resolution was introduced at a regular meeting of the Planning Commission of the City of Los Banos held on the 9th day of December 2015, by Commissioner _____, who moved its adoption, which motion was duly seconded by Commissioner _____, and the Resolution is hereby adopted by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

Tom Spada, Planning Commission Chairman

ATTEST:

Sandra Benetti, Planning Commission Secretary

EXHIBIT A

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS FOR CONDITIONAL USE PERMIT #2015-13 – COMCAST (HEADEND FACILITY)

Pursuant to the requirements of California Public Resources Code Section 21000 et seq. (CEQA) and Title 14, California Code of Regulations 15000 et seq. (the CEQA Guidelines), the City as Lead Agency under CEQA adopts the following findings required by CEQA, along with the facts and evidence upon which each finding is based.

The City of Los Banos Planning Commission hereby finds as follows:

1. Pursuant to CEQA, the CEQA Guidelines, and the City of Los Banos Environmental Guidelines, the project was evaluated within the context of those guidelines and found to be categorically exempt from the provisions of CEQA — per Class 2 - Section 15302, consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced - Class 3 - Section 15303, new construction of small facilities or structures.
2. Conditional Use Permit #2015-13 was adequately noticed on November 27, 2015 for consideration at a public meeting on December 9, 2015.
3. No further environmental documentation is required as the Conditional Use Permit was contemplated and adequately analyzed in the initial review.
4. Prior to considering the proposed Project, the Planning Commission considered the Categorical Exemption.

EXHIBIT B

FINDINGS FOR APPROVAL OF CONDITIONAL USE PERMIT #2015-13 - COMCAST (HEADEND FACILITY)

The City of Los Banos Planning Commission hereby finds as follows:

1. The project is consistent with the City of Los Banos General Plan and the Los Banos Municipal Code.

The existing General Plan land use designation for the project site is Professional Office, which permits small scale offices and campus-like office complex development, including professional and medical offices, research and development activities. This designation may also allow small restaurants, support services, and convenience retail activities. The proposed headend facility is consistent with the purpose of the Professional Office designation because the facility would play a critical role in providing the cable, cellular and telephone services, which are utilized by individuals and businesses in the City on a daily basis.

The following specific General Plan Goals, Objectives and Policies are applicable to the proposed project:

ECONOMIC DEVELOPMENT POLICY ED-G-1:

Help create jobs and improve job quality for existing and future Los Banos residents.

ECONOMIC DEVELOPMENT POLICY ED-G-2

Facilitate the development of new businesses, and/or expansion of existing businesses through site availability, infrastructure investments, and labor force preparedness.

ECONOMIC DEVELOPMENT POLICY ED-G-3

Make Los Banos an ideal place to do business by fostering a business friendly climate.

Evidence/Analysis. The proposed headend facility would serve a critical role in transmitting cable, telephone and cellular data to individuals and businesses in the City. A functional communications network is necessary to attract and maintain businesses in the City. Allowing Comcast to locate the new headend facility in close proximity to the existing headend facility would facilitate the transition process, and minimize interruption to existing cable, telephone and cellular service.

SAFETY POLICY S-G-5

Maintain and enhance the city's capacity for law enforcement.

SAFETY POLICY S-G-6

Improve current police and fire response times and staffing ratios.

Evidence/Analysis. The proposed headend facility would facilitate emergency response by supporting the telephone and cellular networks where emergency calls would be placed. The facility would also support the reverse 911 and emergency alert systems, which provide emergency notifications to the citizens of Los Banos and the region.

2. That the proposed use or project will not be a nuisance or detrimental to the public health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use.

Evidence/Analysis. The proposed use will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area, impair the utility or value of property of other persons located near the site, or be detrimental to public health, safety or general welfare. The proposed headend equipment is located within a 1914 sq. ft. building which is situated away from nearby residences. Potential impacts to the surrounding areas would be minimal.

3. The proposed Conditional Use Permit is compatible with the adjacent uses, properties and neighborhoods and will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

Evidence/Analysis: When comparing this location versus other professional office areas throughout the city, the site is suitable and adequate for the proposed use. The project is essentially surrounded by future professional office uses and therefore consistent and compatible with future adjacent uses. The proposed headend equipment is located within a 1914 sq. ft. building which is situated away from nearby residences. Potential impacts to the adjacent uses, properties and neighborhoods would be minimal.

EXHIBIT C

CONDITIONS OF APPROVAL FOR CONDITIONAL USE PERMIT #2015 – 13 - COMCAST (HEADEND FACILITY)

Planning:

1. The following conditions of approval shall apply to and be applicable to the applicant, property owner, and/or operator. Reference to applicant, property owner, and/or operator shall be interpreted to include all. These conditions shall run with the land and shall survive the issuance of an occupancy permit.
2. Conditional Use Permit 2015-13 is for a headend facility operated by Comcast of San Joaquin Inc., located at 604 Texas Avenue more specifically identified as Assessor's Parcel Number: 027-211-001 as described and depicted in the application and related supporting material submitted by the applicant. The Permit shall expire after one (1) year from date of approval by the Los Banos Planning Commission. Failure to commence the use within this term shall result in termination of approval unless an extension of time is granted prior to the expiration date. The City for cause may revoke this Conditional Use Permit. Any expansion, intensification, or changes to the uses approved under this Conditional Use Permit shall be permitted only upon modification of this Conditional Use Permit or approval of a separate Conditional Use Permit application.
3. The applicant/operator shall comply with all other requirements, laws and policies of other governmental agencies in the conduct and operation of said business. The applicant/operator shall comply with the conditions of approval of related project permits and approvals.
4. The use must comply with the City Noise Control Ordinance. No equipment shall be installed or operated which would generate noise levels disruptive to surrounding land uses.
5. Signs shall be consistent with the City Sign Ordinance for the district in which the facility is located and shall be consistent with architectural character of the location.
6. The applicant/operator agrees to indemnify, hold harmless, and defend the City of Los Banos, its officers, agents and employees from any and all liability or claims that may be brought against the City of Los Banos arising out of its approval of this permit, or the environmental determination rendered in connection with the permit approval, or arising out of the operation of the use or

uses allowed under the permit, save and except that caused solely by the City's active negligence.

7. All activities shall take place within the existing building.

8. No outdoor storage is permitted.

9. This Conditional Use Permit shall be subject to revocation by the Community and Economic Development Director or the Planning Commission upon a finding that:

a. Conditions of approval have not been fulfilled;

b. A significant change or intensification of the approved use;

c. The use has resulted in a nuisance or detriment to the public health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City;

RESOLUTION #2015-47

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS BANOS APPROVING SITE PLAN #2015-07 FOR THE REPLACEMENT AND CONSTRUCTION OF A 1,914 SQUARE FOOT HEADEND FACILITY LOCATED AT 604 TEXAS AVENUE, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR'S PARCEL NUMBER: 027-211-001

APPLICANT: Kevin Fattal, of Comm/net Systems, on behalf of Comcast
OWNER: Comcast of San Joaquin, Inc.

WHEREAS, the applicant has requested that the City of Los Banos consider a Site Plan Approval to allow a replacement of a Headend Facility located at 604 Texas Avenue further identified as Assessor's Parcel Number: 027-211-001; and

WHEREAS, a public hearing was duly noticed for December 9, 2015, in accordance with California Government Code Section 65091 by advertisement in the Los Banos Enterprise and by mail to property owners within 300 feet of the project boundaries on November 27, 2015 to consider and take testimony regarding the Site Plan Approval for a replacement and construction of a Headend Facility; and

WHEREAS, the Los Banos Planning Commission has held a public hearing and received public testimony, reviewed said Site Plan Review request including the staff report and related documents, has studied the compatibility of the applicant's request with adjacent land uses and has considered this request in accordance with the Site Plan criteria established in Section 9-3.2320 of the Los Banos Municipal Code; and

WHEREAS, the applicant proposes to construct a 1,914 square foot building, to replace the existing headend facility, located in the Professional Office Zoning District; and

WHEREAS, the project is categorically exempt from the provisions of CEQA per Class 2 - Section 15302, consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced - Class 3 - Section 15303, new construction of small facilities or structures.

BASED UPON THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, the Planning Commission of the City of Los Banos does hereby make the findings set forth in Exhibit A (CEQA Findings), and Exhibit B (Findings of Approval), attached hereto and incorporated herein by this reference.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission of the

City of Los Banos does hereby approve Site Plan #2015-07 for the construction and replacement of a Headend Facility located at 604 Texas Avenue further identified as Assessor's Parcel Number: 027-211-001, subject to the Conditions of Approval set forth in Exhibit C attached hereto and incorporated herein by this reference.

The foregoing resolution was introduced at a regular meeting of the Planning Commission of the City of Los Banos held on the 9th day of December 2015, by Commissioner _____, who moved its adoption, which motion was duly seconded by Commissioner _____, and the Resolution is hereby adopted by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

Tom Spada, Planning Commission Chair

ATTEST:

Sandra Benetti, Planning Commission Secretary

EXHIBIT A

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS FOR SITE PLAN REVIEW #2015-07 – COMCAST (HEADEND FACILITY)

Pursuant to the requirements of California Public Resources Code Section 21000 et seq. (CEQA) and Title 14, California Code of Regulations 15000 et seq. (the CEQA Guidelines), the City as Lead Agency under CEQA adopts the following findings required by CEQA, along with the facts and evidence upon which each finding is based.

The City of Los Banos Planning Commission hereby finds as follows:

1. Pursuant to CEQA, the CEQA Guidelines, and the City of Los Banos Environmental Guidelines, the project was evaluated within the context of those guidelines and found to be categorically exempt from the provisions of CEQA — per Class 2 - Section 15302, consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced - Class 3 - Section 15303, new construction of small facilities or structures.
2. Site Plan Review #2015-07 was adequately noticed on November 27, 2015 for consideration at a public meeting on December 9, 2015.
3. No further environmental documentation is required as the Conditional Use Permit was contemplated and adequately analyzed in the initial review.
4. Prior to considering the proposed Project, the Planning Commission considered the Categorical Exemption.

EXHIBIT B

FINDINGS FOR APPROVAL OF SITE PLAN REVIEW #2015-07 – COMCAST (HEADEND FACILITY)

The City of Los Banos Planning Commission hereby finds as follows:

1. That the proposed development is consistent with the general plan, any specific plans, and any design standards adopted by the City Council.

Evidence/Analysis. The existing General Plan land use designation for the project site is Professional Office, which permits small scale offices and campus-like office complex development, including professional and medical offices, research and development activities. This designation may also allow small restaurants, support services, and convenience retail activities. The proposed headend facility is consistent with the purpose of the Professional Office designation because the facility would play a critical role in providing the cable, cellular and telephone services, which are utilized by individuals and businesses in the City on a daily basis.

The following specific General Plan Goals, Objectives and Policies are applicable to the proposed project:

ECONOMIC DEVELOPMENT POLICY ED-G-1:

Help create jobs and improve job quality for existing and future Los Banos residents.

ECONOMIC DEVELOPMENT POLICY ED-G-2

Facilitate the development of new businesses, and/or expansion of existing businesses through site availability, infrastructure investments, and labor force preparedness.

ECONOMIC DEVELOPMENT POLICY ED-G-3

Make Los Banos an ideal place to do business by fostering a business friendly climate.

Evidence/Analysis. The proposed headend facility would serve a critical role in transmitting cable, telephone and cellular data to individuals and businesses in the City. A functional communications network is necessary to attract and maintain businesses in the City. Allowing Comcast to locate the new headend facility in close proximity to the existing headend facility would facilitate the transition process, and minimize interruption to existing cable, telephone and cellular service.

SAFETY POLICY S-G-5

Maintain and enhance the city's capacity for law enforcement.

SAFETY POLICY S-G-6

Improve current police and fire response times and staffing ratios.

Evidence/Analysis. The proposed headend facility would facilitate emergency response by supporting the telephone and cellular networks where emergency calls would be placed. The facility would also support the reverse 911 and emergency alert systems, which provide emergency notifications to the citizens of Los Banos and the region.

2. That the design and location of the proposed development and its relationship to existing or proposed developments and traffic in the vicinity thereof is such that it will not impair the desirability of investment or occupation in the neighborhood; and that it will not unreasonably interfere with the use and enjoyment of existing or proposed developments in the vicinity thereof, and that it will not create traffic hazards or congestion.

Evidence/Analysis. Access to the site will be from the Texas Avenue driveway entrance to the project site. Based on the statement of operations and hours of operation the use will not significantly increase traffic in the area.

3. That the design of the proposed development is in keeping with the character of the surrounding neighborhood and is not detrimental to the harmonious, orderly, and attractive development contemplated by this ordinance and the general plan of the City.

Evidence/Analysis. The proposed structure is a relatively small service building. Architectural elements and landscaping have been incorporated into the site plan as to provide an attractive building and overall attractive development of the parcel. The architecture and siting will compliment future development of the surrounding area in keeping with the purpose of the P-O zoning district.

4. That the design of the proposed development would provide a desirable environment for its occupants, as well as for its neighbors, and that it is aesthetically of good composition, materials, textures, and colors.

Evidence/Analysis. The proposed structure is a relatively small service building. Architectural elements and landscaping have been incorporated into the site plan as to provide an attractive building and overall attractive development of the parcel. The architecture and siting will compliment future development of the surrounding area in keeping with the purpose of the P-O zoning district. Complimentary colors and the building materials will provide an aesthetically pleasing development.

5. That the proposed use complies with all applicable requirements of the zoning district in which it is located and all other applicable requirements.

Evidence/Analysis. As conditioned, the proposed use is consistent with the Los Banos Municipal Code.

6. That the overall development of the subject property is designed to ensure the protection of the public health, safety, and general welfare.

Evidence/Analysis. The proposed use will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area, impair the utility or value of property of other persons located near the site, or be detrimental to public health, safety or general welfare. The proposed headend equipment is located within a 1914 sq. ft. building which is situated away from nearby residences. Potential impacts to the surrounding areas would be minimal.

EXHIBIT C

CONDITIONS OF APPROVAL FOR SITE PLAN #2015-07 – COMCAST (HEADEND FACILITY)

Planning:

1. The following conditions of approval shall apply to and be applicable to the applicant, property owner, and/or developer. Reference to applicant, property owner, and/or developer shall be interpreted to include all including the holder of a building permit or other permit issued by the City in connection with this project. These conditions shall run with the land and shall survive the issuance of an occupancy permit.
2. This Site Plan shall expire if an application for a building or electrical permit is not applied for within 24 months from date of approval. One six-month extension may be allowed through a written submittal that would be approved by the Community and Economic Development Director.
3. Subject to and in addition to the conditions of approval set forth herein the development and construction of all improvements for the Project shall substantially conform to the conditionally approved Site Plan approved by the Planning Commission consisting of the conditions of approval, application, site plan layout, exterior elevations, and color renderings (herein after "site plan"). The applicant shall submit a revised Site Plan to the Community and Economic Development Department reflecting any modifications, additions, and conditions of approval approved by the Planning Commission within 30 days from Planning Commission approval. Said revised Site Plan shall be reviewed by the Community and Economic Development Department and stamped "conditionally approved" for purposes of providing a clear record of the approved Site Plan.
4. Full compliance with all conditions of approval shall be satisfied prior to issuance of any certificate of occupancy. Any proposed modifications to the approved Site Plan shall require approval by the Community and Economic Development Director or Planning Commission as appropriate.
5. Any application for a building permit shall be reviewed by the Community and Economic Development Department for a determination as to whether such application conforms to the prior design and site development review approval by the Planning Commission.
6. The applicant shall comply with all applicable federal, state and local laws.
7. The applicant shall meet all requirements of the currently adopted edition of the California Building, Fire, and City of Los Banos Municipal Codes in effect at time of the building permit application.

8. The applicant agrees to indemnify, hold harmless, and defend the City of Los Banos, its officers, agents and employees from any and all liability or claims that may be brought against the City of Los Banos arising out of its approval of this permit, or the environmental determination rendered in connection with the permit approval, or arising out of the operation of the use or uses allowed under the site plan, save and except that caused solely by the City's active negligence.
9. Construction shall be limited to those hours specified in Section 9-3.2706 of the Los Banos Municipal Code: Monday through Friday from 7:00 am to 9:00 pm; Saturday and Sunday from 8:00 am to 5:00 pm.
10. The applicant shall comply with all requirements of other appropriate governmental agencies.
11. The applicant shall comply with the Americans with Disabilities Act (ADA) requirements in the design, construction and maintenance of this project.
12. The applicant shall provide a copy of the conditions of approval to all contractors and subcontractors prior to commencement of construction.
13. During construction, and for safety purposes, the public right-of-way shall be kept clear of obstructions and shall be cleaned on a daily basis.
14. The applicant shall require all contractors and subcontractors to obtain a City of Los Banos Business License, prior to start of work on the project. All work performed on the project shall comply with the requirements of the California Business and Professions Code.
15. All structures, foundations, and footings for buildings on the project site shall be designed and constructed to conform to the current California Building Code, including amendments adopted by the City.
16. An engineering soils report shall be prepared in order to identify soil characteristics requiring special structural design. On-site and off-site structural design shall conform to the findings and recommendation of the engineering soils report. The report shall be prepared prior to issuance of a grading permit, subject to review and written approval by the City Engineer.
17. A minimum 200-foot separation shall be maintained between the public right-of-way and adjacent buildings from material stockpiles, debris piles, or containers and equipment storage during the construction process. If such storage must be located within 50 feet of the public right-of-way or adjacent buildings, a six-foot high opaque fence shall shield the storage area from view when the storage area is inactive for more than eight hours. This requirement shall be incorporated into the specifications for all construction plans, subject to review and written approval by the Community and Economic Development Department.

18. During construction activities, all food-related trash items shall be enclosed in sealed containers and regularly removed from the project site to avoid attracting wildlife to the project site. Pets shall not be allowed on the construction site. The proper location of the trash containers shall be subject to the review and written approval of the Community and Economic Development Department.
19. Prior to placement of combustible materials on the site, two points of all-weather access, at least one paved, shall be provided, to the satisfaction and written approval of the Fire Chief.
20. Temporary construction trailers shall be permitted only in areas immediately adjacent to or within that portion of the Site Plan where active construction is taking place. Placement of said construction trailer is subject to the written approval of the Public Works Director.
21. The development site shall be controlled of weeds and free of debris and litter. The applicant shall provide protection against wind and water soil erosion.
22. Due to the possibility that significant buried cultural resources might be found during construction, the following language shall be included in any permits issued for the project site, including, but not limited to building permits for future development, subject to the review and approval of the Los Banos Community Development Department:

“If archaeological resources or human remains are discovered during construction, work shall be halted from the find and the area shall be staked off. The project developer shall notify a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation measures shall be formulated and implemented.”
23. In the event of an accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the City shall ensure that this language is included in all permits in accordance with CEQA Guidelines section 15064.5(e):

“If human remains are found during construction there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the Los Banos Police Department contacts the coroner of Merced County to determine that no investigation of the cause of death is required. If the coroner determines the remains to be Native American, the coroner shall contact the Native American Heritage Commission within 24 hours. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descendent from the deceased Native American. The most likely descendent may then make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and associated grave goods as provided in Public Resources Code Section 5097.98. The landowner or his authorized representative shall rebury the Native

American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further disturbance if: a) the Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission; b) the descendent identified fails to make a recommendation; or c) the landowner or his authorized representative rejects the recommendation of the descendent, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.”

24. The site shall be kept in a dust-free condition during construction of the project in. Prior to issuance of a building permit, dust control requirements shall be included in all construction contract specifications to reduce significant levels of construction-related hazardous air emissions.
- a. All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, or vegetative ground cover.
 - b. All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.
 - c. All land clearing, grubbing, scraping, excavation, land leveling, grading, and cut and fill activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.
 - d. When materials are transported off-site, all material shall be covered, effectively wetted to limit visible dust emissions, or at least six inches of freeboard space from the top of the container shall be maintained.
 - e. All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at least once every 24 hours when operations are occurring. (The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions. The use of blower devices is expressly forbidden.)
 - f. Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.
25. Prior to issuance of building permits, the developer/applicant shall include the following requirements in all construction bids and documents including contracts (and implemented during construction activities) for the purpose of reducing diesel particulate and acrolein emissions during construction of the project:

- a. All pre-1994 model year and older diesel equipment shall be retrofitted with EPA-certified diesel oxidation catalyst filters;
 - b. Contractor shall maintain records of all purchases of diesel oxidation catalyst filters or biodiesel fuel until construction is complete; and
 - c. The SJVAPCD shall have the right to inspect all construction and demolition equipment, as well as the contractor's records at any time during demolition and construction.
26. The project site shall include a bicycle rack. Size and location shall be approved by the Community and Economic Development Director.
27. All rooftop mechanical equipment and appurtenances shall be screened from view from the public right-of-way and adjacent properties.
28. The outdoor generator shall be screened from view from the public right-of way and adjacent properties.
29. The existing headend building shall be demolished.
30. All development impact fees shall be paid in full prior to occupancy and as a condition of issuance of an occupancy permit. The developer shall provide a receipt from the Los Banos Unified School District for all applicable school impact fees.
31. The Applicant will take reasonable steps to preserve all survey monuments. The Applicant is responsible for the preservation of survey monuments within the work area under this permit at Applicant's sole expense. If any monuments are disturbed, the Applicant is responsible for re-establishing the monuments upon completion of the permitted work. Re-establishing of monuments shall be performed by a duly licensed land surveyor and a corner record shall be filed in accordance with State law at Applicant's sole expense.
32. All Community and Economic Development processing and application fees shall be paid in full prior to the issuance of a building permit.

Utilities and Drainage:

33. Subject to the review and approval of the Los Banos Public Works Department, project improvement plans shall include Best Management Practices (BMPs) to reduce the introduction of oils and other contaminants to the Los Banos storm water drainage system and main canal. Water quality safeguards shall be installed prior to occupancy of the parking lots. A water quality Best Management Practices plan shall be implemented upon occupancy.

34. A trash enclosure shall be built according to City specifications; colors, materials, and textures matching those of the main building, and provide for recycling services within. A concrete apron is required across the width of the trash enclosure opening that shall extend a minimum depth of ten feet in front of the opening. The location shall be specifically shown on the improvement plans and approved by the Community and Economic Development Director.
35. Approved backflow devices shall be installed as required per City standards.
36. Separate landscape and domestic service meters shall be installed.

Landscape and Lighting:

37. Prior to issuance of a building permit the applicant shall submit a lighting plan pursuant to standards in the Los Banos Standards and Specifications. All exterior lighting including parking lot lighting, shall meet the provisions of the Los Banos Municipal Code.
38. All landscaping and irrigation shall be continuously maintained in a healthy and thriving manner and shall fulfill the City Shade Canopy Ordinance. Should any landscape material die, it shall be immediately replaced with landscaping of a similar type, size and quantity or an approved alternative should a different type of landscape material be determined to fare better than the deceased material in the project environment. The applicant shall provide the Public Works Department a Landscape Plan and a Landscape Maintenance Plan describing their strategy for maintaining all landscaped areas in a healthy, litter free and thriving manner. Said plan shall identify responsible parties and be submitted for Public Works Department approval prior to issuance of building permit(s). Failure to maintain and replace landscaping and shade canopy in a healthy manner may result in administrative citations and fines.
39. All ground and rooftop mounted electrical, plumbing and mechanical equipment shall be screened from view of the public right-of-way by continuous parapet wall of landscaping or combination thereof.

Signage:

40. All advertising signage shall be subject to Sign Review and permit approval from both the Community Development and Building Departments, prior to installation, consistent with the development criteria of the Los Banos Municipal Code Sign Ordinance.

Design/Aesthetics:

41. The design of the improvements shall be conforming to the approved site plan. Any significant changes in color or architecture (i.e. paint, texture, material) shall require written approval by the Community and Economic Development Director or Planning Commission approval. The applicant shall maintain the color as presented in the site plan for the life of the project. Any changes to the site plan as to color or architecture shall require prior approval by the Community and Economic Development Director or Planning Commission. This condition shall be applicable beyond the issuance of an occupancy permit.
42. Downspouts shall be located within the building walls or architecturally integrated into the design and color of the structures, and there shall be no drainage across the public access ways or across the public right-of-way.

Police Department

43. Install easy to view surveillance cameras inside and outside of the building subject to the prior approval of the Police Chief as to the location and quantity.

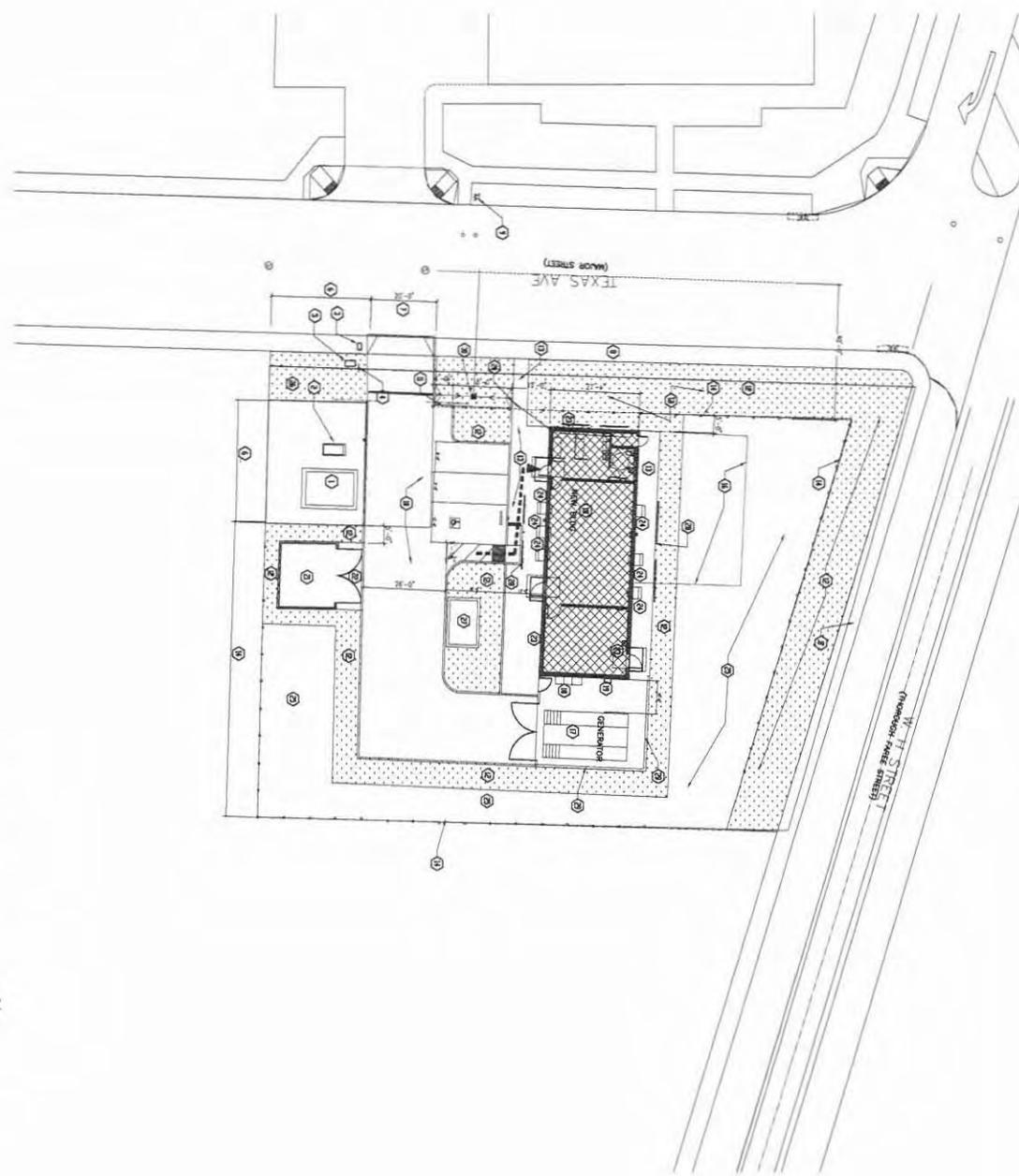
Fire Department

44. A fire control room shall be provided with exterior access only. This room shall be large enough to conduct maintenance of fire riser and fire control panel. The minimum size shall be 4'x4'.
45. Commercial grade Knox Boxes shall be required on the exterior of the building in the area of the front entrance. Applications can be obtained through the Fire Department.
46. A fire alarm control panel shall be located within the fire control room. A minimum of one (1) pull station and one (1) audio visual station shall be provided within 5' of the front entrance. The fire alarm system shall be plan checked and approved by the Los Banos Fire Department. These plans shall be through deferred submittal to the Fire Department.
47. The fire sprinkler system shall be plan checked and approved by the Los Banos Fire Department. These plans shall be through deferred submittal to the Fire Department. The fire sprinkler riser shall be located within the fire control room.
48. Fire Department connection to be located on the backflow preventer.
49. There shall be at two (2) - ten (10") inch address of a contrasting color on the building facing Texas Avenue (west elevation) and the other facing the parking lot (south elevation).
50. Driveways, parking lots, water lines, fire hydrants, and underground utilities shall be completed prior to occupancy.

Public Works

51. Prior to the issuance of a building permit, the Owner shall enter into a deferred improvement agreement approved by the City of Los Banos for the dedication for street purposes of the ultimate 'H' Street right of way (35'- 40' , exact width of dedication will require the applicant to survey the property to determine the existing right of way's relation to the existing improvements), dedication of the ultimate curve return right of way, dedication of a 10 foot Public Use Easement, and the design and construction of all street infrastructure along the 'H' Street frontage and the ultimate curve return per the City's standards and specifications. These improvements include but are not limited to curb, gutter and sidewalk construction, street light installation, street construction, etc.
52. The owner shall dedicate a ten foot (10') Public Utilities Easement on both frontage streets.
53. The developer shall prepare improvement plans for the entire site and plans shall be approved by the City Engineer prior to the start of any site work. Included in those improvement plans shall be, but not limited to, topography, site, grading and drainage, utilities, striping and signage, landscape, on and offsite lighting (street frontage), and offsite improvements. These improvements shall be installed per City of Los Banos Standards. The developer shall repair and replace any areas of broken sidewalk along Texas Avenue and the frontage along H Street, install street lights along the Texas Avenue frontage, and install an ADA accessible curve return which shall be detailed in the Improvement plans and conform to the City's standards and specifications.
54. The developer shall prepare, prior to issuance of a building permit, a landscape and lighting plan. The landscape and lighting plan shall be approved by the Community and Economic Development Department and Public Works Department prior to issuance of a building permit, and shall be prepared by a Landscape Architect and shall include the size, type of fixtures to be used on site, and include a Lumen Dispersion Map and comply with the City of Los Banos shade tree canopy ordinance. The landscape plan shall be designed in accordance with the City's "Water Efficient Landscape Ordinance".
55. A Storm Water Pollution Prevention Plan (SWPPP) shall be generated if the property is greater than 1-acre. In any case Construction and Post-Construction Best Management Practices (BMP's) shall be implemented to the City's MS-4 Phase II designation.
56. The developer shall prepare a grading and drainage plan and improvement plan prior to the issuance of a building permit. The grading and drainage plan shall be prepared per City standards and shall be approved by the City Engineer prior to the commencement of grading and work of any kind. The City will accept/allow through the curb drainage for the onsite storm water in lieu of connection to the 36" storm line on Texas Avenue.

57. Storm drain, water main, and sanitary sewer main line improvements shall be installed by the developer per the City of Los Banos Utility Master Plans.
58. All new utility services are to be under-grounded.
59. All development fees, including but not limited to all inspection fees, processing fees, landscape and light plan fees, and improvement plan fees shall be paid prior to issuance of the building permit.
60. The Developer shall form or annex the Subject Property to a Lighting and Landscaping District created for purposes of maintaining public landscape areas, signage and public lighting including a share of traffic signal maintenance costs as authorized pursuant to the Landscape and Lighting Act of 1972, Part 2 of Division 15 of the California Streets and Highways Code, and Article XIII D of the California Constitution. The form, terms and conditions and the tax rate for the formation of the Lighting and Landscaping District, or in the alternative the annexation of the Subject Property to an existing district, shall be as approved by the City Council, as determined in its sole and exclusive discretion. It is the intent of the parties that the assessment of the Subject Property will be apportioned to each parcel in proportion to the special benefit it receives. District formation or annexation shall be at the sole cost of the Developer. Due to the limited development in this area, this requirement can be outlined and addressed in the deferred improvement agreement as a condition when the future street improvements on 'H' Street are installed.
61. The Landscape Plan shall be designed to have trees meet the City Shade Canopy requirements of 50% parking stall coverage in 5 years over the new parking lot area.
62. The following note needs to be on all improvement plans- The Contractor is responsible for protecting and preserving survey monuments and other survey markers. Any survey monuments damaged as a direct result of construction activities shall be re-established by a duly licensed land surveyor at the Contractor's sole expense. A corner record shall be filed in accordance with State law for any reset monuments at the Contractor's sole expense.



1 OVERALL SITE PLAN
SCALE: 1"=16'-0"

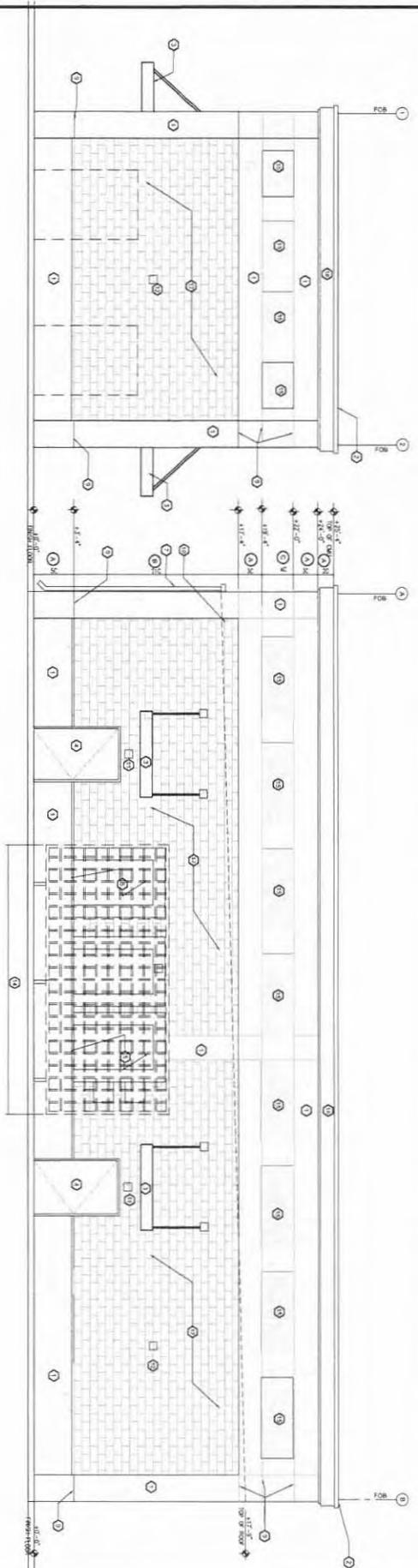


- LEGEND**
- ▲ MAIN ENTRANCE TO BUILDING
 - EXISTING FENCE
 - FENCE
 - ***** FENCE
 - ▲ NON-ACCESSIBLE SECONDARY BLDG. ENTRANCE
 - ▲ ACCESSIBLE SECONDARY BLDG. ENTRANCE
 - ▲ ACCESSIBLE SECONDARY BLDG. DRIVE
 - ▲ AREA OF WORK NEW BUILDING
 - ▲ (1) HANDICAP ACCESSIBLE VAN PARKING STALL
 - ▲ NEW CONCRETE AREA
 - ▲ NEW LANDSCAPE AREA LIGHT

SITE PLAN KEYNOTES

- 1 EXISTING HEADEND BUILDING
- 2 EXISTING GENERATOR TO REMAIN
- 3 EXISTING WATER METER
- 4 EXISTING WATER BACKFLOW PREVENTER
- 5 EXISTING CABLE TV BOX
- 6 EXISTING 6'-0" x 12' OAKEN LIGHT FENCE TO BE REMOVED AND REPLACED WITH NEW 6'-0" x 12' OAKEN LIGHT FENCE
- 7 EXISTING DRIVEWAY AND PAVION TO REMAIN
- 8 EXISTING PUBLIC SIDEWALK
- 9 EXISTING FIRE HYDRANT
- 10 NEW AC PARKING DRIVEWAY AND PARKING
- 11 NEW AUTOMATIC SLIDING WROUGHT IRON GATE ON L-1
- 12 NEW LANDSCAPE AREAS. SEE LIMITS OF LANDSCAPE WORK ON L-1
- 13 NEW CONCRETE WALK/PAD
- 14 NEW 6'-0" x 11' WROUGHT IRON FENCE
- 15 NEW HEADEND BUILDING
- 16 FUTURE HEADEND EXPANSION AREA
- 17 NEW GENERATOR / FUEL STORAGE TANK
- 18 NEW SITEWORK
- 19 NEW ATIS
- 20 NEW ACCESS GATE FOR PUBLIC HWY
- 21 NEW CHAIN LINK ENCLOSURE
- 22 CONCRETE PAVION AT TRASH ENCLOSURE
- 23 NEW ROOF
- 24 NEW HVAC
- 25 NEW UNDEVELOPED AREA. SEE LANDSCAPE DRAWINGS SH-1, L-1
- 26 EXISTING DEAD LANDSCAPE PLANTING TO BE REMOVED AT NEW LANDSCAPE TO BE INSTALLED AS SHOWN ON L-1
- 27 NEW POLE TRANSFORMER PAD
- 28 METAL TRUSS. REFER TO ELEVATIONS
- 29 CHU WALL AT 10'-0" PAVION TO MATCH BLDG. COLOR
- 30 NEW BR-SMALL. SEE CIVIL DRAWINGS

<p>DATE: 07.27.2011 BY: [Signature] CHECKED: [Signature] DATE: 11.06.2015 BY: [Signature] DATE: 12.02.2015 BY: [Signature]</p>	<p>COMCAST LOS BANOS</p> <p>COMCAST HEADEND 604 TEXAS AVENUE LOS BANOS, CA</p>		<p>THIRD SHOE, INC. 349 SILVERLAKE DRIVE CHICO, CA 95923 530-898-9123</p> <p>ALAN S. CHAMBERS ARCHITECT</p>	<p>Comm/net Systems, Inc.</p>	
<p>SITE PLAN</p>		<p>DR1.0</p>		<p>11/20/2015</p>	



1 EAST ELEVATION
SCALE 1/4"=1'-0"

2 SOUTH ELEVATION
SCALE 1/4"=1'-0"

EXT. ELEV KEY NOTES

- 1 PLASTER FINISH SHELVY OVER CMU WITH BRONZE ALUMI- COLOR #
- 2 METAL CORING AT TOP OF FINISHT- COLOR #
- 3 METAL CORING WITH SHIMWOOD FINISHING- COLOR #
- 4 METAL CORING WITH SHIMWOOD FINISHING- COLOR #
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- 100 METAL CORING WITH SHIMWOOD FINISHING- COLOR #

GENERAL NOTES

- 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND SPECIFICATIONS.
- 2. ALL MATERIALS SHALL BE APPROVED BY THE ARCHITECT PRIOR TO INSTALLATION.
- 3. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
- 4. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED BUDGET.
- 5. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED QUALITY STANDARDS.
- 6. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED SAFETY STANDARDS.
- 7. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED ENVIRONMENTAL STANDARDS.
- 8. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED SOCIAL STANDARDS.
- 9. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED ECONOMIC STANDARDS.
- 10. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED CULTURAL STANDARDS.
- 11. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED HISTORIC STANDARDS.
- 12. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED ARCHITECTURAL STANDARDS.
- 13. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED ENGINEERING STANDARDS.
- 14. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED CONSTRUCTION STANDARDS.
- 15. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED MAINTENANCE STANDARDS.
- 16. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED OPERATIONAL STANDARDS.
- 17. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED PERFORMANCE STANDARDS.
- 18. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED COMPLIANCE STANDARDS.
- 19. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED LEGAL STANDARDS.
- 20. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED ETHICAL STANDARDS.
- 21. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED PROFESSIONAL STANDARDS.
- 22. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED INDUSTRY STANDARDS.
- 23. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED BEST PRACTICES STANDARDS.
- 24. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED STATE OF THE ART STANDARDS.
- 25. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED INNOVATION STANDARDS.
- 26. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED SUSTAINABILITY STANDARDS.
- 27. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED RESILIENCE STANDARDS.
- 28. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED ADAPTABILITY STANDARDS.
- 29. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED FLEXIBILITY STANDARDS.
- 30. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED SCALABILITY STANDARDS.
- 31. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED SECURITY STANDARDS.
- 32. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED PRIVACY STANDARDS.
- 33. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED INTEGRITY STANDARDS.
- 34. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TRANSPARENCY STANDARDS.
- 35. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED ACCOUNTABILITY STANDARDS.
- 36. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED RESPONSIBILITY STANDARDS.
- 37. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED ETHICS STANDARDS.
- 38. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED HONESTY STANDARDS.
- 39. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED FAIRNESS STANDARDS.
- 40. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED RESPECT STANDARDS.
- 41. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED EMPATHY STANDARDS.
- 42. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED KINDNESS STANDARDS.
- 43. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED PATIENCE STANDARDS.
- 44. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED HUMILITY STANDARDS.
- 45. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED GRACE STANDARDS.
- 46. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED MERCY STANDARDS.
- 47. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED COMPASSION STANDARDS.
- 48. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED GENTLENESS STANDARDS.
- 49. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED BENEVOLENCE STANDARDS.
- 50. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED CHARITY STANDARDS.

PAINT COLORS

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CMU SCHEDULE

- 1. 12" x 8" x 16" STANDARD CMU WALL WITH PLASTER FINISH OVER
- 2. 8" x 8" x 16" SHUT Faced CMU WALL
- 3. 8" x 8" x 16" FINISHED CMU WALL

LEGEND

- 1. DIMENTS OVER BLOCK TIME
- 2. DIMENTS MEASURED BY CONCRETS OR OVER BLOCK

CAUTION: THIS SHEET IS NOT TO BE USED IN A REDUCED PRINT

EAST AND SOUTH ELEVATIONS	
DATE	11.06.2015
BY	ALAN S. CHAMBERS
CHECKED	ALAN S. CHAMBERS
SCALE	AS SHOWN
SHEET	DR3.1

COMCAST LOS BANOS
COMCAST HEADEND
604 TEXAS AVENUE
LOS BANOS, CA



THIRD SHOE, INC.
148 SILVERLAKE DRIVE
CHICO, CA 95973
530-898-0723
ALAN S. CHAMBERS
ARCHITECT

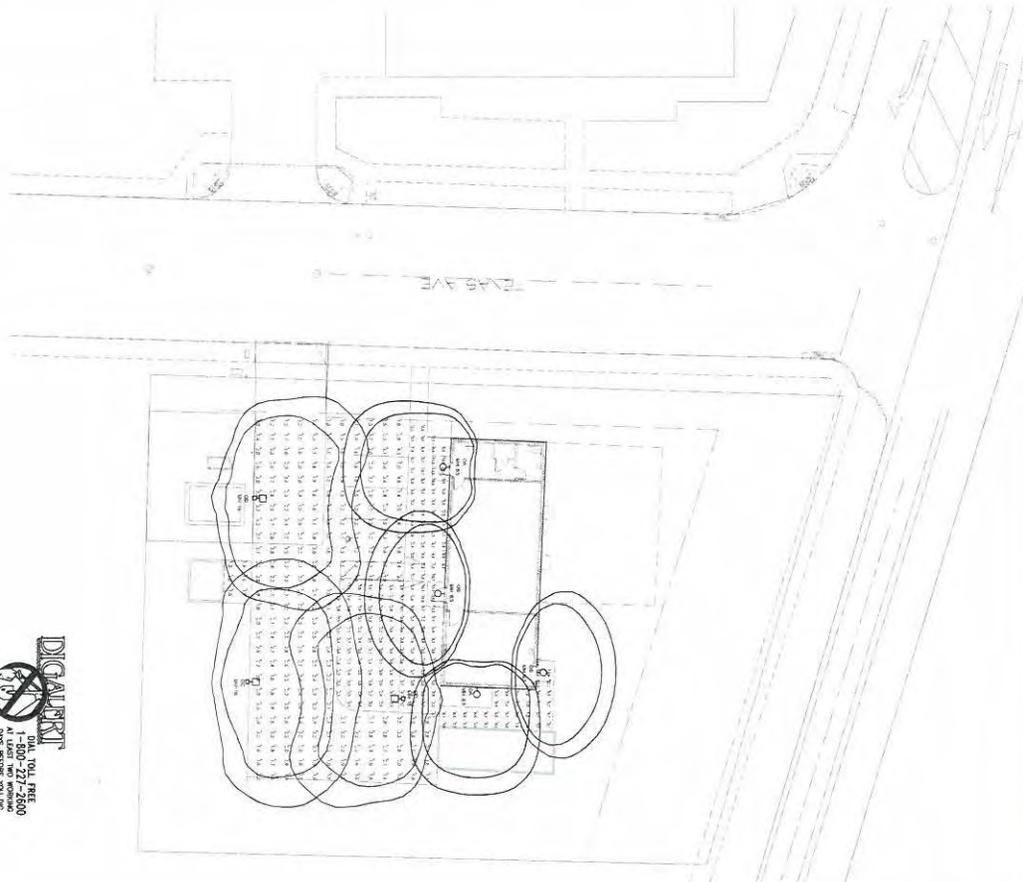


07/27/2015

CANNOT BE REUSED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF THE ORIGINAL AUTHOR.

LUMINAIRE SCHEDULE

TYPE	MANUFACTURER/CATALOG	DESCRIPTION	MOUNTING	LAMP		REMARKS
				NO.	TYPE	
OA	LEOTER ES1-24H-MV-NW-FT-XX-K30	WALL LUMINAIRE	SURFACE	LED	277	44
OB	LEOTER ES1-24H-MV-NW-XX-530	WALL LUMINAIRE	SURFACE	LED	277	44
OC	LEOTER AR13-6H-MV-NW-3-DB-530	POLE FIXTURE	SURFACE	LED	277	39
OD	LEOTER AR13-6H-MV-NW-4-DB-530	POLE FIXTURE	SURFACE	LED	277	39

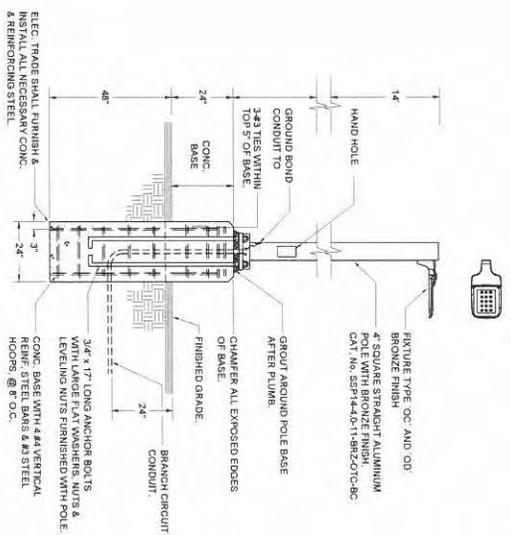


1 SITE PLAN - LIGHTING
1/8" = 1'

DIAGNOSTIC
DIAL TOLL FREE
1-800-277-2800
UNOBSTRUCTED VIEW OF SKYLINE
DAYS BEFORE TO BE



2 POLE LIGHT 'OC' & 'OD' - DETAIL
NO SCALE



EDGE
ELECTRICAL CONSULTING
441 30th Street, San Ramon, CA 94583
Office 916.255.2480
PROJECT NO. C270 CONTACT: ERIC

DATE	REVISIONS
06/20/2013	CITY SUBMITTAL

PROJECT NO. C270 SHEET NO. E1.1

COMCAST LOS BANOS
COMCAST HEADEND
604 TEXAS AVENUE
LOS BANOS, CA



Comm/net Systems, Inc.
10000...
Tel: 916-255-2480



THIRD SHOE, INC.
 349 Silver Lake Drive
 Chico, CA 95973
 916-529-3454

ALAN CHAMBERS
 Architect



WEST ELEVATION

SCALE: N.T.S.

NORTH ELEVATION

SCALE: N.T.S.

GENERAL NOTES

- 1. PAINT ALL EXPOSED PIPING AND CONDUIT.
 COLOR TO MATCH ADJACENT SURFACE

PAINT COLORS

- COLOR #1 - GUDDEN-SMSS COFFEE
 #50YY 83057
- COLOR #2 - GUDDEN-FOREST GREEN
 # 07GG 06244 (CANOPY AND METAL DOORS)
- COLOR #3- GUDDEN-SILVER TROPHY #30BB 53012
 (SPLIT FACE AND PRECISION CMU)

COMCAST FREMONT

Comcast Headend
 604 Texas Avenue
 Los Banos, CA

No.	Description	Date

COMCAST

Color Elevations

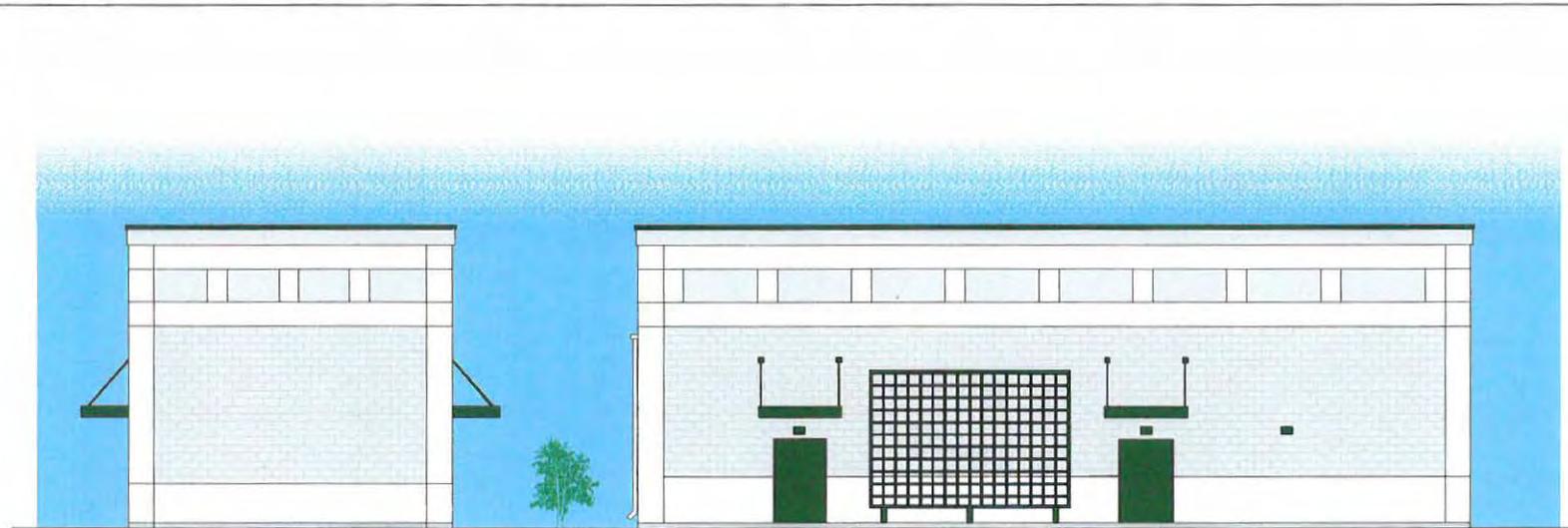
Project number 1518
 Date 5 November, 2015
 Drawn by J.J.L.
 Checked by

DR4.0

Scale N.T.S.

THIRD SHOE, INC.
 349 Silver Lake Drive
 Chico, CA 95973
 916-529-3454

ALAN CHAMBERS
 Architect



EAST ELEVATION

SCALE: N.T.S.

SOUTH ELEVATION

SCALE: N.T.S.

GENERAL NOTES

1. PAINT ALL EXPOSED PIPING AND CONDUIT.
 COLOR TO MATCH ADJACENT SURFACE

PAINT COLORS

COLOR #1 - GUILDEN-SMISS COFFEE
 #50YY 83/057

COLOR #2 - GUILDEN-FOREST GREEN
 # 07GG 08/244 (CANOPY AND METAL DOORS)

COLOR #3 - GUILDEN-SILVER TROPHY #30BB 53/012
 (SPLIT FACE AND PRECISION CMU)

COMCAST FREMONT

Comcast Headend
 604 Texas Avenue
 Los Banos, CA

No.	Description	Date

COMCAST

Color Elevations

Project number	1518
Date	5 November, 2015
Drawn by	JUL
Checked by	

DR4.1

Scale N.T.S.













City of
Los Banos
At the Crossroads of California

**COMMUNITY AND ECONOMIC
DEVELOPMENT DEPARTMENT**

Date: November 27, 2015

Re: Notice of Public Hearing

Proposal: Conditional Use Permit #2015-13 & Site Plan Review #2015-07 –
Comcast Headend Facility

NOTICE IS HEREBY GIVEN THAT a Public Hearing will be held by the Los Banos Planning Commission to consider a Conditional Use Permit and Site Plan Review for the development of a 1,914 square foot telecommunication headend facility for Comcast located in the Professional Office zoning district at 604 Texas Avenue, more specifically described as Assessor's Parcel Number: 027-211-001.

A PUBLIC HEARING on this matter will be held at the next scheduled meeting of the Los Banos Planning Commission on Wednesday, December 9, 2015 at 7:00 p.m. in the Council Chambers of Los Banos City Hall located at 520 J Street.

All persons are invited to be present at the public hearing. Written and oral testimony is invited. Notice is hereby further given that if you challenge the above described Ordinance 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.

Additional information may be obtained from Community & Economic Development Department at 520 J Street, Los Banos, California. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (209) 827-7000. Notification at least 72 hours prior to the public hearing will enable the City to make reasonable arrangements to allow participation at this hearing

THE CITY OF LOS BANOS

Sandra Benetti
Planning Technician



City of
Los Banos
At the Crossroads of California

PLANNING COMMISSION STAFF REPORT

TO: CHAIRMAN SPADA AND COMMISSIONERS

FROM: STACY SOUZA ELMS, SENIOR PLANNER *SE*

DATE: DECEMBER 9, 2015

**SUBJECT: WALMART STORES, INC. CONDITIONAL USE PERMIT #2015-10
FOR THE INSTRUCTIONAL TASTING OF ALCOHOL**

RECOMMENDATION:

That the Planning Commission adopt Resolution No. 2015-48 recommending approval of Conditional Use Permit #2015-10 to the Los Banos City Council for the instructional tasting of alcohol for Wal-Mart Stores, Inc. located at 1575 W. Pacheco Boulevard.

PROJECT BACKGROUND/DESCRIPTION:

On March 24, 1993, the Los Banos Planning Commission approved Site Plan Review #93-2 for the construction of a Wal-Mart Store. The store was constructed as approved and has been operational since 1994 in the City of Los Banos.

In 2008, Wal-Mart Stores, Inc. requested the use of a Type 20 alcohol license for the off-sale of beer and wine. On May 14, 2008, the Planning Commission recommended approval to the Los Banos City Council and subsequently the City Council approved the Conditional Use Permit on June 4, 2008.

In 2009 Wal-Mart Stores, Inc. requested the use of a Type 21 alcohol license for the off-sale of general alcohol. On January 13, 2010 the Planning Commission recommended approval to the Los Banos City Council and the City Council approved the Conditional Use Permit on February 3, 2010.

On October 27, 2010, the Los Banos Planning Commission approved Site Plan Review #2008-05 for the super center expansion of Wal-Mart by 69,300 square feet. The expansion has been completed and the store has been operational as a super center since July 2014.

The applicant, Wal-Mart Stores, Inc., is currently requesting a Conditional Use Permit for a Type 86 alcohol license to permit instructional tasting of alcohol products at 1575 W. Pacheco Blvd.

The Type 86 alcohol license allows authorized alcoholic beverage manufacturers, winegrowers, and wholesalers (“Tasting Coordinator”) to conduct instructional tasting events within the store. These tasting events are intended to inform customers on the subject of wine, beer, or distilled spirits. The applicant is proposing to conduct an instructional tasting event approximately 2-3 times a month. The instructional tasting events will be conducted at the end of the alcohol display aisles.

LOCATION AND ACCESS:

The project site is located at 1575 W. Pacheco Blvd., more specifically identified as Assessor’s Parcel Number: 430-010-012.



LAND USE:

Property	Land Use	Zone	General Plan
Project site	Commercial	H-C	Commercial
North	Commercial	H-C	Commercial
South	Residential	R-1	Low Density Residential
East	Commercial	H-C	Commercial
West	Commercial	H-C	Commercial

H-C = Highway Commercial

R-1 = Low Density Residential

ENVIRONMENTAL ASSESSMENT:

Pursuant to the California Environmental Quality Act (CEQA) and the City of Los Banos Environmental Quality Guidelines, it has been determined that this project is categorically exempt from the provisions of CEQA – Article 19, Section 15301. The applicant's request for the on-sale of beer involves the permitting and licensing of an existing private structure and involves no expansion at 1575 W. Pacheco Blvd.

USE PERMIT ANALYSIS

Code Requirements

Pursuant to the Los Banos Municipal Code Section 9-3.2322, a Conditional Use Permit is required for any establishment dispensing for sale or other consideration alcoholic beverages, including beer and wine, for on-sale or off-sale. The Planning Commission is the recommending body and the City Council is the decision making body for Conditional Use Permits for the on-sale and off-sale of alcoholic beverages. A Conditional Use Permit may be granted if the proposed use is conforming to the following criteria:

General Use Permit Criteria:

1. That the proposed use and project is consistent with the City of Los Banos General Plan, and Los Banos Municipal Code;
2. That the proposed use or project will not be a nuisance or detrimental to the public health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use;
3. That the proposed use is compatible with the adjacent uses, properties and neighborhoods and will not be detrimental or injurious to property and improvement in the neighborhood or to the general welfare of the City.

Specific On-Sale and Off-Sale Alcoholic Beverages Criteria:

1. That the proposal will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable with consideration given to the area's function and character, problems of crime and loitering, and traffic problems and capacity;

2. That the proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds;
3. That the proposal will not interfere with the movement of people along an important pedestrian street; and
4. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, the use will be limited in hours of operation, or designed operated so as to avoid the disruption of residents' sleep between the hours of 10:00 p.m. and 7:00 a.m.

Staff has evaluated the proposal pursuant to the above criteria set forth in the Municipal Code and offers the following observations:

The project will not contribute to the proliferation of alcohol in the area or cause an increase in crime in that there are currently no other retailers which conduct instructional tasting events. The instructional tasting events will be conducted in a separate at the end of the alcohol display aisle. The proposed tasting area will be complimentary to the existing off-sale of alcohol at the store, and will be conducted pursuant to ABC regulations.

The proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds. The proposed use of instructional tasting is not located in close proximity to any of the above mentioned uses.

The proposal will not have an effect on the movement of people in that there will be no off-site or public consumption of alcohol pursuant to ABC regulations.

The proposed use is not in direct proximity to residential uses and is located more than 100 feet from any bedroom windows. In addition, all instructional tasting will be conducted within the premises and the project will be subject to conditions, which will mitigate any adverse affects on the surrounding neighborhood.

Alcoholic Beverage Control

The Alcoholic Beverage Control Board (ABC) is the issuing authority for a Type 86 alcohol license. The City's authority for the sale of alcohol is through its land use powers embodied within the Los Banos Zoning Code.

ABC has the authority according to Section 23801 of the Business and Professions Code to exercise certain conditions under the license, the personal qualifications of the licensee, the conduct of the business or the condition of the premises, which will protect the public welfare and morals, including, but not limited to, the following:

- a) Restrictions as to hours of sale
- b) Display of signs
- c) Employment of designated persons

- d) Types and strengths of alcoholic beverages to be served where such types or strengths are otherwise limited by law
- e) The portion of the privileges to be exercised under the license
- f) The personal conduct of the licensee

ABC may also refuse to issue a license to any person who has violated the Alcoholic Beverage Control Act, has a disqualifying criminal record, or is otherwise disqualified.

In addition, ABC has established the following restrictions for instructional tasting events:

- The instructional tasting event will be conducted in a separate area (“Tasting Area”) within the alcohol display aisle or at the end of the alcohol display aisle. The Tasting Area will be separated from the remainder of the premises by a rope, cable, or other temporary barrier. Signage must be displayed prohibiting persons under the age of 21 from entering the tasting event area, and all entrants will be required to show identification. In addition, the Tasting Coordinator will ensure no one under the age of 21 is served alcohol during a tasting event.
- No person under 21 years of age may serve, or be served, wine, beer, or distilled spirits at the instructional tasting event.
- Instructional tasting events are regulated to take place between the hours of 10:00 a.m. and 9:00 p.m.
- The Tasting Coordinator shall not permit any consumer to leave the instruction Tasting Area with an open container of alcohol.
- Each instructional event is limited to a single type of alcoholic beverage (distilled spirits, wine, or beer) and is limited to only those products which are sold by the store under its Type 21 alcohol license.
- The number and size of portions provided to customers are limited to the following:
 - Wine will not exceed one ounce.
 - Distilled spirits will not exceed one-fourth of one ounce.
 - Beer will not exceed eight ounces per person per day.
 - No person shall have more than 3 tastings of wine or spirits.

PUBLIC COMMENT:

A public hearing notice was published in the Los Banos Enterprise and notices were provided to adjacent property owners within a 300 foot radius of the subject property on November 27, 2015. As of the date of this staff report, no comments have been received.

APPLICABLE ORDINANCES/GUIDELINES:

Los Banos General Plan

Los Banos Municipal Code – Section 9-3.2322

ABC Act, California Business and Professions Code

RECOMMENDATION:

That the Planning Commission adopt Resolution No. 2015-48 recommending approval of Conditional Use Permit #2015-10 to the Los Banos City Council for the instructional tasting of alcohol for Wal-Mart Stores, Inc. located at 1575 W. Pacheco Boulevard.

ATTACHMENTS:

1. Resolution 2015-48
 - Exhibit A CEQA Findings
 - Exhibit B Project Findings
 - Exhibit C Conditions of Approval
2. Floor Plan
3. Site Photos
4. Public Hearing Notice – November 27, 2015

RESOLUTION NO. 2015-48

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS BANOS RECOMMENDING APPROVAL OF CONDITIONAL USE PERMIT #2015-10 TO THE LOS BANOS CITY COUNCIL FOR THE USE OF A TYPE 86 ALCOHOL LICENSE, "INSTRUCTIONAL TASTING", FOR WALMART LOCATED AT 1575 WEST PACHECO BOULEVARD

WHEREAS, the applicant, Wal-Mart Stores, Inc., has requested that the City of Los Banos consider a Conditional Use Permit to allow the use of a Type 86 alcohol license for instructional tasting of alcohol located at 1575 W. Pacheco Blvd., more specifically identified as Assessor's Parcel Number: 430-010-012; and

WHEREAS, a public hearing notice was published in the Los Banos Enterprise on November 27, 2015 and notices were mailed to property owners within a 300 foot radius of the project site as required by the Los Banos Municipal Code and Government Code Section 65091; and

WHEREAS, the Los Banos Planning Commission has held a public hearing, reviewed said Conditional Use Permit request and staff report, has studied the compatibility of the applicant's request with adjacent land uses and has considered this request in accordance with the Conditional Use Permit criteria established in Section 9-3.2322 of the Los Banos Municipal Code; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) and the City of Los Banos Environmental Quality Guidelines, Conditional Use Permit #2015-10 for Aqua Entertainment Center was determined to be categorically exempt from the provisions of CEQA per Article 19, Section 15301 as the project site is an existing facility; and

WHEREAS, the request/proposed use satisfies the criteria of the Los Banos Municipal Code.

BASED UPON THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, the Planning Commission of the City of Los Banos hereby makes the appropriate findings set forth in Exhibit A (California Environmental Quality Act (CEQA) Findings), and Exhibit B (Findings for Approval), attached hereto and incorporated herein by this reference.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Los Banos does hereby recommend the approval of Conditional Use Permit #2015-10 to the Los Banos City Council to allow instructional tasting conjunction with an ABC License, Type 86, for Wal-Mart Stores, Inc. located at 1575 W. Pacheco Blvd., more specifically identified as Assessor's Parcel Number: 430-010-012, subject to the Conditions of Approval set forth in Exhibit C, attached hereto and incorporated herein by this reference.

The foregoing resolution was introduced at a regular meeting of the Planning Commission of the City of Los Banos held on the 9th day of December 2015 by Planning Commissioner _____ who moved its adoption, which motion was duly seconded by Planning Commissioner _____, and the Resolution adopted by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

Tom Spada, Planning Commission Chairman

ATTEST:

Sandra Benetti, Planning Commission Secretary

EXHIBIT A

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS CONDITIONAL USE PERMIT #2015-10 – WAL-MART STORES, INC.

Pursuant to the requirements of California Public Resources Code Section 21000 et seq. ("CEQA") and Title 14, California Code of Regulations Section 15000 et seq. (the "CEQA Guidelines"), the City as Lead Agency under CEQA adopts the following findings required by CEQA, along with the facts and evidence upon which each finding is based.

The City of Los Banos Planning Commission hereby finds as follows:

1. Pursuant to CEQA, the CEQA Guidelines, and the City of Los Banos Environmental Quality Guidelines, Conditional Use Permit #2015-10 was evaluated and determined to be categorically exempt per Article 19, Section 15301 as the request for the instructional tasting of alcohol involves the permitting and licensing of an existing private structure and involves no expansion at 1575 W. Pacheco Blvd.
2. Conditional Use Permit #2015-10 was adequately noticed on November 27, 2015 for consideration at a public meeting on December 9, 2015.
3. No further environmental documentation is required as the Conditional Use Permit was contemplated and adequately analyzed in the initial review.
4. Prior to considering the proposed Project, the Planning Commission considered the Categorical Exemption.

EXHIBIT B

FINDINGS FOR APPROVAL OF CONDITIONAL USE PERMIT #2015-10 – WAL-MART STORES, INC.

A. General Findings

1. That the proposed use and project is consistent with the City of Los Banos general plan, and the Los Banos Municipal Code.

The existing General Plan land use designation for the project site is Commercial, which permits large-scale commercial developments that serve both residents, visitors, and the surrounding region. The zoning designation for the project site is Highway Commercial (H-C). The purpose of the Highway Commercial District is to provide a district for commercial uses that do not specialize in serving the pedestrian shopper but rather, because of their character, are more appropriately located along a highway or major street and where drive-in operations are more feasible.

The following specific General Plan Goals, Objectives, and Policies are applicable to the proposed project:

ECONOMIC DEVELOPMENT POLICY ED-G-7:

Seek and promote particular businesses or economic opportunities that provide needed local goods, services, employment, or those that enhance the City's physical and social well being.

LAND USE POLICY LU-G-10:

Foster viable, pedestrian-oriented neighborhood centers and strong, visually attractive regional commercial centers with a mix of tenants to serve both local and regional needs.

Evidence/Analysis: The instructional tasting events will help serve the needs of the community at large, including residents, visitors, and the surrounding region. In addition, the store will be able to provide a wider range of goods within the commercial district in which the store is located. The proposed instructional tasting would expand an existing regional commercial/retail use that is compatible with and complementary of existing commercial/retail uses at the site. In addition, the project would also be consistent with General Plan land use policies as set forth above.

2. That the proposed use or project will not be a nuisance or detrimental to the public health, safety, morals, comfort, and

general welfare of the persons residing or working in the neighborhood of such proposed use.

Evidence/Analysis: The instructional tasting events will be conducted in accordance with ABC regulations and therefore, will not be a nuisance or detrimental to the neighborhood in which the store is located. The project would include conditions of approval which regulate the operational characteristics of allowing the serving of alcohol and are intended to preserve the public health, safety, or welfare of persons and property in the vicinity.

3. That the proposed use is compatible with the adjacent uses, properties, and neighborhoods and will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

Evidence/Analysis: The instructional tasting events will be conducted in a separate tasting area at the end of the alcohol display aisle. The proposed tasting area will be complimentary to the existing off-sale of alcohol at the store, and will be conducted pursuant to ABC regulations. The proposed conditions of approval would ensure consistency with other uses in shopping center and promote compatibility.

B. Specific Findings

1. That the proposal will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable with consideration given to the area's function and character, problems of crime and loitering, and traffic problems and capacity.

Evidence/Analysis: Currently there are no other retailers in the area that conduct instructional tasting events. Wal-Mart will conduct the instructional tasting events pursuant to ABC regulations and will continue to implement security measures at the store to combat crime and loitering. The proposed instructional tasting is not anticipated to generate significant traffic as they will be attended largely by customers already shopping in the store. Further, the proposed instructional tasting events would be held within the existing store.

2. That the proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds.

Evidence/Analysis: There are no such uses in the immediate vicinity of the store.

3. That the proposal will not interfere with the movement of people along an important pedestrian street.

Evidence/Analysis: Consumption of alcohol will only be allowed inside the premises and the use will be regulated by City, State and Federal regulations. The purpose of the requested use is to benefit customers and will not interfere with the movement of people along an important pedestrian street.

4. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, the use will be limited in hours of operation, or designed operated so as to avoid the disruption of residents' sleep between the hours of 10:00 p.m. and 7:00 a.m.

Evidence/Analysis: The instructional tasting events will only take place between the hours of 10:00 a.m. and 9:00 p.m.

EXHIBIT C

CONDITIONS OF APPROVAL FOR CONDITIONAL USE PERMIT #2015-10 – WAL-MART STORES, INC.

Planning:

1. The following conditions of approval shall apply to and be applicable to the applicant, property owner, and/or operator. Reference to applicant, property owner, and/or operator shall be interpreted to include all.
2. Conditional Use Permit 2015-10 is for Wal-Mart Stores, Inc. located at 1575 W. Pacheco Blvd.; more specifically identified as Assessor's Parcel Number: 430-010-012 and the requested use shall expire after one (1) year from date of approval by the Los Banos City Council unless implemented. The City for cause may revoke this Conditional Use Permit. Any expansion, intensification, or changes to the uses approved under this Conditional Use Permit shall be permitted only upon modification of this Conditional Use Permit or approval of a separate Conditional Use Permit application.
3. The applicant/operator shall comply with all other requirements, laws and policies of other governmental agencies in the conduct and operation of said business. The applicant/operator shall comply with the conditions of approval of related project permits and approvals.
4. The applicant/operator shall obtain and maintain an active Type 86 "Instructional Tasting" license as defined by the Department of Alcoholic Beverage Control and shall provide a copy of said license upon issuance by the Alcoholic Beverage Control to the Community Development Department prior to any instructional tasting events on the premises. The approval of the is Conditional Use Permit shall allow only instructional tasting. The applicant shall be required to comply with all regulations of the Department of Alcoholic Beverage Control.
5. A copy of these Conditions of Approval and the California Department of Alcoholic Beverage Control license are required to be kept on the premises and presented to any law enforcement officer or authorized City official upon request.
6. The applicant/operator shall be responsible for maintaining the property free of litter at all times in the parking lot area and the areas adjacent to the premises over which they have control.

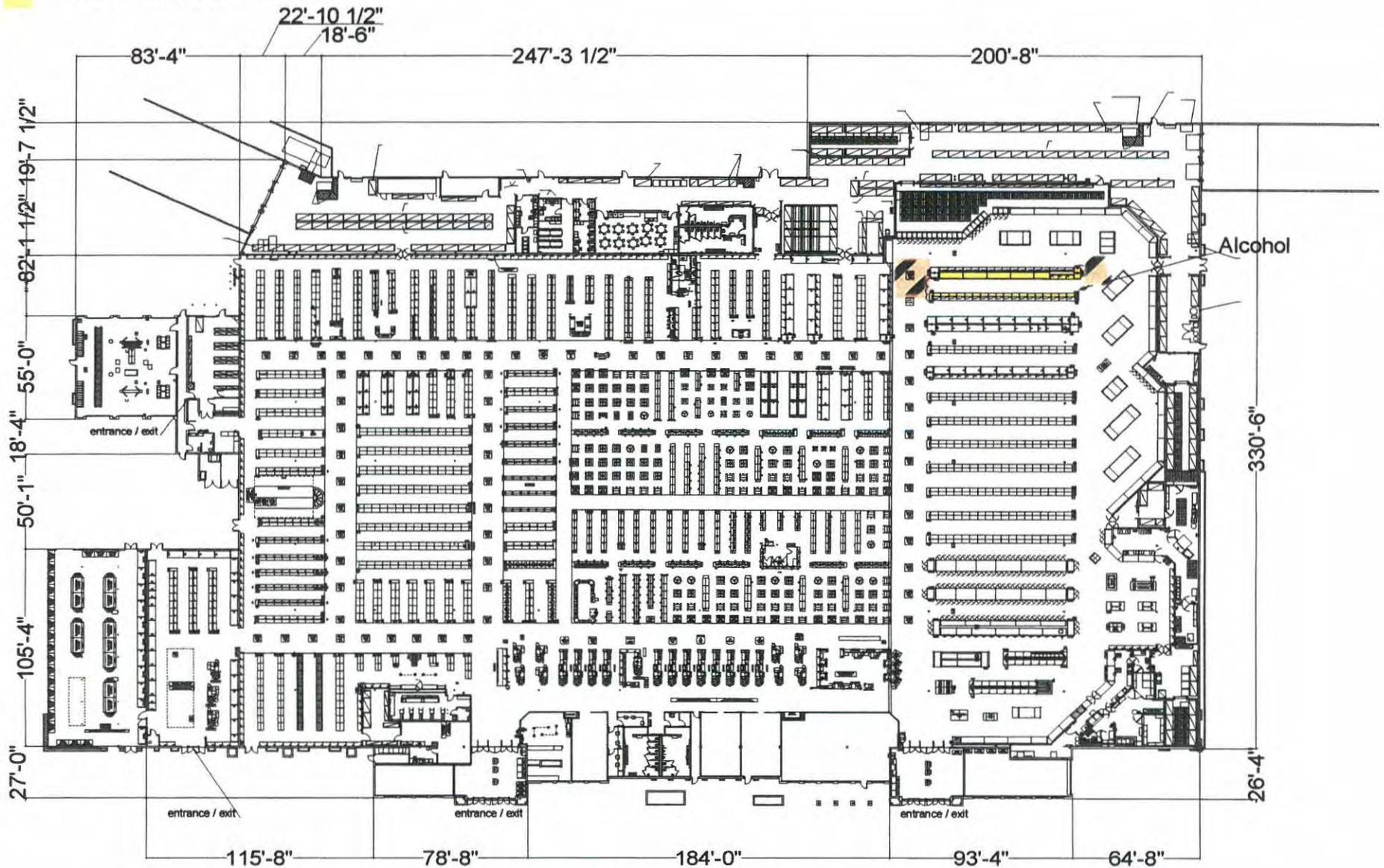
7. The Planning Commission shall have the right to review and/or revoke this permit should the applicant not adhere to the Conditions of Approval. The City may amend or impose new conditions to mitigate adverse affects in the neighborhood resulting from the use of alcohol on the premises.
8. The applicant/operator agrees to indemnify, hold harmless, and defend the City of Los Banos, its officers, agents and employees from any and all liability or claims that may be brought against the City of Los Banos arising out of its approval of this permit, or the environmental determination rendered in connection with the permit approval, or arising out of the operation of the use or uses allowed under the permit, save and except that caused solely by the City's active negligence.
9. The exterior of the premises, including adjacent public sidewalks and the parking lot areas, shall be illuminated during all hours of darkness when the premises are open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel.
10. The premises shall be operated primarily as a Wal-Mart store as described in the application prepared by the applicant and filed with the Community and Economic Development Department. Any substantial or significant changes in use or operation of the premises from the Operational Statement may cause a review, amendment or revocation of the Conditional Use Permit.
11. The use of the premises of the subject site shall be consistent with the Conditions of Approval and shall not be operated in a manner that deviates from the approved Conditional Use Permit filed application and operational statement, which shall constitute a violation and may result in the revocation or modification of the permit upon written notice to the owner of the subject site.
12. Authorization of a Conditional Use Permit granted pursuant to the provisions of Section 9-3.2322 of the Los Banos Municipal Code shall run with the land and shall continue to be valid upon change of ownership of the site or structure which was the subject of the Conditional Use Permit application provided the use shall be subject to all provisions of the Municipal Code and all conditions placed on approval of the Conditional Use Permit are continually met.
13. This Conditional Use Permit shall be subject to revocation by the Community and Economic Development Director or the Planning Commission upon a finding that:

- a. Conditions of approval have not been fulfilled;
 - b. A significant change or intensification of the approved use;
 - c. The use has resulted in a nuisance or detriment to the public health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
14. The tasting area shall be a separate area at the end of the alcohol display aisle and shall be separated from the remainder of the premises by rope, cable, or other temporary barrier. Wal-Mart shall prominently display signage prohibiting persons under 21 years of age from entering the tasting event area, and all entrants shall show identification.
 15. No person under 21 years of age shall serve, or be served, wine, beer, or distilled spirits at the instructional tasting event.
 16. Instructional tasting events shall only take place between the hours of 10:00 a.m. and 9:00 p.m. All activities shall take place inside the building.
 17. Customers shall be prohibited from leaving the instructional tasting area with an open container of alcohol.
 18. Each instructional tasting event shall be limited to a single type of alcoholic beverage (distilled spirits, wine, or beer) and shall be limited only to those products that are sold by Wal-Mart under its Type 21 license.
 19. Wine portions shall not exceed half an ounce as stated in the operational statement on file with the Community and Economic Development Department.
 20. Distilled spirit portions shall not exceed one-fourth of one ounce
 21. Beer portions shall not exceed eight ounces of beer per person per day.
 22. No person shall have more than 3 tastings of wine or spirits. As stated in the operational statement on file with the Community and Economic Development Department, the vendor shall mark the customer's hand with a marker to ensure the customer has not received more than the allowed limit.

Walmart Store #2117
1575 W. Pacheco Blvd.
Los Banos, CA 93638

 Proposed Tasting Area

 Alcohol Display Area





SITE:

Walmart Supercenter
 1575 West Pacheco Blvd
 Los Banos, CA 93635

- | | |
|--|--|
| <p>1. View from CA-33 - Looking North</p> <p>2. View from Corner of Badger Flat and CA-33 - Looking North-East</p> <p>3. View from Badger Flat - Looking East</p> <p>4. View from Corner of Prairie Springs Dr and Badger Flat Rd - Looking South-East</p> | <p>5. View from Prairie Springs Dr - Looking South</p> <p>6. View from Corner of Prairie Springs Dr - Looking South-West</p> <p>7. View from Parking Lot - Looking West</p> <p>8. View from Corner of CA-33 - Looking North-West</p> |
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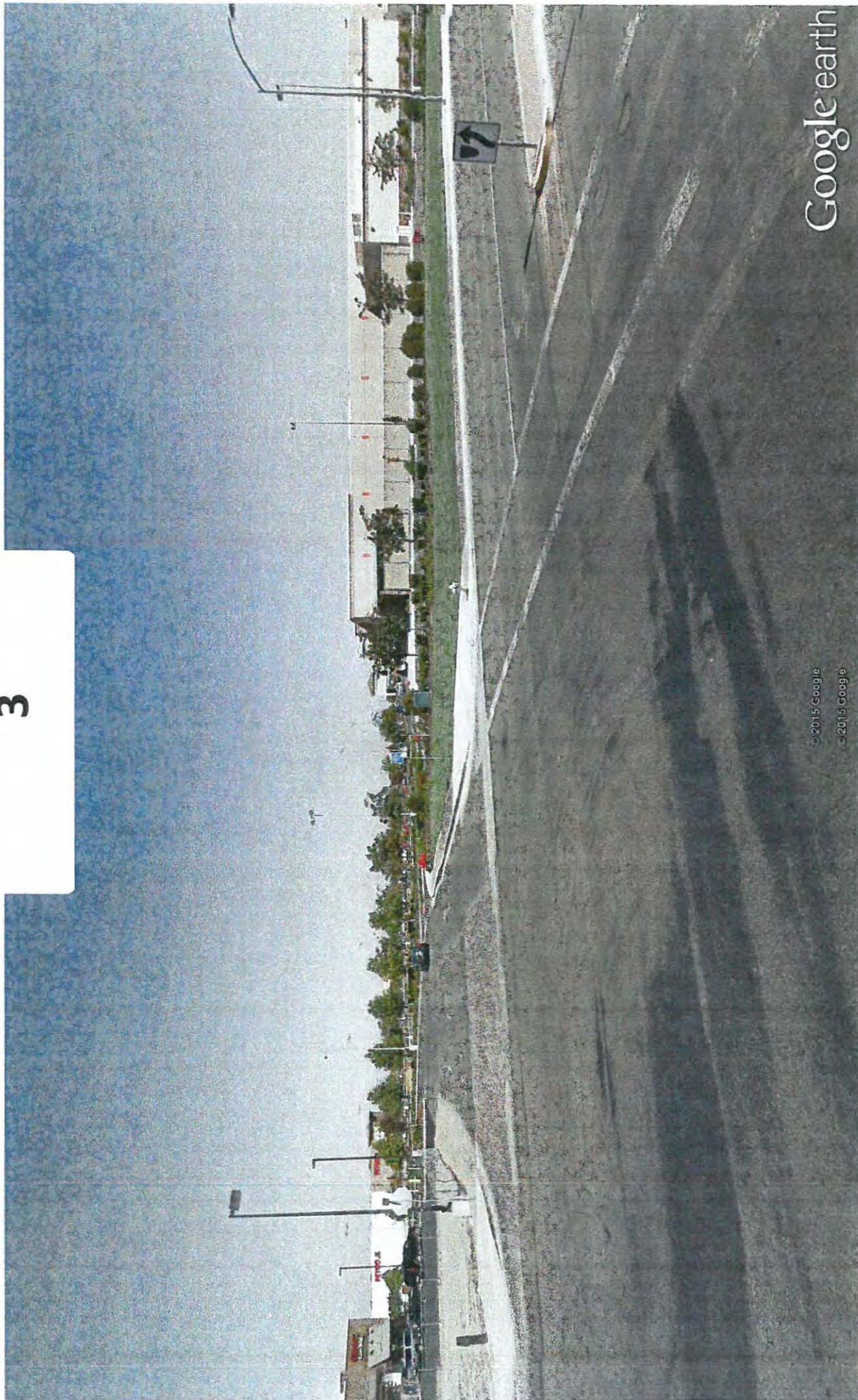


Google earth

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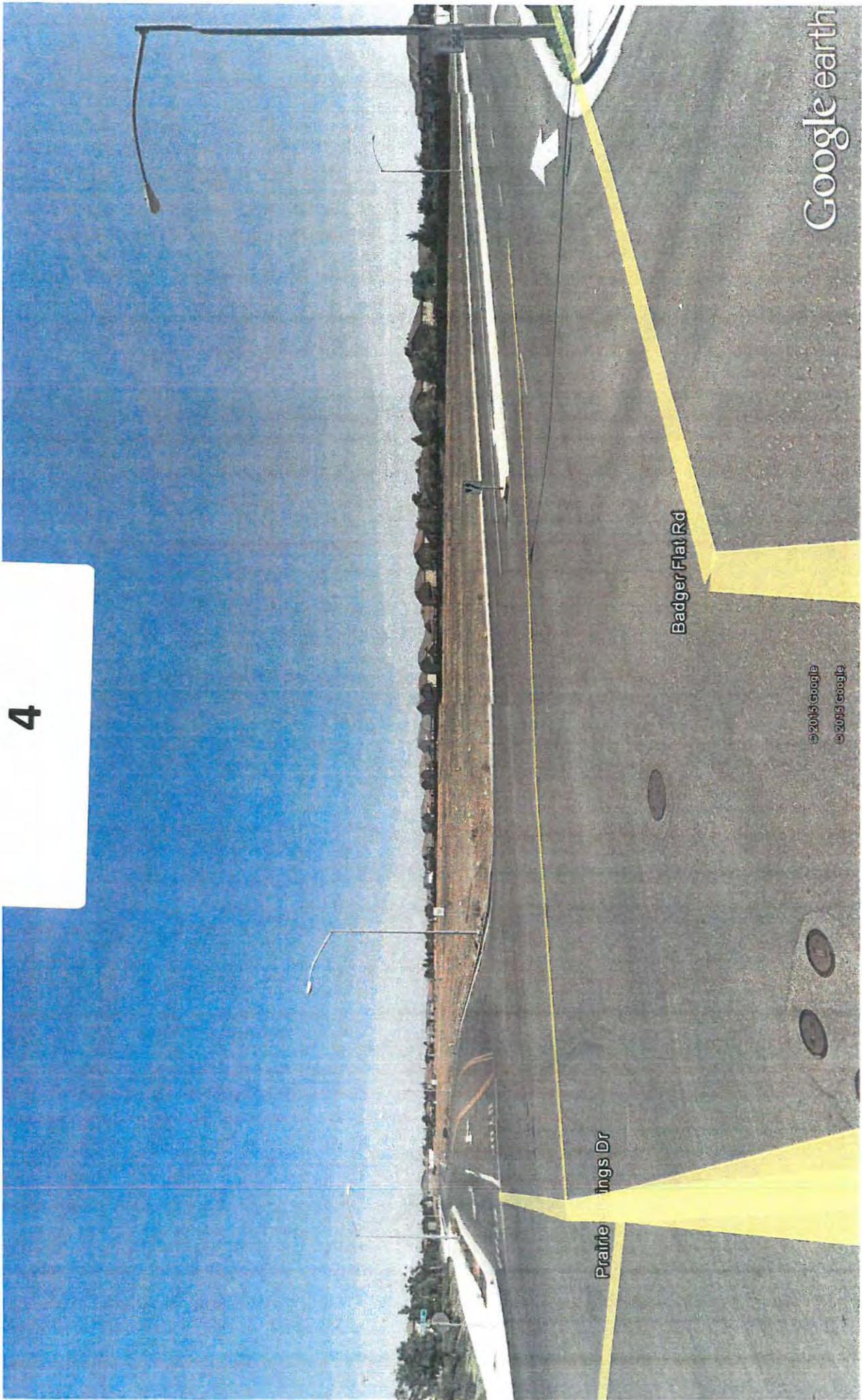
Baughman Rd

3



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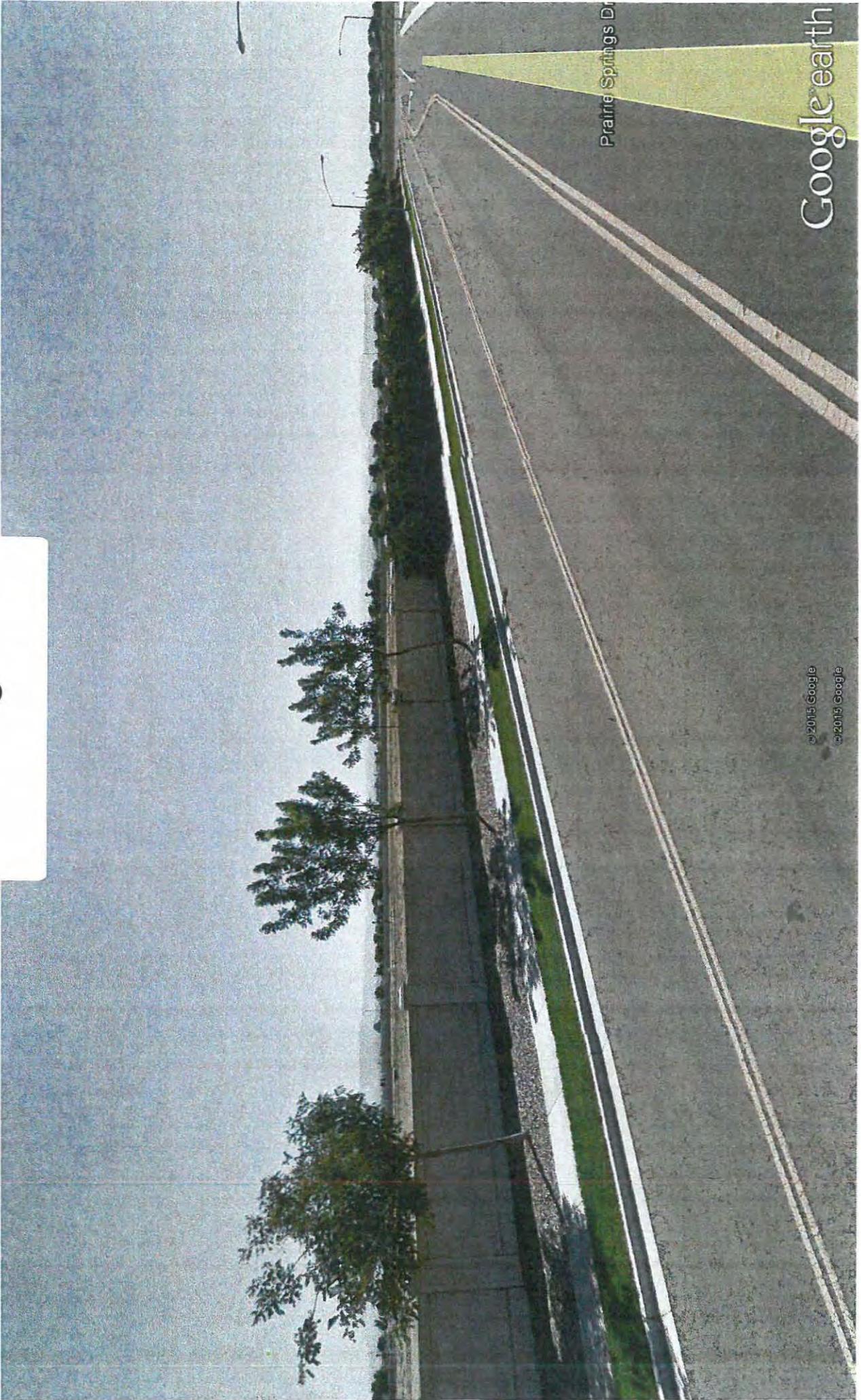
Badger Flat Rd

5



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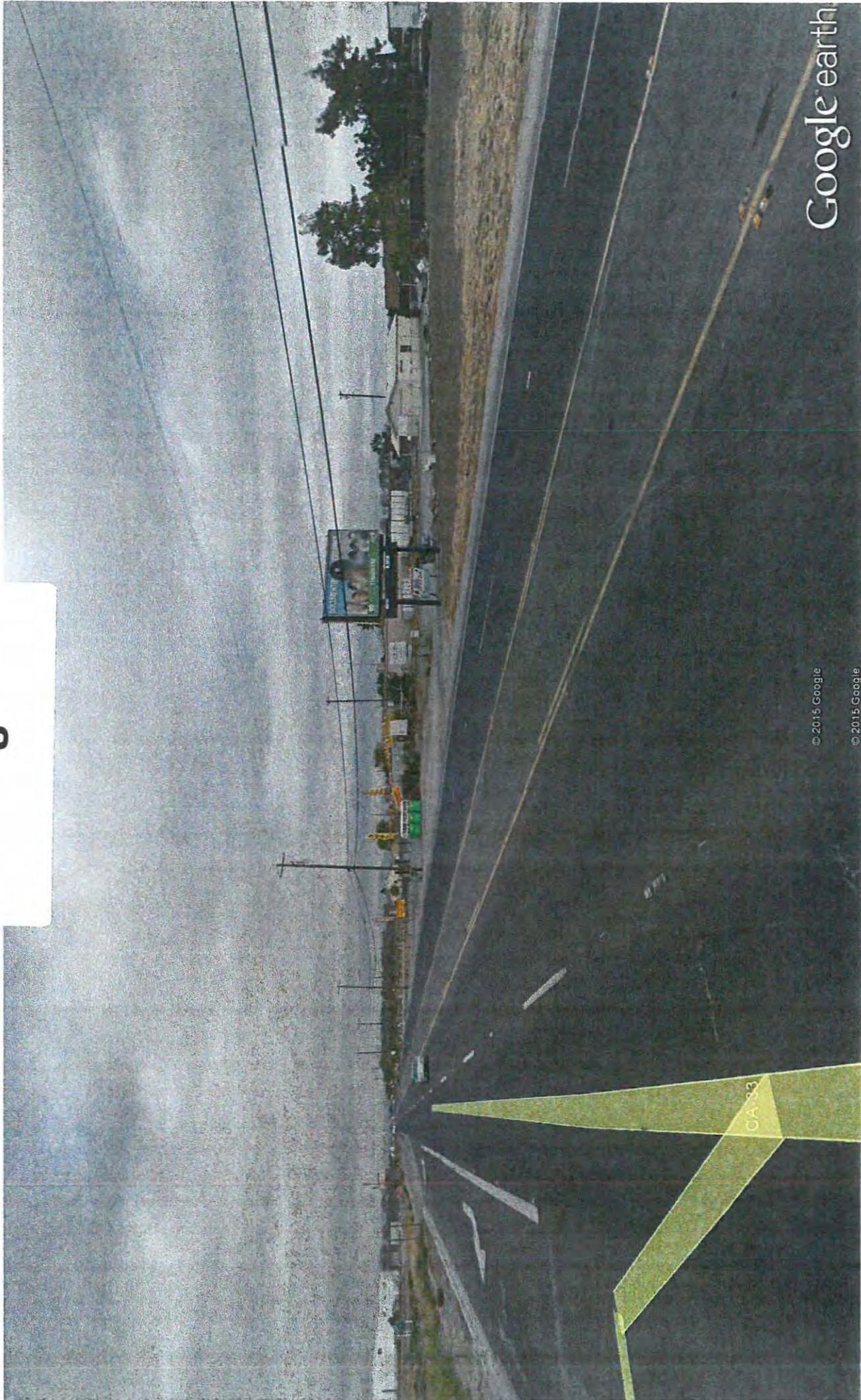


Prairie Springs Dr

Google earth

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City of
Los Banos
At the Crossroads of California

**COMMUNITY AND ECONOMIC
DEVELOPMENT DEPARTMENT**

Date: November 27, 2015

Regarding: Notice of Public Hearing

Proposal: Conditional Use Permit #2015-10 – Type 86 Alcohol License

NOTICE IS HEREBY GIVEN THAT a Public Hearing will be held by the Los Banos Planning Commission to consider a Conditional Use Permit to allow the use of a Type 86 Alcohol License for the instructional tasting of alcoholic beverages onsite. The requested Conditional Use Permit is for Wal-Mart Stores, Inc. located at 1575 W. Pacheco Boulevard, more specifically described as Assessor's Parcel Number: 430-010-012.

A PUBLIC HEARING on this matter will be held at the next scheduled meeting of the Los Banos Planning Commission on Wednesday, December 9, 2015 at 7:00 p.m. in the Council Chambers of Los Banos City Hall located at 520 J Street.

All persons are invited to be present at the public hearing. Written and oral testimony is invited. Notice is hereby further given that if you challenge the above described Ordinance 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.

Additional information may be obtained from Community & Economic Development Department at 520 J Street, Los Banos, California. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (209) 827-7000. Notification at least 72 hours prior to the public hearing will enable the City to make reasonable arrangements to allow participation at this hearing

THE CITY OF LOS BANOS

Sandra Benetti
Planning Technician



City of
Los Banos
At the Crossroads of California

PLANNING COMMISSION STAFF REPORT

TO: CHAIRMAN SPADA AND COMMISSIONERS

FROM: STACY SOUZA ELMS, SENIOR PLANNER *JS*

DATE: DECEMBER 9, 2015

SUBJECT: AQUA ENTERTAINMENT CENTER CONDITIONAL USE PERMIT
#2015-11 FOR THE ON-SALE OF BEER

RECOMMENDATION:

That the Planning Commission adopt Resolution No. 2015-49 recommending approval of Conditional Use Permit #2015-11 to the Los Banos City Council for the on-sale of beer for Aqua Entertainment Center located at 923 W. Pacheco Boulevard.

PROJECT BACKGROUND/DESCRIPTION:

The applicant, Kuo Chen Liao (Aqua Entertainment Center), is requesting a Conditional Use Permit for the on-sale of beer in conjunction with a Type 40 alcohol license to permit the on-sale of beer for the proposed bowling alley/entertainment center located at 923 W. Pacheco Boulevard.

The applicant is proposing to establish a bowling alley/entertainment center in the San Luis Shopping Center. The applicant is proposing to sell snacks, soft drinks, bottle water, and prepackaged foods (i.e. chips, candy, pretzels). The hours of operation will be from 9:00 a.m. to 10:30 p.m. Sunday thru Thursday, and 9:00 a.m. to 1:30 a.m. Friday thru Saturday. The applicant will be preparing tenant improvements to the existing building, which was previously a cinema, to accommodate a 10 lane bowling alley, an arcade room, birthday party rooms, and a laser tag room. The applicant is anticipating hiring approximately 15-18 employees within 6 months of opening.

The bowling alley/entertainment center is located in the San Luis Shopping Center on the southwest corner of West Pacheco Boulevard and West I Street, which is surrounded by service and retail businesses such as AAA Insurance, JC's Pure Water, Star of David Ministries, Morfin Barber Shop, La Esperanza Market, Village Sports, Dollar City, JCPenney, Oasis RMA Re-Use, Noah's Ark Pet Styling, Evangelical Free

Church, West America Bank, and Black Bear Diner. This specific location was previously occupied by Los Banos Cinema, which closed in July 2009.

LOCATION AND ACCESS:

The project site is located at 923 W. Pacheco Blvd., more specifically identified as Assessor's Parcel Number: 431-020-002.



LAND USE:

Property	Land Use	Zone	General Plan
Project site	Commercial	H-C	Commercial
North	Commercial	H-C	Commercial
South	Residential	R-1	Low Density Residential
East	Commercial	H-C	Commercial
West	Commercial	H-C	Commercial

H-C = Highway Commercial R-1 = Low Density Residential

ENVIRONMENTAL ASSESSMENT:

Pursuant to the California Environmental Quality Act (CEQA) and the City of Los Banos Environmental Quality Guidelines, it has been determined that this project is categorically exempt from the provisions of CEQA – Article 19, Section 15301. The applicant's request for the on-sale of beer involves the permitting and licensing of an existing private structure and involves no expansion at 923 W. Pacheco Blvd.

USE PERMIT ANALYSIS

Code Requirements

Pursuant to the Los Banos Municipal Code Section 9-3.2322, a Conditional Use Permit is required for any establishment dispensing for sale or other consideration alcoholic beverages, including beer and wine, for on-sale or off-sale. The Planning Commission is the recommending body and the City Council is the decision making body for Conditional Use Permits for the on-sale and off-sale of alcoholic beverages. A Conditional Use Permit may be granted if the proposed use is conforming to the following criteria:

General Use Permit Criteria:

1. That the proposed use and project is consistent with the City of Los Banos General Plan, and Los Banos Municipal Code;
2. That the proposed use or project will not be a nuisance or detrimental to the public health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use;
3. That the proposed use is compatible with the adjacent uses, properties and neighborhoods and will not be detrimental or injurious to property and improvement in the neighborhood or to the general welfare of the City.

Specific On-Sale and Off-Sale Alcoholic Beverages Criteria:

1. That the proposal will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable with consideration given to the area's function and character, problems of crime and loitering, and traffic problems and capacity;
2. That the proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds;
3. That the proposal will not interfere with the movement of people along an important pedestrian street; and
4. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, the use will be limited in hours of operation, or designed operated so as to avoid the disruption of residents' sleep between the hours of 10:00 p.m. and 7:00 a.m.

Staff has evaluated the proposal pursuant to the above criteria set forth in the Municipal Code and offers the following observations:

The project will not contribute to the proliferation of alcohol in the area or cause an increase in crime in that the proposed use will be ancillary to the primary use as a bowling alley/entertainment center. The surrounding area and function is primarily commercial in nature, which allows for the sale and serving of alcohol. The addition of one more license will not contribute to the undue proliferation of alcohol sales in the area. The proposed sale of beer will expand an existing regional entertainment use that is compatible with and complementary of existing commercial uses at the site. The

project will include conditions of approval which regulate the operational characteristics of allowing the serving of alcohol and are intended to preserve the public health, safety, or welfare of persons and property in the vicinity including crime prevention and loitering.

The proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds. The proposed use is located within a shopping center which currently contains two (2) churches. The project will include conditions of approval which regulate the operational characteristics of allowing the serving of alcohol and are intended to preserve the public health, safety, or welfare of persons and property in the vicinity. The proposal will not adversely affect these churches as alcohol will not be consumed outside of the premises and is not the primary use of the premises.

The proposal will not have an effect on the movement of people in that the serving and consumption of alcohol will only be allowed inside the premises. The location of the proposed use is not near an important pedestrian street.

The proposed use is not in direct proximity to residential uses and is located more than 100 feet away from the front entrance to the facility. The serving and consumption of alcohol will be only inside the premises and is not allowed outside of the premises per the conditions of approval. The entertainment center will be subject to the Los Banos Municipal Code Noise Ordinance. The project will include conditions of approval which regulate the operational characteristics of allowing the serving of alcohol and are intended to preserve the public health, safety, and welfare of persons and property in the vicinity.

Alcoholic Beverage Control

The Alcoholic Beverage Control Board (ABC) is the issuing authority for a Type 40 alcohol license. The City's authority for the sale of alcohol is through its land use powers embodied within the Los Banos Zoning Code.

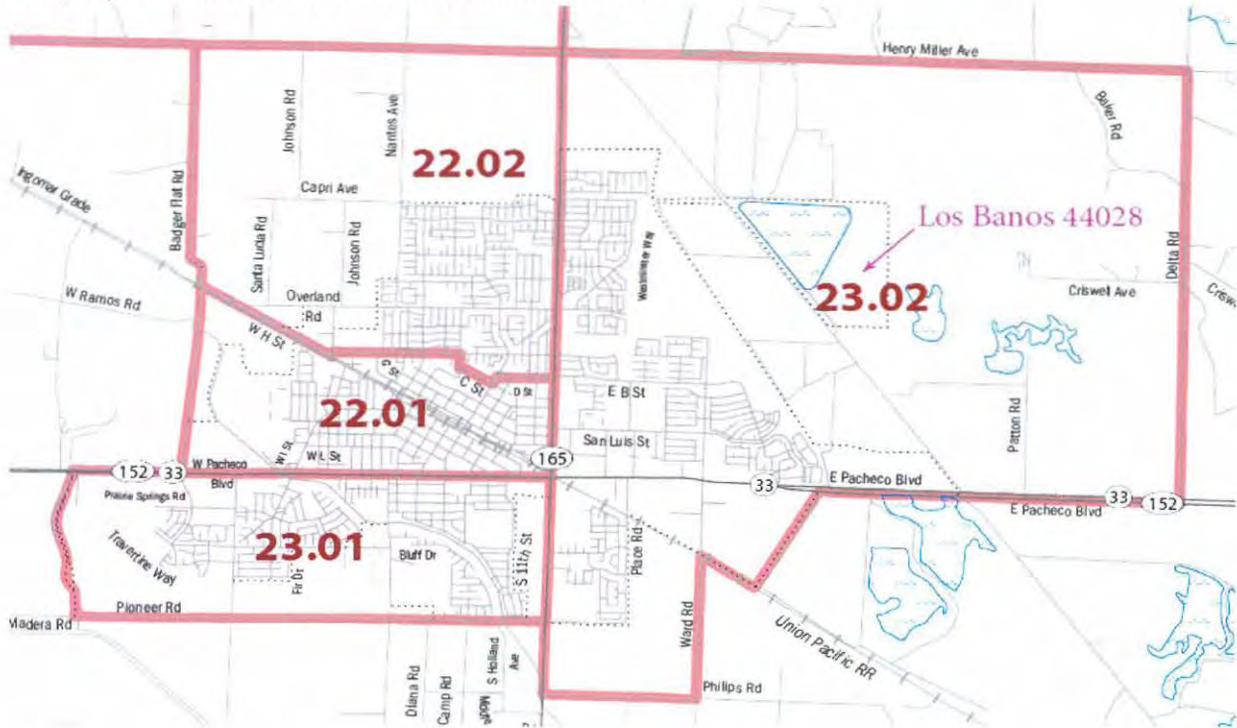
ABC has the authority according to Section 23801 of the Business and Professions Code to exercise certain conditions under the license, the personal qualifications of the licensee, the conduct of the business or the condition of the premises, which will protect the public welfare and morals, including, but not limited to, the following:

- a) Restrictions as to hours of sale
- b) Display of signs
- c) Employment of designated persons
- d) Types and strengths of alcoholic beverages to be served where such types or strengths are otherwise limited by law
- e) The portion of the privileges to be exercised under the license
- f) The personal conduct of the licensee

ABC may also refuse to issue a license to any person who has violated the Alcoholic Beverage Control Act, has a disqualifying criminal record, or is otherwise disqualified.

Census Tract

The project site is located in census tract 23.01.



As of the date of this report, there are nine (9) on-sale licenses currently in use in this specific census tract. According to Section 23817.5 of the Business and Professions Code there are **no limitations** to how many on-sale beer and wine licenses may be issued in a census tract. Limitations are only specified for off-sale of beer and wine and off-sale general licenses.

License Type ¹	Business Name	Premises Address
41	Sugoi Rolls and BBQ	1245 E. Pacheco Blvd.
41	China #1 Buffet	1313 E. Pacheco Blvd., Ste. A
41	Taqueria El Rodeo	1313 E. Pacheco Blvd., Ste. D
41	Mountain Mikes Pizza	509 Pacheco Blvd.
41	Pizza Hut	419 Pacheco Blvd.
41	Hot City BBQ & Bistro	1313 Sixth Street
41	China Garden Restaurant	829 W. Pacheco Blvd.
41	Black Bear Diner	955 W. Pacheco Blvd.
41	Hook and Ladder Hot Wings	245 W. Pacheco Blvd., Ste A & B

Type 41 license = On-sale beer and wine

¹ California Department of Alcoholic Beverage Control
<http://www.abc.ca.gov/datport/AHCityRep.asp>

PUBLIC COMMENT:

A public hearing notice was published in the Los Banos Enterprise and notices were provided to adjacent property owners within a 300 foot radius of the subject property on November 27, 2015. As of the date of this staff report, no comments have been received.

APPLICABLE ORDINANCES/GUIDELINES:

Los Banos General Plan

Los Banos Municipal Code – Section 9-3.2322

ABC Act, California Business and Professions Code

RECOMMENDATION:

That the Planning Commission adopt Resolution No. 2015-49 recommending approval of Conditional Use Permit #2015-11 to the Los Banos City Council for the on-sale of beer for Aqua Entertainment Center located at 923 W. Pacheco Boulevard.

ATTACHMENTS:

1. Resolution 2015-49
 - Exhibit A CEQA Findings
 - Exhibit B Project Findings
 - Exhibit C Conditions of Approval
2. Floor Plan
3. Site Photos
4. Public Hearing Notice – November 27, 2015

RESOLUTION NO. 2015-49

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS BANOS RECOMMENDING APPROVAL OF CONDITIONAL USE PERMIT #2015-11 TO THE LOS BANOS CITY COUNCIL FOR THE ON-SALE OF BEER FOR AQUA ENTERTAINMENT CENTER LOCATED AT 923 WEST PACHECO BOULEVARD

WHEREAS, the applicant, Kuon Chen Liao (Aqua Entertainment Center), has requested that the City of Los Banos consider a Conditional Use Permit to allow the use of a Type 40 alcohol license for the on-sale of beer for Aqua Entertainment Center located at 923 W. Pacheco Blvd., more specifically identified as Assessor's Parcel Number: 431-020-002; and

WHEREAS, a public hearing notice was published in the Los Banos Enterprise on November 27, 2015 and notices were mailed to property owners within a 300 foot radius of the project site as required by the Los Banos Municipal Code and Government Code Section 65091; and

WHEREAS, the Los Banos Planning Commission has held a public hearing, reviewed said Conditional Use Permit request and staff report, has studied the compatibility of the applicant's request with adjacent land uses and has considered this request in accordance with the Conditional Use Permit criteria established in Section 9-3.2322 of the Los Banos Municipal Code; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) and the City of Los Banos Environmental Quality Guidelines, Conditional Use Permit #2015-11 for Aqua Entertainment Center was determined to be categorically exempt from the provisions of CEQA per Article 19, Section 15301 as the project site is an existing facility; and

WHEREAS, the request/proposed use satisfies the criteria of the Los Banos Municipal Code.

BASED UPON THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, the Planning Commission of the City of Los Banos hereby makes the appropriate findings set forth in Exhibit A (California Environmental Quality Act (CEQA) Findings), and Exhibit B (Findings for Approval), attached hereto and incorporated herein by this reference.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Los Banos does hereby recommend the approval of Conditional Use

Permit #2015-11 to the Los Banos City Council to allow the on-sale of beer in conjunction with an ABC License, Type 40, on-sale beer for Aqua Entertainment Center located at 923 W. Pacheco Blvd., more specifically identified as Assessor's Parcel Number: 431-020-002, subject to the Conditions of Approval set forth in Exhibit C, attached hereto and incorporated herein by this reference.

The foregoing resolution was introduced at a regular meeting of the Planning Commission of the City of Los Banos held on the 9th day of December 2015 by Planning Commissioner _____ who moved its adoption, which motion was duly seconded by Planning Commissioner _____, and the Resolution adopted by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

Tom Spada, Planning Commission Chairman

ATTEST:

Sandra Benetti, Planning Commission Secretary

EXHIBIT A

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS CONDITIONAL USE PERMIT #2015-11 – AQUA ENTERTAINMENT CENTER

Pursuant to the requirements of California Public Resources Code Section 21000 et seq. ("CEQA") and Title 14, California Code of Regulations Section 15000 et seq. (the "CEQA Guidelines"), the City as Lead Agency under CEQA adopts the following findings required by CEQA, along with the facts and evidence upon which each finding is based.

The City of Los Banos Planning Commission hereby finds as follows:

1. Pursuant to CEQA, the CEQA Guidelines, and the City of Los Banos Environmental Quality Guidelines, Conditional Use Permit #2015-11 was evaluated and determined to be categorically exempt per Article 19, Section 15301 as the request for the on-sale of beer involves the permitting and licensing of an existing private structure and involves no expansion at 923 W. Pacheco Blvd.
2. Conditional Use Permit #2015-11 was adequately noticed on November 27, 2015 for consideration at a public meeting on December 9, 2015.
3. No further environmental documentation is required as the Conditional Use Permit was contemplated and adequately analyzed in the initial review.
4. Prior to considering the proposed Project, the Planning Commission considered the Categorical Exemption.

EXHIBIT B

FINDINGS FOR APPROVAL OF CONDITIONAL USE PERMIT #2015-11 – AQUA ENTERTAINMENT CENTER

A. General Findings

1. That the proposed use and project is consistent with the City of Los Banos general plan, and the Los Banos Municipal Code.

The existing General Plan land use designation for the project site is Commercial, which permits large-scale commercial developments that serve both residents, visitors, and the surrounding region. The proposed use and project is consistent with the purpose of the Commercial designation because the entertainment center will provide recreational entertainment to residents, visitors, and surrounding region.

The following specific General Plan Goals, Objectives, and Policies are applicable to the proposed project:

ECONOMIC DEVELOPMENT POLICY ED-G-1:

Help create jobs and improve job quality for existing and future Los Banos residents.

ECONOMIC DEVELOPMENT POLICY ED-G-7:

Seek and promote particular businesses or economic opportunities that provide needed local goods, services, employment, or those that enhance the City's physical and social well being.

LAND USE POLICY LU-G-10:

Foster viable, pedestrian-oriented neighborhood centers and strong, visually attractive regional commercial centers with a mix of tenants to serve both local and regional needs.

LAND USE POLICY LU-G-12:

Provide appropriately located areas for a broad range of employment generating uses to strengthen the City's economic base and provide employment opportunities for residents.

Evidence/Analysis: The proposed entertainment center would provide recreational activities for local residents as well as the surrounding region such as bowling, laser tag, and arcades. The facility will be providing family entertainment that will not enhance the community and provide a source of entertainment not otherwise available in the community. The proposed project will create

employment opportunities for various ranges of employees searching for entry level positions to management positions. The proposed sale of beer would expand an existing regional entertainment use that is compatible with and complementary of existing commercial uses at the site. In addition, the project would also be consistent with General Plan land use policies as set forth above.

2. That the proposed use or project will not be a nuisance or detrimental to the public health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use.

Evidence/Analysis: The proposed use will be conducted within the San Luis Shopping Center and will not result in significant operational changes to the existing commercial area. The areas function and character is Commercial, which includes uses that serve alcohol. The project would include conditions of approval which regulate the operational characteristics of allowing the serving of alcohol and are intended to preserve the public health, safety, or welfare of persons and property in the vicinity.

3. That the proposed use is compatible with the adjacent uses, properties, and neighborhoods and will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

Evidence/Analysis: The proposed use will be conducted within the San Luis Shopping Center, which is intended to be developed with entertainment type uses, including establishments serving alcohol, and will not result in significant operational changes to the existing commercial area. The proposed conditions of approval would ensure consistency with other uses in the shopping center and promote compatibility.

B. Specific Findings

1. That the proposal will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable with consideration given to the area's function and character, problems of crime and loitering, and traffic problems and capacity.

Evidence/Analysis: As reflected in the staff report, the number of on-sale licenses in the Census Tract is currently nine (9). The census tract stretches along Pacheco Boulevard from the west boundaries of the City to Mercey Springs Road. The census tract area and function is primarily commercial in nature which allows for

the sale and serving of alcohol. The addition of one more license will not contribute to the undue proliferation of alcohol sales in the area. The proposed sale of beer would expand an existing regional entertainment use that is compatible with and complementary of existing commercial uses at the site. The project would include conditions of approval which regulate the operational characteristics of allowing the serving of alcohol and are intended to preserve the public health, safety, or welfare of persons and property in the vicinity including crime prevention and loitering.

2. That the proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds.

Evidence/Analysis: There are two (2) churches within the San Luis Shopping Center. The project would include conditions of approval which regulate the operational characteristics of allowing the serving of alcohol and are intended to preserve the public health, safety, or welfare of persons and property in the vicinity. The proposal will not adversely affect these churches as alcohol will not be consumed outside of the premises and is not the primary use of the premises.

3. That the proposal will not interfere with the movement of people along an important pedestrian street.

Evidence/Analysis: The serving and consumption of alcohol will only be allowed inside the premises. The location of the proposed use is not near an important pedestrian street.

4. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, the use will be limited in hours of operation, or designed operated so as to avoid the disruption of residents' sleep between the hours of 10:00 p.m. and 7:00 a.m.

Evidence/Analysis: The serving and consumption of alcohol will be only inside the premises and is not allowed outside of the premises per the conditions of approval and City ordinance. The nearest residential window is located more than 100 feet away from the front entrance to the facility. The entertainment center will be subject to the Los Banos Municipal Code Noise Ordinance. The project will include conditions of approval which regulate the operational characteristics of allowing the serving of alcohol and are intended to preserve the public health, safety, or welfare of persons and property in the vicinity.

EXHIBIT C

CONDITIONS OF APPROVAL FOR CONDITIONAL USE PERMIT #2015-11 – AQUA ENTERTAINMENT CENTER

Planning:

1. The following conditions of approval shall apply to and be applicable to the applicant, property owner, and/or operator. Reference to applicant, property owner, and/or operator shall be interpreted to include all. These conditions shall run with the land and shall survive the issuance of an occupancy permit.
2. Conditional Use Permit 2015-11 is for Aqua Entertainment Center located at 923 W. Pacheco Blvd.; more specifically identified as Assessor's Parcel Number: 431-020-002 and the requested use shall expire after one (1) year from date of approval by the Los Banos City Council unless implemented. The City for cause may revoke this Conditional Use Permit. Any expansion, intensification, or changes to the uses approved under this Conditional Use Permit shall be permitted only upon modification of this Conditional Use Permit or approval of a separate Conditional Use Permit application.
3. The applicant/operator shall comply with all other requirements, laws and policies of other governmental agencies in the conduct and operation of said business. The applicant/operator shall comply with the conditions of approval of related project permits and approvals.
4. The applicant/operator shall obtain and maintain an active Type 40 "On-Sale Beer" license as defined by the Department of Alcoholic Beverage Control and shall provide a copy of said license upon issuance by the Alcoholic Beverage Control to the Community Development Department prior to the sale of alcohol on the premises. The approval of this conditional use permit shall allow only the on sale of beer. The applicant shall be required to comply with all regulations of the Department of Alcoholic Beverage Control.
5. A copy of these Conditions of Approval and the California Department of Alcoholic Beverage Control license are required to be kept on the premises and presented to any law enforcement officer or authorized City official upon request.
6. The applicant/operator shall be responsible for maintaining the property free of litter at all times in the parking lot area and the areas adjacent to the premises over which they have control.

7. The Planning Commission shall have the right to review and/or revoke this permit should the applicant not adhere to the Conditions of Approval. The City may amend or impose new conditions to mitigate adverse affects in the neighborhood resulting from the use of alcohol on the premises.
8. The applicant/operator agrees to indemnify, hold harmless, and defend the City of Los Banos, its officers, agents and employees from any and all liability or claims that may be brought against the City of Los Banos arising out of its approval of this permit, or the environmental determination rendered in connection with the permit approval, or arising out of the operation of the use or uses allowed under the permit, save and except that caused solely by the City's active negligence.
9. The exterior of the premises, including adjacent public sidewalks and the parking lot areas, shall be illuminated during all hours of darkness when the premises are open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel.
10. The premises shall be operated primarily as a recreational/entertainment center as described in the application prepared by the applicant and filed with the Community and Economic Development Department. Any substantial or significant changes in use or operation of the premises from the Operational Statement may cause a review, amendment or revocation of the Conditional Use Permit. The onsite consumption and sale of beer shall be ancillary to the primary use as an entertainment center. The sale and consumption of beer shall cease at 9:30 p.m. Sunday thru Thursday and 12:30 a.m. Friday thru Saturday.
11. The use of the premises of the subject site shall be consistent with the Conditions of Approval and shall not be operated in a manner that deviates from the approved Conditional Use Permit filed application and operational statement, which shall constitute a violation and may result in the revocation or modification of the permit upon written notice to the owner of the subject site.
12. Authorization of a Conditional Use Permit granted pursuant to the provisions of Section 9-3.2322 of the Los Banos Municipal Code shall run with the land and shall continue to be valid upon change of ownership of the site or structure which was the subject of the Conditional Use Permit application provided the use shall be subject to all provisions of the Municipal Code and all conditions placed on approval of the Conditional Use Permit are continually met.

13. This Conditional Use Permit shall be subject to revocation by the Community and Economic Development Director or the Planning Commission upon a finding that:
 - a. Conditions of approval have not been fulfilled;
 - b. A significant change or intensification of the approved use;
 - c. The use has resulted in a nuisance or detriment to the public health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
14. Alcohol shall be prohibited at all times within the laser tag room and arcade room.
15. No loud amplification of music or voice is allowed outside.
16. All activities shall take place in the interior tenant space.
17. The Los Banos Police Department shall be notified of any promotional events expected to increase the number of patrons beyond the normal business operation and has the authority to require private security officers.



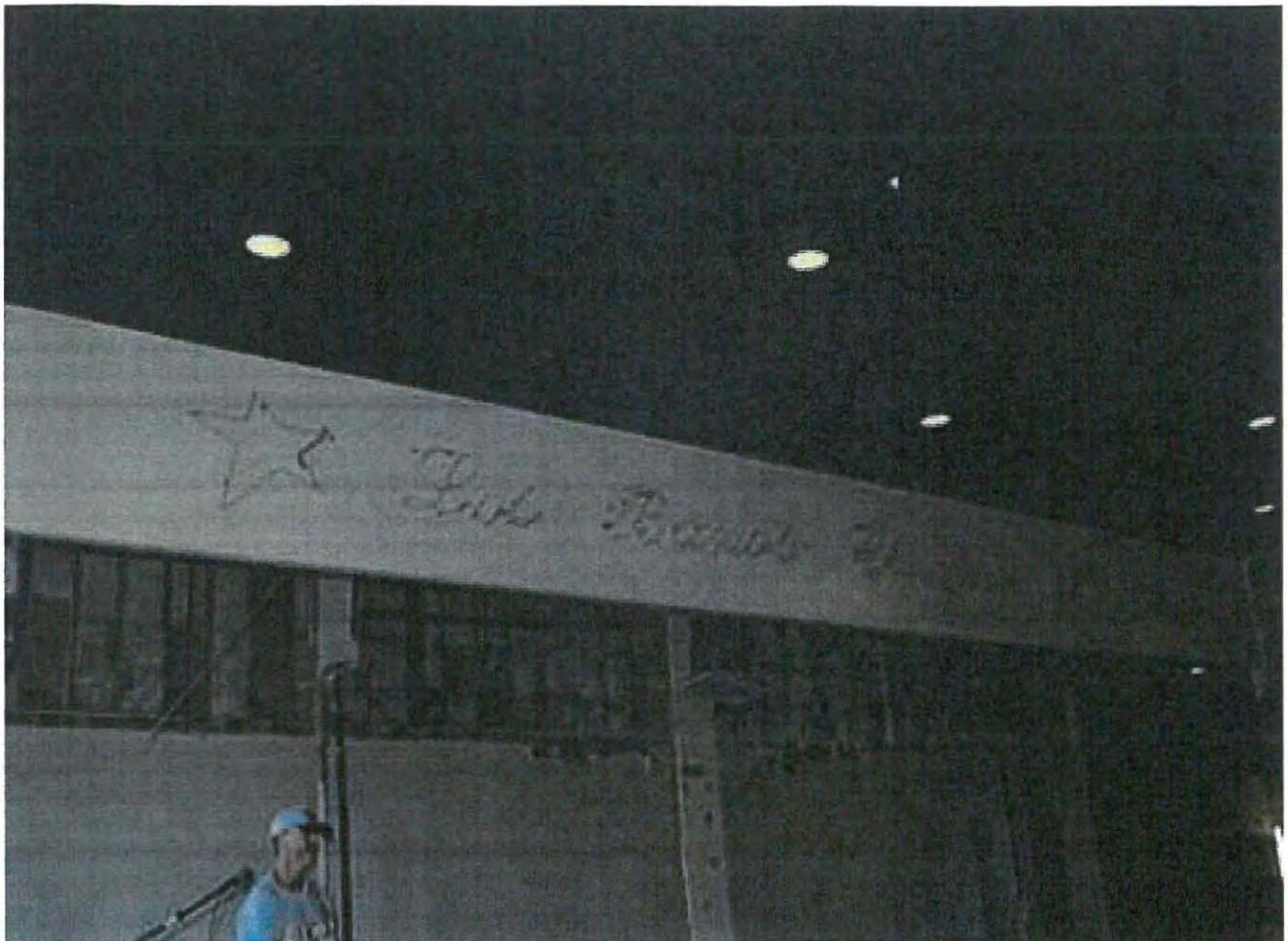
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City of
Los Banos
At the Crossroads of California

**COMMUNITY AND ECONOMIC
DEVELOPMENT DEPARTMENT**

Date: November 27, 2015

Regarding: Notice of Public Hearing

Proposal: Conditional Use Permit #2015-11 – Type 40 Alcohol License

NOTICE IS HEREBY GIVEN THAT a Public Hearing will be held by the Los Banos Planning Commission to consider a Conditional Use Permit to allow the use of a Type 40 Alcohol License for the on-sale of beer in conjunction with the availability of snacks. The requested Conditional Use Permit is for Aqua Entertainment Center located at 923 W. Pacheco Boulevard, more specifically described as Assessor's Parcel Number: 431-020-002.

A PUBLIC HEARING on this matter will be held at the next scheduled meeting of the Los Banos Planning Commission on Wednesday, December 9, 2015 at 7:00 p.m. in the Council Chambers of Los Banos City Hall located at 520 J Street.

All persons are invited to be present at the public hearing. Written and oral testimony is invited. Notice is hereby further given that if you challenge the above described Ordinance 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.

Additional information may be obtained from Community & Economic Development Department at 520 J Street, Los Banos, California. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (209) 827-7000. Notification at least 72 hours prior to the public hearing will enable the City to make reasonable arrangements to allow participation at this hearing

THE CITY OF LOS BANOS

Sandra Benetti
Planning Technician