

RESOLUTION NO. 12-115

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
APPROVING PLANNED DEVELOPMENT 12-001 & CONDITIONAL USE PERMIT 12-003
(Ayres Paso Robles, LTD.)
APN: 025-391-014

WHEREAS, PD 12-001 & CUP 12-003 have been submitted by Doug Ayres on behalf of Ayres Paso Robles, LTD. to establish a 225 room resort hotel; and

WHEREAS, the resort would also include a wellness/spa facility, conference room, restaurant, extended stay units (included in the 225 rooms proposed), wine tasting/retail boutique, and ancillary parking, gardens, orchards and vineyards; and

WHEREAS, the project is proposed to be located on the 20-acre site at the northeast corner of Buena Vista Drive and Experimental Station Road; and

WHEREAS, the project entitlements needed to establish the project include the following:

General Plan Amendment: to change the existing RMF-8 (Residential Multi-Family, 8-units per acre) to Parks and Open Space (POS) with a Resort Lodging Overlay (R/L) land use designation;

Rezone: to change the existing R2 (Residential Multi-Family duplex/triplex) zoning designation to Parks and Open Space (POS) with a Resort Lodging Overlay (R/L) zoning;

Specific Plan Amendment: to amend the Borkey Area Specific Plan to allow for the project that introduces a different land use than originally proposed by the plan and adopt a new rural street standard for Experimental Station Road; and

Development Plan: development plan to review the project site planning, architectural design and details, mixture of land uses, and landscaping;

Conditional Use Permit: to allow for resort hotels in the POS zoning district, and to exceed the applicable height limitations;

Tentative Parcel Map: requested by the applicant to create separate parcels for the wine tasting retail building and the wellness center from the resort hotel parcel;

Street Abandonment: request to abandon an unused portion of Experimental Station Road, at its intersection with Buena Vista Drive.

WHEREAS, a public hearing was conducted by the Planning Commission on June 26, 2012, to consider facts as presented in the staff report prepared for this project, and to accept public testimony regarding this proposed Development Plan, Conditional Use Permit, General Plan Amendment, Rezone, Specific Plan Amendment, Tentative Parcel Map, and associated Mitigated Negative Declaration; and

WHEREAS, on June 26, 2012, the Planning Commission recommended that the City Council approve the PD 12-001, and CUP 12-003, and associated Mitigated Negative Declaration with changes to Conditions 1, 11 & 15 as noted in this resolution; and

WHEREAS, a public hearing was conducted by the City Council on July 17, 2012, to consider facts as presented in the staff report prepared for this project, and to accept public testimony regarding this proposed development plan, rezone and associated Mitigated Negative Declaration; and

WHEREAS, a resolution was adopted by the City Council approving a Mitigated Negative Declaration status for this project, and a Mitigated Negative Declaration was prepared for the proposed Planned Development and Rezone applications in accordance with the California Environmental Quality Act; and

WHEREAS, based upon the facts and analysis presented in the staff report and the attachments thereto, the public testimony received, and subject to the Conditions of Approval listed below, the City Council makes the following findings:

Section 1. Findings

In accordance with Sections 21.23.250 and 21.23B.050 of the Zoning Code, based on facts and analysis set forth in the staff report for this item, and taking into consideration comments received from the public and/or other governmental agencies having purview in the subject development plan and conditional use permit applications, the City Council hereby makes the following findings:

- a. The design and intensity (density of the proposed development is consistent with the following):
 1. The goals and policies established by the General Plan;
 - a. *With the approval of the General Plan Amendment, the project site will be located in the Parks and Open Space Land Use Category. The purpose of this land use category includes provision of sites for recreation and resort uses.*
 - b. *The project is designed to maximize protection of oaks and biological resources as called for in Policies C-3A and C-3B of the Conservation Element. No oak trees are proposed to be removed with this project. Additionally, Condition #BR-6 of this Resolution requires mitigation of impacts to Kit Fox habitat.*
 - c. *Condition # 11, will require construction of pedestrian paths (sidewalks) and Condition # AQ-1 requires incorporation of air quality mitigation measures, which will implement Policies C-2-B and C-2C of the Conservation Element.*
 2. The policies and development standards established by any applicable specific plan;
 - a. *The proposed resort project is consistent with several of the 14 goals for the Borkey Area Specific Plan listed in Chapter 3.*
 3. The Zoning Code, particularly the purpose and intent of the zoning district in which a development project is located;
 - a. *With the approval of the proposed Rezone, the project site will be located in the Parks and Open Space (POS) Zone. Hotels/Motels are subject to approval of a Conditional Use Permit (CUP) in the POS Zone. The purpose of a CUP is to enable the City to impose conditions to ensure that land uses will be compatible with neighboring properties and implement City codes and policies.*
 4. All other adopted codes, policies, standards, and plans of the City;
 - a. *This resolution contains several conditions designed to implement the Municipal Code, City State, and Regional governmental policies, regulations and adopted standards related to public infrastructure (e.g., streets, water, sewer, storm drainage), building and fire safety, general public safety.*
 - b. *The project expands the City's inventory of transient lodgings, which advances the following policies in the 2006 Economic Strategy*

(1) The overall policy pertaining to "Place", which calls for the establishment of "distinctive, quality, stable, safe and sustainable physical improvements and attractions that welcome ... commerce, tourism, ... and wealth necessary to maintain and enhance quality of life."

(2) The "Positioning" policy, which calls for the promotion of local industry, products, services and destinations via expansion and diversification of hotel products, including end destination full-service resorts;

- b. The Ayres Resort Hotel, is consistent with the adopted codes, policies, standards and plans of the City; since the project has gone through the development review process including, environmental review and the processing of a Conditional Use Permit as required by Table 21.16.200 for recreational parks in the Parks and Open Space zoning districts; and
- c. The Ayres Resort Hotel, will not be detrimental to the health, safety, morals, comfort, convenience and general welfare of the residents and or businesses in the surrounding area, or be injurious or detrimental to property and improvements in the neighborhood or to the general welfare of the City; since the project will be required to comply with the recommended conditions of approval, including any environmental mitigation measures, and comply with any building and fire codes; and
- d. The Ayres Resort Hotel accommodates the aesthetic quality of the City as a whole, especially where development will be visible from the gateways to the City, scenic corridors and the public right-of-way; in this particular case, the project site is not located in a City gateway area or a scenic corridor and has minimal frontage to the public street, however, based on the project being designed to fit the subject site and based on the site plan, architecture and landscaping, the proposed development will accommodate the aesthetic quality of the City as a whole; and
- e. The Ayres Resort Hotel is compatible with, and is not detrimental to, surrounding land uses and improvements, provides an appropriate visual appearance, and contributes to the mitigation of any environmental and social impacts, because the project has been designed to provide significant buffers, including setbacks, and landscaping from the residential properties to the south and east, and additionally as a result of the site planning, building architecture and environmental mitigation, and included with this project.
- f. The Ayres Resort Hotel is compatible with existing scenic and environmental resources such as hillsides, oak trees, vistas, etc. as a result of the project being designed to limit the amount of grading and oak tree impacts by developing in the flatter areas of the site, which allows for the preservation of the existing hillsides and oak trees; and
- g. The establishment, maintenance or operation of the Ayres Resort Hotel, will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort, convenience and general welfare of the persons residing or working in the neighborhood of such proposed use, since the project has gone through the development review process including, environmental review and the processing of a Conditional Use Permit as required by Table 21.16.200 for resort hotels in the POS zoning districts; and
- h. The Ayres Resort Hotel contributes to the orderly development of the City as a whole, since the project will utilize the existing infrastructure in Buena Vista and Experimental Station Roads, consisting of sewer water and other utilities; and
- i. The Ayres Resort Hotel as conditioned would meet the intent of the General Plan and Zoning Ordinance by providing a transient occupancy/resort type use in close proximity to golf courses and commercial recreation.

- j. The Ayres Resort Hotel would be consistent with the Economic Strategy, since it would allow for the expansion and diversification of transient occupancy projects, by providing an end-destination full-service resort.
- k. The 70-foot height limit would be acceptable in the POS zoning district based on the 70-foot tower element being proportional with the rest of the building, and based on the 20-acre site size in relation to the building.

Section 2. Conditions of Approval

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of El Paso de Robles approves Planned Development 12-001 & Conditional Use Permit 12-003 subject to the following conditions:

PLANNING:

- 1. This PD 12-001 along with CUP 12-003 allows for the development of the 20-acre site into a 225 room resort that would include a 179 room hotel, 20 villa units, 36 extended stay units, wellness/spa facility, conference room, restaurant, wine tasting/retail boutique, and ancillary parking, gardens, orchards and vineyards. The tower of the hotel may be 60-feet tall only if the hotel building is three stories. If the hotel is only two stories, the tower design must return to the Development Review Committee for approval.
- 2. The project is proposed to be developed in 4 phases. In the event that the applicant wishes to change the phasing order, after verification from the City Engineer that there are no concerns, the Development Review Committee (DRC) may approve the phasing change request.
- 3. The project shall be constructed in substantial conformance with the Conditions of Approval established by this Resolution and it shall be constructed in substantial conformance with the following Exhibits:

EXHIBIT	DESCRIPTION
A	Standard Conditions
B	Title Sheet – Project Data
C	Architectural Site Plan
D	Hotel Lower Floor Plan
E	Hotel Upper Floor Plan
F	Villas Lower & Upper Floor Plans, Hotel South Elev., Wine Taste West Elev., & Extended Stay East Elev.
G	Hotel West and North Elevations, Villas North Elevation
H	Hotel South Elevation (Third Floor Plan Option)
I	Wellness, Wine Tasting & Extended Stay Floor Plans & Elevations
J	Color/Materials Board
K	Tentative Parcel Map
L	Preliminary Grading & Drainage
M	Preliminary Underground Plan
N	Site Cross Sections
O	Conceptual Landscape Plan
P	Landscape Concept Plan
Q	Signage Plan

4. The maximum length of stay for any resort room, including the hotel, villa rooms and extended-stay rooms is 30 consecutive days.
5. Approval of this PD/CUP does not preclude the property owner from applying for independent Temporary Use Permit(s) for special events/activities that would be outside of the general scope of this CUP approval. Any approval of such a TUP would be subject to an independent set of conditions as deemed necessary, per Chapter 21.23C of the Municipal Code (Temporary Use Permits).
6. Prior to the issuance of a building permit, the Development Review Committee (DRC) shall review the following items to insure substantial compliance with the above listed Exhibits:
 - Final site details such as landscaping, decorative paving, benches, exterior lighting and any other site planning details;
 - Architectural elevations, including final materials, colors and details;
 - Equipment such as back flow devices, transformers, a/c condensers and appropriate screening methods for both views and noise. Back flow and double check-valves shall not be visible from Buena Vista Drive or Experimental Station Road;
 - Final grading and drainage plans.
 - Signage
7. The project landscape plan is subject to the requirements within the City's Landscape Ordinance. Since the landscape area is over 1 acre, a Landscape Documentation Package (LDP) is required to be submitted to the City prior to the issuance of a Building Permit.
8. All on-site operations shall be in conformance with the City's performance standards contained in Section 21.21.040 and as listed below:
 - a. Fire and Explosion Hazards. All activities involving, and all storage of, inflammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion and adequate firefighting and fire-suppression equipment and devices standard in industry and as approved by the fire department. All incineration is prohibited.
 - b. Radioactivity or Electrical Disturbance. Devices that radiate radio-frequency energy shall be so operated as not to cause interference with any activity carried on beyond the boundary line of the property upon which the device is located. Further, no radiation of any kind shall be emitted which is dangerous to humans. All radio transmissions shall occur in full compliance with Federal Communications Commission (FCC) and other applicable regulations.
 - c. Noise. No land use shall increase the ambient noise level as measured at the nearest residentially zoned property line to a level that constitutes a public nuisance.
 - d. Vibration. No vibrations shall be permitted so as to cause a noticeable tremor measurable without instruments at the lot line.
 - e. Smoke. Except for fireplaces and barbecues, no emission shall be permitted at any point from any chimney which would constitute a violation of standards established by the San Luis Obispo County Air Pollution Control District (APCD).
 - f. Odors. Except for fireplaces and barbecues, no emission shall be permitted of odorous gases or other odorous matter in such quantities as to constitute a public nuisance.
 - g. Fly Ash, Dust, Fumes, Vapors, Gases and Other Forms of Air Pollution. No emission shall be permitted which can cause damage to health, animals, vegetations or other forms of property, or

which can cause any excessive soiling at any point. No emissions shall be permitted in excess of the standards established by the San Luis Obispo County Air Pollution Control District (APCD).

- h. Glare. No direct glare, whether produced by floodlight, high-temperature processes such as combustion or welding or other processes, so as to be visible from any boundary line of the property on which the same is produced shall be permitted. Sky-reflected glare from buildings or portions thereof shall be so controlled by reasonable means as are practical to the end that said sky-reflected glare will not inconvenience or annoy persons or interfere with the use and enjoyment of property in and about the area where it occurs.
 - i. Liquid or Solid Wastes. No discharge shall be permitted at any point into any public sewer, private sewage disposal system or stream, or into the ground, of any materials of such nature or temperature as can contaminate any water supply, interfere with bacterial processes in sewage treatment, or otherwise cause the emission of dangerous or offensive elements, except in accord with standards approved by the California Department of Health or such other governmental agency as shall have jurisdiction over such activities. Manufacturing, processing, treatment and other activities involving use of toxic or hazardous materials shall be designed to incorporate the best available control technologies and wherever technically feasible shall employ a "closed loop" system of containment.
 - j. Transportation Systems Impacts. Vehicular, bikeway and/or pedestrian traffic, directly attributable to the proposed land use, shall not increase to a significant extent without implementation of adequate mitigation measures in a form to be approved by the city engineer. In determining significance of impacts, consideration shall be given to cumulative (projected build-out) capacity of streets and highways serving the land use. Mitigation measures required may include but not be limited to curb, gutter, sidewalk, street and/or alley, bikeway, transit related improvements and traffic signalization. Mitigation may be required as pursuant to the California Environmental Quality Act (CEQA), or as a condition of a discretionary review. (Ord. 665 N.S. § 28, 1993; (Ord. 405 N.S. § 2 (part), 1977)
9. Any condition imposed by the Planning Commission in granting this Conditional Use Permit may be modified or eliminated, or new conditions may be added, provided that the Planning Commission shall first conduct a public hearing in the same manner as required for the granting of the original permit. No such modification shall be made unless the Commission finds that such modification is necessary to protect the public interest and/or neighboring properties, or, in the case of deletion of an existing condition, that such action is necessary to permit reasonable operation and use under the Conditional Use Permit.

ENGINEERING:

- 10. Prior to occupancy of Phase I, Experimental Station Road shall be improved to comply with minimum Fire Code standards and a modified Borkey Area Standard as requested by the applicant along the frontage of the project in accordance with plans approved by the City Engineer.
- 11. Prior to occupancy of Phase I, Buena Vista Drive shall be improved with curb, gutter, sidewalk and bikeway along the frontage of the project. The sidewalk and bikeway shall be extended to Dallons Drive only be required if the City executes a reimbursement agreement or development agreement under which the applicant will be reimbursed for doing such work beyond his property. All improvements shall be constructed in accordance with plans approved by the City Engineer.
- 12. All existing overhead utility lines along Buena Vista Drive shall be relocated underground across the frontage of the project.

13. Low impact development best management practices as outlined in the project submittals shall be incorporated into the project grading plans and shall meet design criteria adopted by the City in effect at the time of development of the project.
14. The project will be subject to traffic impact and other development impact fees in effect at the time of occupancy of the project.
15. The project shall be served by City water including the ten acres of orchard and vineyard. In the event that additional sources of water become available in the future that are appropriate and approved by the City Council, those sources may be substituted for the municipal water. The orchard and vineyard shall be irrigated with recycled water provided by the City when available providing that the recycled water is of a quality legally suitable for the irrigation of organics crops to be consumed by humans.
16. Borkey Specific Plan fees shall be provided as outlined in the applicant's submittal package.

Section 3. Environmental Mitigation Measures

Air Quality:

- AQ-1 Projects with grading areas that are greater than 4-acres or are within 1,000 feet of any sensitive receptor shall implement the following mitigation measures to manage fugitive dust emissions such that they do not exceed the APCD 20% opacity limit (APCD Rule 401) and do not impact off-site areas prompting nuisance violations (APCD Rule 402):
- a. Reduce the amount of the disturbed area where possible;
 - b. Use of water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency would be required whenever wind speeds exceed 15 mph. Reclaimed (non-potable) water should be used whenever possible;
 - c. All dirt stock pile areas should be sprayed daily as needed;
 - d. Permanent dust control measures identified in the approved project revegetation and landscape plans should be implemented as soon as possible, following completion of any soil disturbing activities;
 - e. Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading should be sown with a fast germinating, non-invasive, grass seed and watered until vegetation is established;
 - f. All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by the APCD;
 - g. All roadways, driveways, sidewalks, etc. to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used;
 - h. Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site;
 - i. All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet of freeboard (minimum vertical distance between top of load and top of trailer) in accordance with CVC Section 23114;
 - j. Install wheel washers where vehicles enter and exit unpaved roads onto streets, or wash off trucks and equipment leaving the site;
 - k. Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible;

- l. All PM₁₀ mitigation measures required should be shown on grading and building plans; and,
- m. The contractor or builder shall designate a person or persons to monitor the fugitive dust emissions and enhance the implementation of the measures as necessary to minimize dust complaints, reduce visible emissions below 20% opacity, and to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the APCD Compliance Division prior to the start of any grading, earthwork or demolition.

AQ-2 The standard mitigation measures for reducing nitrogen oxides (NO_x), reactive organic gases (ROG), and diesel particulate matter (DPM) emissions from construction equipment are listed below (SLOCAPCD 2009):

- a. Maintain all construction equipment in proper tune according to manufacturer's specifications;
- b. Fuel all off-road and portable diesel powered equipment with CARB-certified motor vehicle diesel fuel (non-taxed version suitable for use off-road);
- c. Use diesel construction equipment meeting CARB's Tier 2 certified engines or cleaner off-road heavy-duty diesel engines, and comply with the State off-Road Regulation (CCR Title 13, Article 4.8, Chapter 9, Section 2449);
- d. Use on-road heavy-duty trucks that meet the CARB's 2007 or cleaner certification standard for on-road heavy-duty diesel engines, and comply with the State On-Road Regulation (CCR Title 13, Article 4.8, Chapter 9, Section 2449);
- e. Construction or trucking companies with fleets that do not have engines in their fleet that meet the engine standards identified in the above two measures (e.g. captive or NOx exempt area fleets) may be eligible by proving alternative compliance;
- f. All on and off-road diesel equipment shall not idle for more than 5 minutes. Signs shall be posted in the designated queuing areas and or job sites to remind drivers and operators of the 5 minute idling limit;
- g. Diesel idling within 1,000 feet of sensitive receptors is not permitted;
- h. Staging and queuing areas shall not be located within 1,000 feet of sensitive receptors;
- i. Electrify equipment when feasible;
- j. Substitute gasoline-powered in place of diesel-powered equipment, where feasible; and,
- k. Use alternatively fueled construction equipment on-site where feasible, such as compressed natural gas (CNG), liquefied natural gas (LNG), propane or biodiesel.
- l. In addition to the above SLOCAPCD recommended mitigation measures, the following additional mitigation measures shall also be implemented:
- m. To the extent practical, reuse and recycle construction waste (including, but not limited to, soil, vegetation, concrete, lumber, metal, and cardboard.
- n. If site preparation and grading activities are to occur during the same calendar quarter, a minimum of ten percent of diesel-powered heavy-duty (i.e., 50 hp or greater) offroad equipment shall meet CARB's Tier 3, or cleaner, certified engine standards.

AQ-3 Construction Phase Idling Limitations

Again, this project is in close proximity to nearby sensitive receptors (Cuesta College and adjacent residences). Projects that will have diesel powered construction activity in close proximity to any sensitive receptor shall implement the following mitigation measures to ensure that public health benefits are realized by reducing toxic risk from diesel emissions:

To help reduce sensitive receptor emissions impact of diesel vehicles and equipment used to construct the project, the applicant shall implement the following idling control techniques:

1. California Diesel Idling Regulations

- a. *On-road diesel vehicles* shall comply with Section 2485 of Title 13 of the California Code of Regulations. This regulation limits idling from diesel-fueled commercial motor vehicles with gross vehicular weight ratings of more than 10,000 pounds and licensed for operation on highways. It applies to California and non-California based vehicles. In general, the regulation specifies that drivers of said vehicles:
 1. Shall not idle the vehicle's primary diesel engine for greater than 5 minutes at any location, except as noted in Subsection (d) of the regulation; and,
 2. Shall not operate a diesel-fueled auxiliary power system (APS) to power a heater, air conditioner, or any ancillary equipment on that vehicle during sleeping or resting in a sleeper berth for greater than 5.0 minutes at any location when within 1,000 feet of a restricted area, except as noted in Subsection (d) of the regulation.
- b. *Off-road diesel equipment* shall comply with the 5 minute idling restriction identified in Section 2449(d)(2) of the California Air Resources Board's In-Use off-Road Diesel regulation.
- c. Signs must be posted in the designated queuing areas and job sites to remind drivers and operators of the state's 5 minute idling limit.
- d. The specific requirements and exceptions in the regulations can be reviewed at the following web sites: www.arb.ca.gov/msprog/truck-idling/2485.pdf and www.arb.ca.gov/regact/2007/ordiesl07/frooal.pdf.

2. Diesel Idling Restrictions Near Sensitive Receptors (i.e. the adjacent residential dwelling units)

In addition to the State required diesel idling requirements, the project applicant shall comply with these more restrictive requirements to minimize impacts to nearby sensitive receptors:

- a. Staging and queuing areas shall not be located within 1,000 feet of sensitive receptors;
- b. Diesel idling within 1,000 feet of sensitive receptors shall not be permitted;
- c. Use of alternative fueled equipment is recommended; and
- d. Signs that specify the no idling areas must be posted and enforced at the site.

AQ-4 Truck Routing

Any proposed construction truck routes should be evaluated and selected to ensure routing patterns have the least impact to residential dwellings and other sensitive receptors, such as schools, parks, day care centers, nursing homes, and hospitals. If the project has significant truck trips where hauling/truck trips are routine activity and operate in close proximity to sensitive receptors, toxic risk needs to be evaluated.

AQ-5 Construction Mitigation Efficacy

The Initial Study completed an analysis of potential construction phase emission impacts based on default settings in the CalEEMod model for building the project. The results demonstrated that the project could exceed the quarterly ozone precursor threshold of 2.5 tons of reactive organic gases and nitrogen oxides per quarter. To the extent practical, reuse and recycle construction waste (including, but not limited to soil, vegetation, concrete, lumber, metal, and cardboard. Prior to the issuance of grading permits, the applicant will need to demonstrate through updated modeling that

the actual construction fleet that is secured will not exceed the construction phase thresholds when the construction mitigation is implemented. Should the actual fleet exceed any threshold, then phasing changes or other mitigation shall be proposed and approved by the APCD such that the project will be below the construction phase air quality thresholds of significance of 2.5 tons/quarter ROG+NOx.

Biological Resources:

- BR-1: Within one week of ground disturbance activities, if work occurs between March 15 and August 15, nesting bird surveys shall be conducted. If surveys do not locate nesting birds, construction activities may be conducted. If nesting birds are located, no construction activities shall occur within 100 feet of nests until chicks are fledged. A pre-construction survey report shall be submitted to the lead agency immediately upon completion of the survey. The report shall detail appropriate fencing or flagging of the buffer zone and make recommendations on additional monitoring requirements. A map of the project site and nest locations shall be included with the report.
- BR-2 Occupied burrows or nests of special status species shall be mapped using GPS or survey equipment. Work shall not be allowed within 100 foot buffer while nests are in use. The buffer zone shall be delineated on the ground with orange construction fencing where it overlaps work areas.
- BR-3 Occupied burrows or nests of special status bird species that are within 100 feet of project work areas shall be monitored at least every two weeks through the nesting season to document nest success and check for project compliance with buffer zones. Once burrows or nests are deemed inactive and/or chicks have fledged and are no longer dependent on the nest, work may commence in those areas.
- BR-4 Silvery legless lizards, a special status species, could potentially be present in construction areas. Pre-construction surveys for silvery legless lizards shall be conducted prior to primary grubbing and other construction activities that affect undisturbed habitat. If no special status species are found, construction activities may begin immediately. If a silvery legless lizard is found, a qualified biologist shall move them to the nearest safe location. The biologist shall have the authority to stop work if special status species are found in the project area during construction.
- BR-5 A pre-construction survey shall be conducted within 30 days of beginning construction work on a portion of the Project site to identify if badgers are present. The results of the survey shall be sent to the Project manager and lead agency.
- If the pre-construction survey finds potential badger dens, they shall be inspected to determine whether they are occupied. The survey shall cover all Project areas included in the respective construction phase, and shall examine both old and new dens. If potential badger dens are too long to completely inspect from the entrance, a fiber optic scope shall be used to examine the den to the end. Inactive dens may be excavated by hand with a shovel to prevent re-use of dens during construction. If badgers are found in dens between February and July, nursing young may be present. To avoid disturbance and the possibility of direct loss of adults and nursing young, and to prevent badgers from becoming trapped in burrows during construction activity, no grading shall occur within 100 feet of active badger dens between February 1 and July 1. Between July 1 and February 1 all potential badger dens shall be inspected to determine if badgers are present. During the winter badgers do not truly hibernate, but are active and asleep in their dens for several days at a time. Because they can be torpid during the winter, they are vulnerable to disturbances that may collapse their dens before they rouse and emerge. Therefore, surveys shall be conducted for badger dens throughout the year. If badger dens are found on the Project site during the pre-construction

survey, and are not raising young, they may be encouraged to vacate the den by a qualified biologist. If measures such as partially blocking den entrances do not result in the badger moving, badgers may be live trapped and moved to save locations.

BR-6 Prior to issuance of grading and/or construction permits, the applicant shall submit evidence to the City of Paso Robles Planning Department, (City) that states that one or a combination of the following three San Joaquin kit fox mitigation measures has been implemented:

- a. Provide for the protection in perpetuity, through acquisition of fee or a conservation easement of 40 acres of suitable habitat in the kit fox corridor area (e.g. within the San Luis Obispo County kit fox habitat area, northwest of Highway 58), either on-site or off-site, and provide for a non-wasting endowment to provide for management and monitoring of the property in perpetuity. Lands to be conserved shall be subject to the review and approval of the California Department of Fish and Game (Department) and the County.

This mitigation alternative (a.) requires that all aspects of this program must be in place before City permit issuance or initiation of any ground disturbing activities.

- b. Deposit funds into an approved in-lieu fee program, which would provide for the protection in perpetuity of suitable habitat in the kit fox corridor area within San Luis Obispo County, and provide for a non-wasting endowment for management and monitoring of the property in perpetuity.

Mitigation alternative (b) above, can be completed by providing funds to The Nature Conservancy (TNC) pursuant to the Voluntary Fee-Based Compensatory Mitigation Program (Program). The Program was established in agreement between the Department and TNC to preserve San Joaquin kit fox habitat, and to provide a voluntary mitigation alternative to project proponents who must mitigate the impacts of projects in accordance with the California Environmental Quality Act (CEQA). The fee, payable to "The Nature Conservancy", would total \$100,000. This fee is calculated based on the current cost-per-unit of \$2500 per acre of mitigation, which is scheduled to be adjusted to address the increasing cost of property in San Luis Obispo County; your actual cost may increase depending on the timing of payment. This fee must be paid after the Department provides written notification about your mitigation options but prior to City permit issuance and initiation of any ground disturbing activities.

- c. Purchase 40 credits in a Department-approved conservation bank, which would provide for the protection in perpetuity of suitable habitat within the kit fox corridor area and provide for a non-wasting endowment for management and monitoring of the property in perpetuity.

Mitigation alternative (c) above, can be completed by purchasing credits from the Palo Prieto Conservation Bank (see contact information below). The Palo Prieto Conservation Bank was established to preserve San Joaquin kit fox habitat, and to provide a voluntary mitigation alternative to project proponents who must mitigate the impacts of projects in accordance with the California Environmental Quality Act (CEQA). The cost for purchasing credits is payable to the owners of The Palo Prieto Conservation Bank, and would total \$100,000. This fee is calculated based on the current cost-per-credit of \$2500 per acre of mitigation. The fee is established by the conservation bank owner and may change at any time. Your actual cost may increase depending on the timing of payment. Purchase of credits must be completed prior to County permit issuance and initiation of any ground disturbing activities.

BR-7 Prior to issuance of grading and/or construction permits, the applicant shall provide evidence that they have retained a qualified biologist acceptable to the City. The retained biologist shall perform the following monitoring activities:

- i. Prior to issuance of grading and/or construction permits and within 30 days prior to initiation of site disturbance and/or construction, the biologist shall conduct a pre-activity (i.e. pre-construction) survey for known or potential kit fox dens and submit a letter to the City reporting the date the survey was conducted, the survey protocol, survey results, and what measures were necessary (and completed), as applicable, to address any kit fox activity within the project limits.
- ii. The qualified biologist shall conduct weekly site visits during site-disturbance activities (i.e. grading, diking, excavation, stock piling of dirt or gravel, etc.) that proceed longer than 14 days, for the purpose of monitoring compliance with required Mitigation Measures BR-8 through BR-16. Site disturbance activities lasting up to 14 days do not require weekly monitoring by the biologist unless observations of kit fox or their dens are made on-site or the qualified biologist recommends monitoring for some other reason (see BR-19iii). When weekly monitoring is required, the biologist shall submit weekly monitoring reports to the City.
- iii. Prior to or during project activities, if any observations are made of San Joaquin Kit fox, or any known or potential San Joaquin kit fox dens are discovered within the project limits, the qualified biologist shall re-assess the probability of incidental take (e.g. harm or death) to kit fox. At the time a den is discovered, the qualified biologist shall contact USFWS and the CDFG for guidance on possible additional kit fox protection measures to implement and whether or not a Federal and/or State incidental take permit is needed. If a potential den is encountered during construction, work shall stop until such time the USFWS determines it is appropriate to resume work.

If incidental take of kit fox during project activities is possible, before project activities commence, the applicant must consult with the USFWS. The results of this consultation may require the applicant to obtain a Federal and/or State permit for incidental take during project activities. The applicant should be aware that the presence of kit foxes or known or potential kit fox dens at the project site could result in further delays of project activities.

- iv. In addition, the qualified biologist shall implement the following measures:
 1. Within 30 days prior to initiation of site disturbance and/or construction, fenced exclusion zones shall be established around all known and potential kit fox dens. Exclusion zone fencing shall consist of either large flagged stakes connected by rope or cord, or survey laths or wooden stakes prominently flagged with survey ribbon. Each exclusion zone shall be roughly circular in configuration with a radius of the following distance measured outward from the den or burrow entrances:
Potential kit fox den: 50 feet
Known or active kit fox den: 100 feet
Kit fox pupping den: 150 feet
 2. All foot and vehicle traffic, as well as all construction activities, including storage of supplies and equipment, shall remain outside of exclusion zones. Exclusion zones shall be maintained until all project-related disturbances have been terminated, and then shall be removed.
 3. If kit foxes or known or potential kit fox dens are found on site, daily monitoring by a qualified biologist shall be required during ground disturbing activities.

BR-8 Prior to issuance of grading and/or construction permits, the applicant shall clearly delineate the following as a note on the project plans: "Speed signs of 25 mph (of lower) shall be posted for all construction traffic to minimize the probability of road mortality of the San Joaquin kit fox."

Speed limit signs shall be installed on the project site within 30 days prior to initiation of site disturbance and/or construction.

- BR-9 During the site disturbance and/or construction phase, grading and construction activities after dusk shall be prohibited unless coordinated through the City, during which additional kit fox mitigation measures may be required.
- BR-10 Prior to issuance of grading and/or construction permit and within 30 days prior to initiation of site disturbance and/or construction, all personnel associated with the project shall attend a worker education training program, conducted by a qualified biologist, to avoid or reduce impacts on sensitive biological resources (i.e. SJKF). At a minimum, as the program relates to the kit fox, the training shall include all mitigation measures specified by the City, as well as any related biological reports(s) prepared for the project. The applicant shall notify the City shortly prior to this meeting. A kit fox fact sheet shall also be developed prior to the training program, and distributed at the training program to all contractors, employers and other personnel involved with the construction of the project.
- BR-11 During the site-disturbance and/or construction phase, to prevent entrapment of the SJKF, all excavations, steep-walled holes and trenches in excess of 2 feet in depth shall be covered at the close of each working day by plywood or similar materials, or provided with one or more escape ramps constructed of earth fill or wooden planks. Trenches shall also be inspected for entrapped kit fox each morning prior to onset of field activities and immediately prior to covering with plywood at the end of each day. Before such holes or trenches are filled, they shall be inspected for entrapped kit fox. Any kit fox so discovered shall be allowed to escape before field activities resume, or removed from the trench or hole by a qualified biologist and allowed to escape unimpeded.
- BR-12 During the sit disturbance and/or construction phase, any pipes, culverts, or similar structures with a diameter of four inches or greater, stored overnight at the project sit shall be thoroughly inspected for trapped SJKF before the subject pipe is subsequently buried, capped, or otherwise used or moved in any way. If during the construction phase a kit fox is discovered inside a pipe, that section of pipe will not be moved. If necessary, the pipe may be moved only once to remove it from the path of activity, until the kit fox has escaped.
- BR-13 During the site-disturbance and/or construction phase, all food-related trash items such as wrappers, can, bottles, and food scraps shall be disposed of only in closed containers. These containers shall be regularly removed from the site. Food items may attract SJKF onto the project site, consequently exposing such animals to increased risk of injury or mortality. No deliberate feeding of wildlife shall be allowed.
- BR-14 Prior to, during and after the site-disturbance and/or construction phase, use of pesticides or herbicides shall be in compliance with all local, State and Federal regulations. This is necessary to minimize the probability of primary or secondary poisoning of endangered species utilizing adjacent habitats, and depletion of prey upon which SJKF depend.
- BR-15 During the site-disturbance and/or construction phase, any contractor or employee that inadvertently kills or injures a SJKF or who finds such animal either dead, injured, or entrapped shall be required to report the incident immediately to the applicant and the City. In the event that nay observations are made of injured or dead kit fox, the applicant shall immediately notify the USFWS and CDFG by telephone. In addition, formal notification shall be provided in writing within three working days of the finding of any such animal(s). Notification shall include the date, time, location and circumstances of the incident. Any threatened or endangered species found dead or injured shall be turned over immediately to CDFG for care, analysis or disposition.

BR-16 Prior to final inspection should any long internal or perimeter fencing be proposed or installed, the applicant shall do the following to provide for kit fox passage:

- If a wire strand/pole design is used, the lowest strand shall be no closer to the ground than 12 inches.
- If a more solid wire mesh fence is used, 8"x12" openings near the ground shall be provided every 100 yards.

Upon fence installation, the applicant shall notify the City to verify proper installation, the applicant shall notify the City to verify proper installation. Any fencing constructed after issuance of a final permit shall follow the above guidelines.

GHG Mitigations

GHG-1: The project applicant shall coordinate with the City of Paso Robles and the SLOAPCD to identify and implement GHG-reduction measures sufficient to reduce operational GHG emissions to below the SLOAPCD's significance threshold of 1,150 MTCO₂e/year. GHG-reduction measures may include, but are not limited to, implementation of measures that would reduce energy use, water use, and motor vehicle trips. Examples of measures to be implemented are included in the Air Quality & Greenhouse Gas Impact Assessment, Appendix B. If the project does not implement sufficient adopted GHG reduction measures to reduce the emissions below the GHG threshold, the applicant shall pay off-site mitigation fees at the rate established by SLOAPCD to fund local GHG reduction projects subject to approval by the City of Paso Robles.

PASSED AND ADOPTED THIS 17th day of July, 2012 by the following Roll Call Vote:

AYES: Strong, Gilman, Hamon, Picanco
NOES:
ABSTAIN: Steinbeck
ABSENT:

Duane Picanco, Mayor

ATTEST:

Caryn Jackson, Deputy City Clerk

BR-16 Prior to final inspection should any long internal or perimeter fencing be proposed or installed, the applicant shall do the following to provide for kit fox passage:

- If a wire strand/pole design is used, the lowest strand shall be no closer to the ground than 12 inches.
- If a more solid wire mesh fence is used, 8"x12" openings near the ground shall be provided every 100 yards.

Upon fence installation, the applicant shall notify the City to verify proper installation, the applicant shall notify the City to verify proper installation. Any fencing constructed after issuance of a final permit shall follow the above guidelines.

GHG Mitigations

GHG-1: The project applicant shall coordinate with the City of Paso Robles and the SLOAPCD to identify and implement GHG-reduction measures sufficient to reduce operational GHG emissions to below the SLOAPCD's significance threshold of 1,150 MTCO_{2e}/year. GHG-reduction measures may include, but are not limited to, implementation of measures that would reduce energy use, water use, and motor vehicle trips. Examples of measures to be implemented are included in the Air Quality & Greenhouse Gas Impact Assessment, Appendix B. If the project does not implement sufficient adopted GHG reduction measures to reduce the emissions below the GHG threshold, the applicant shall pay off-site mitigation fees at the rate established by SLOAPCD to fund local GHG reduction projects subject to approval by the City of Paso Robles.

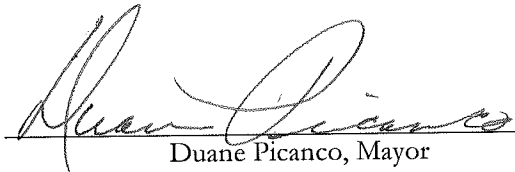
PASSED AND ADOPTED THIS 17th day of July, 2012 by the following Roll Call Vote:

AYES: Strong, Gilman, Hamon, Picanco

NOES:

ABSTAIN: Steinbeck

ABSENT:



Duane Picanco, Mayor

ATTEST:



Caryn Jackson, Deputy City Clerk