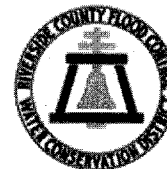


**SUBMITTAL TO THE FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM
11.3
(ID # 7761)

MEETING DATE:

Tuesday, August 28, 2018

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: FLOOD CONTROL DISTRICT: Approval of Conservation Services Agreement Between the Riverside County Flood Control and Water Conservation District and Banning Wilson 97, LLC for Implementation of Certain Mitigation Requirements for the Montgomery Creek Channel - Sunview Drive Storm Drain, Project No. 5-0-00051, California Environmental Quality Act Findings of Nothing Further is Required, District 5. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that entering into the Conservation Services Agreement (Agreement) will not result in any new significant environmental impacts not identified in the Initial Study and Mitigated Negative Declaration (SCH#2015061074) ("MND") and make a determination that nothing further is required;
2. Approve the Conservation Services Agreement between the Riverside County Flood Control and Water Conservation District (District) and Banning Wilson 97 LLC (Developer);
3. Authorize the Chairman to execute the Agreement on behalf of the District;
4. Direct the Clerk of the Board to file the Notice of Determination with the County Clerk within five (5) days of this Board hearing;
5. Direct the Clerk of the Board to return five (5) executed Conservation Services Agreements to the District.

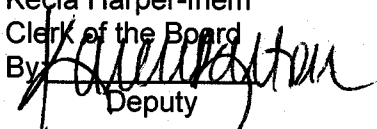
ACTION: Policy


Bob Cullen, Assistant Chief Engineer 8/20/2018

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Ashley, seconded by Supervisor Perez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: August 28, 2018
xc: Flood, Recorder

Kecia Harper-Ihem
Clerk of the Board
By 
Deputy

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS:			Budget Adjustment:	No
			For Fiscal Year:	NA

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Conservation Services Agreement sets forth the terms and conditions by which Developer's invasive plant species removal effort will be joined with District's efforts within Smith Creek Channel right of way.

Developer is required to remove invasive plant species to satisfy conditions of a Streambed Alteration Agreement (SAA) Notification No. 1600-2017-0200-R6 Revision 2 required by the California Department of Fish and Wildlife (CDFW) as mitigation for the impacts of construction of Tract No. 36939 to ephemeral streams located within the tract.

District has been issued an SAA Notification No. 1600-2016-0001-R6 Revision 2 that requires 0.93 acre of invasive plant species removal from the edge of Smith Creek Channel right of way within Assessor Parcel No. 532-180-051 and is owned by District ("Project Site"), to mitigate for impacts as part of the Banning Master Drainage Plan (MDP) Line H, Stage 1 storm drain project ("Line H Project").

The use of Project Site for invasive plant species removal will benefit District by reducing the overall cost of preparing a Habitat Mitigation and Monitoring Plan (HMMP) Implementation for Line H Project through cost sharing and will not encumber District right of way. The use of Project Site by Developer for invasive plant species removal is a good example of Public Private Partnership.

Staff has reviewed the proposed Conservation Services Agreement, and it was determined that no further environmental documents were required because all potentially significant environmental impacts associated with the Conservation Services Agreement have been fully analyzed in an earlier adopted Mitigated Negative Declaration (SCH#2015061074) ("MND") and have been avoided or mitigated to less than significant pursuant to that earlier MND. The potential environmental effects of the Banning MDP Line H, Stage 1 Project were fully studied in Initial Study/MND (SCH#2015061074). Based upon the findings incorporated therein, the Board of Supervisors adopted the MND (SCH#2015061074) and a Mitigation Monitoring Program and approved the Banning MDP Line H, Stage 1 Project on December 15, 2015 (Agenda Item 11-3) with Resolution No. F2015-37.

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

County Counsel has approved the Agreement as to legal form, and Developer has executed the Agreement.

Prev. Agn. Ref.: 11-3 of 12/15/15

Impact on Residents and Businesses

Entering into the Conservations Services Agreement will offset the costs for the District to comply with certain regulatory permit mitigation requirement for the Banning Master Drainage Plan (MDP) Line H, Stage 1 storm drain project. The residents and businesses of Riverside County are the principal beneficiaries of this project. Costs incurred under this Agreement will be funded by Banning Wilson 97, LLC and ad valorem property tax revenue and entails no new fees, taxes or bonded indebtedness to residents and businesses.

ATTACHMENTS:

1. Vicinity Map
2. Conservation Services Agreement – Banning Wilson 97, LLC
3. Notice of Determination

TIR:blm



Gregory P. Priaplos, Director County Counsel 8/20/2018

CONSERVATION SERVICES AGREEMENT
Montgomery Creek Channel – Sunview Drive Storm Drain
Project No. 5-0-00051
Tract No. 36939

This CONSERVATION SERVICES AGREEMENT ("Agreement") is entered into this 28th day of August 2018 by and between the Riverside County Flood Control and Water Conservation District, a special district created pursuant to Water Code Appendix Section 48-1 ("DISTRICT"), and Banning Wilson 97, LLC, a Delaware limited liability company, ("DEVELOPER"), together, "the Parties".

RECITALS

A. DEVELOPER is required to remove invasive plant species to satisfy conditions of a Streambed Alteration Agreement (SAA) Notification No. 1600-2017-0200-R6 Revision 2 required by the California Department of Fish and Wildlife (CDFW) as mitigation for the impacts of construction of Tract No. 36939 to ephemeral streams located within the tract, as provided in "Exhibit A" attached hereto and made a part hereof; and

B. DISTRICT has been issued an SAA Notification No. 1600-2016-0001-R6 Revision 2 that requires 0.93 acre of invasive plant species removal from the edge of Smith Creek Channel right of way within Assessor Parcel No. 532-180-051 and is owned by DISTRICT ("PROJECT SITE"), to mitigate for impacts as part of the Banning Master Drainage Plan (MDP) Line H, Stage 1 storm drain project ("LINE H PROJECT"), as provided in "Exhibit B" attached hereto and made a part hereof; and

C. DISTRICT has prepared a Habitat Mitigation and Monitoring Plan (HMMP) for LINE H PROJECT invasive plant species removal which has been approved by CDFW; and

D. DEVELOPER desires to revise DISTRICT's HMMP to join DEVELOPER's invasive plant species removal effort with DISTRICT's effort within Smith Creek Channel right

of way by providing funds to DISTRICT for HMMP implementation and use of PROJECT SITE as shown on "Exhibit C" attached hereto and made a part hereof ("MITIGATION"); and

E. DEVELOPER and DISTRICT estimate that DEVELOPER's share of MITIGATION costs will be twenty six thousand twenty seven dollars (\$26,027) ("ESTIMATED COST"), as provided in "Exhibit D" attached hereto and made a part hereof; and

F. DEVELOPER AND DISTRICT understand and acknowledge that the actual MITIGATION costs may vary based on the final consultant cost for HMMP implementation ("ACTUAL COST"); and

G. The use of PROJECT SITE for invasive plant species removal will benefit DEVELOPER by reducing DEVELOPER's need to purchase and manage offsite lands for mitigation, reducing DEVELOPER's costs associated with preparing its own HMMP, and will reduce the time needed to start construction of Tract No. 36939; and

H. The use of PROJECT SITE for invasive plant species removal will benefit DISTRICT by reducing the overall cost of HMMP Implementation for LINE H PROJECT through cost sharing and will not encumber DISTRICT right of way; and

I. The use of PROJECT SITE by DEVELOPER for invasive plant species removal is a good example of Public Private Partnership; and

J. Removal of invasive plant species within PROJECT SITE will not exceed a period of five (5) years and will not require any long term conservation commitments on the property.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms and conditions contained herein, and pursuant to the laws of the State of California, DISTRICT and DEVELOPER hereby agree as follows:

SECTION I

DEVELOPER shall:

1. Ensure that no long term conservation commitments, including but not limited to conservation easements or restrictive covenants, are required on PROJECT SITE as a condition of any regulatory permit such as, Section 1602 SAA issued by the CDFW, Section 404 Permit issued by the U.S. Army Corps of Engineers (ACOE), and/or Section 401 Water Quality Certification issued by the Regional Water Quality Control Board (Regional Board). In the event that such long term commitments are required, DEVELOPER shall obtain them at its sole cost and expense.
2. Revise DISTRICT's HMMP for LINE H PROJECT to include PROJECT SITE at its sole cost and expense.
3. Pay DISTRICT, within thirty (30) days after receipt of an appropriate invoice from DISTRICT for ACTUAL COST.

SECTION II

DISTRICT shall:

1. Select a consultant from its on-call list to implement HMMP.
2. Within 30 days of issuing a task order to the selected consultant for implementation of HMMP, invoice DEVELOPER for ACTUAL COST.
3. Administer HMMP implementation contract for the entire mitigation area (approximately 1.56 acres).
4. Delineate the invasive removal area within the wash.
5. Ensure that all monitoring and reporting requirements are being carried out in accordance with HMMP.

6. Copy DEVELOPER on all monitoring reports and correspondence with CDFW associated with DEVELOPER's portion of the mitigation area.

SECTION III

It is further mutually agreed:

1. The Parties explicitly agree that any mitigation for activities of DEVELOPER not covered by this Agreement, including but not limited to any mitigation not set forth under this Agreement, or any other regulatory permit issued to DEVELOPER or other changes in mitigation related to Tract No. 36939, remains solely and entirely the responsibility of DEVELOPER.

2. DEVELOPER agrees that DISTRICT shall not be responsible to conduct any conservation activities or other services except for those which have been outlined in Section II, above, even if CDFW, the Regional Board, ACOE and/or any other regulatory agency later modify their respective mitigation requirements.

3. DEVELOPER agrees and acknowledges that it remains responsible for obtaining final approval from CDFW, the Regional Board, ACOE and/or any other regulatory agency for satisfaction of permit conditions.

4. DEVELOPER shall indemnify and hold harmless DISTRICT and County of Riverside (including their agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) from any liability, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DEVELOPER's (including its officers, employees, subcontractors and agents) actual or alleged negligent, reckless or willful misconduct, acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to: (a)

property damage; (b) bodily injury or death; (c) any other element of any kind or nature whatsoever.

5. DEVELOPER shall defend, at its sole expense, including all costs and fees (including but not limited to attorney fees, cost of investigation, defense and settlements or awards), DISTRICT and County of Riverside (including their agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) in any claim, proceeding or action for which indemnification is required.

6. With respect to any of DEVELOPER's indemnification requirements, DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, compromise any such claim, proceeding or action without the prior consent of DISTRICT provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes DEVELOPER's indemnification obligations to DISTRICT.

7. DEVELOPER's indemnification obligations shall be satisfied when DEVELOPER has provided to DISTRICT the appropriate form of dismissal (or similar document) relieving DISTRICT from any liability for the claim, proceeding or action involved.

8. In the event there is conflict between this section and California Civil Code Section 2782, this section shall be interpreted to comply with California Civil Code Section 2782. Such interpretation shall not relieve DEVELOPER from indemnifying DISTRICT to the fullest extent allowed by law.

9. Any waiver by any party hereto of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term hereof. Failure on the part of any party hereto to require exact,

full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms hereof, or estopping such party from enforcement hereof.

10. This Agreement is to be construed in accordance with the laws of the State of California. Venue shall be in Riverside County. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

11. Any and all notices sent or required to be sent to the Parties of this Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501

BANNING WILSON 97, LLC
10621 Civic Center Drive
Rancho Cucamonga, CA 91730
Attn: Peter J. Pitassi

12. Any action at law or in equity brought by any of the Parties hereto for the purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the Parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county.

13. This Agreement is the result of negotiations between the Parties hereto, and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by DISTRICT shall have no importance or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT prepared this Agreement in its final form.

14. Attorney's Fee. The Parties shall bear their own attorney's fees and costs related to any enforcement of this Agreement.

15. No Third Party Beneficiaries. There are no intended third party beneficiaries, with the exception of successors and assigns, of any right or obligation assumed by the Parties.

16. The rights and obligations of DEVELOPER shall inure to and be binding upon all heirs, successors and assignees.

17. DEVELOPER shall not assign or otherwise transfer any of its rights, duties or obligations hereunder to any person or entity without the written consent of the other parties hereto being first obtained. In the event of any such transfer or assignment, DEVELOPER expressly understands and agrees that it shall remain liable with respect to any and all of the obligations and duties contained in this Agreement.

18. The individual(s) executing this Agreement on behalf of DEVELOPER certify that they have the authority within their respective company(ies) to enter into and execute this Agreement, and have been authorized to do so by boards of directors, legal counsel and or any other board, committee or other entity within their respective company(ies) which have the authority to authorize or deny entering this Agreement.

19. This Agreement is intended by the Parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the Parties hereto.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on

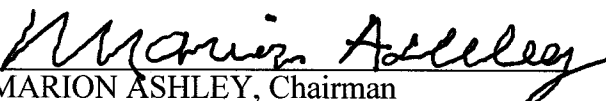
AUG 28 2018

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By 
JASON E. UHLEY
General Manager-Chief Engineer


By 
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

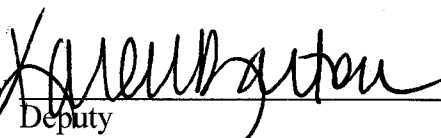
APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By 
LEILA MOSHREF-DANESH
Deputy County Counsel


By 
Deputy

(SEAL)

Conservation Services Agreement with Banning 97, LLC
Montgomery Creek Channel – Sunview Drive Storm Drain
Tract No. 36939
TRI:blm
08/14/18

BANNING WILSON 97, LLC
a Delaware limited liability company

By: Diversified Pacific Development Group LLC,
a California limited liability company,
Its: Manager

By 

MATTHEW JORDAN
Managing Member

(NOTARY)

Conservation Services Agreement with Banning Wilson 97, LLC
Montgomery Creek Channel – Sunview Drive Storm Drain
Tract No. 36939
TRI:blm
08/14/18

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

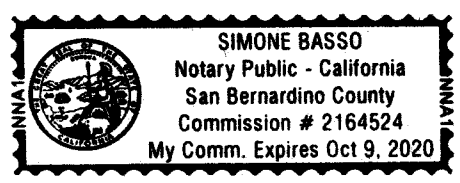
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of San Bernardino }

On August 15, 2018 before me, Simone Basso, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Matthew A. Jordan
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person~~s~~ whose name~~s~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~s~~ on the instrument the person~~s~~, or the entity upon behalf of which the person~~s~~ acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____
 Corporate Officer – Title(s): _____ Corporate Officer – Title(s): _____
 Partner – Limited General Partner – Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian of Conservator Trustee Guardian of Conservator
 Other: _____ Other: _____
Signer is Representing: _____ Signer is Representing: _____

Exhibit A

**DEVELOPER'S STREAMBED ALTERATION AGREEMENT (SAA) NOTIFICATION
NO. 1600-2017-0200-R6 REVISION 2**

ON FILE WITH DISTRICT - AVAILABLE UPON REQUEST

CONSERVATION SERVICES AGREEMENT
Montgomery Creek Channel - Sunview Storm Drain
Project No. 5-0-00051
Tract No. 36939

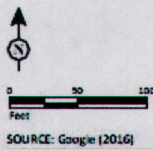
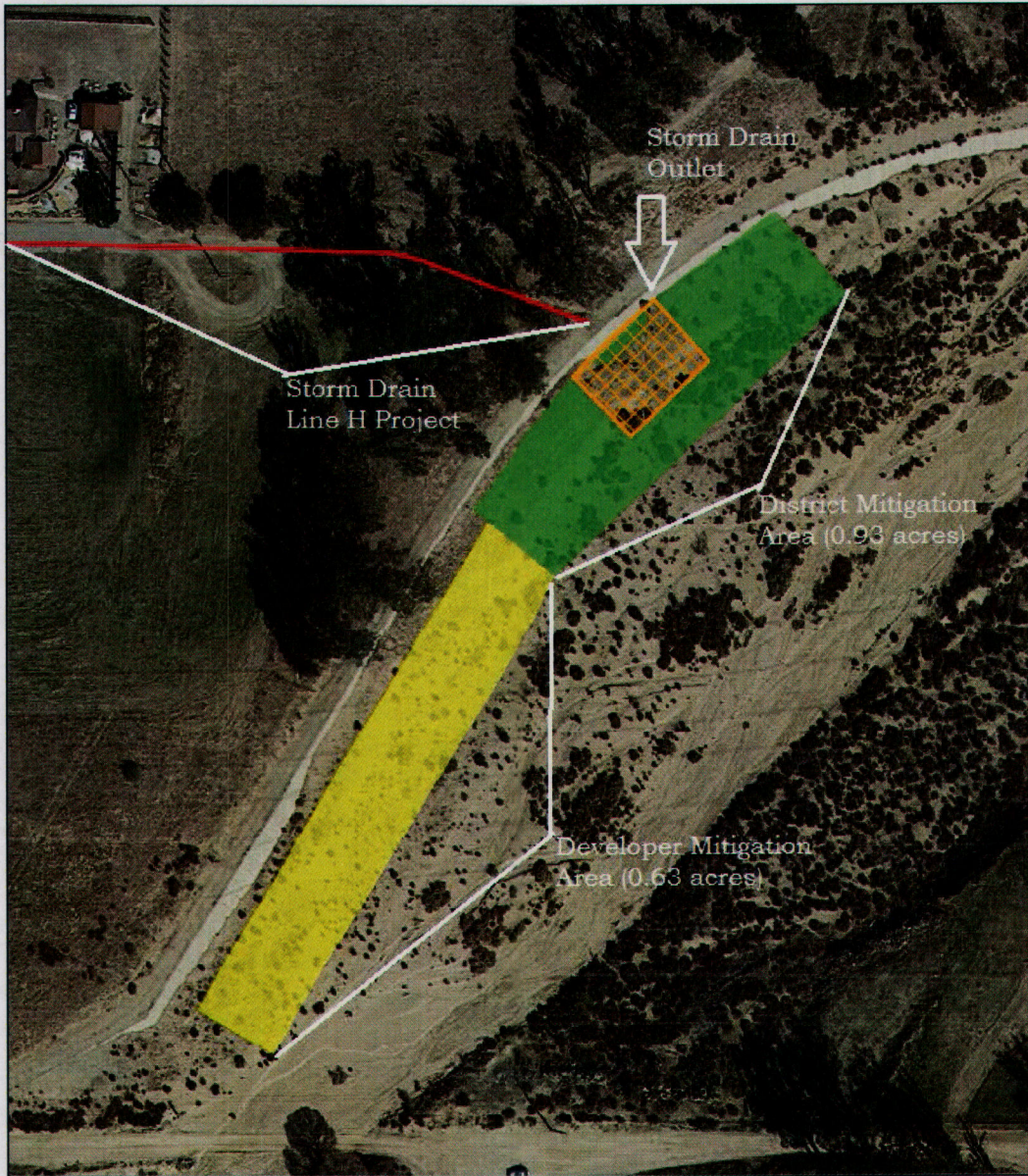
Exhibit B

DISTRICT'S STREAMBED ALTERATION AGREEMENT (SAA) NOTIFICATION NO.
1600-2016-0001-R6 REVISION 2

ON FILE WITH THE DISTRICT - AVAILABLE UPON REQUEST

CONSERVATION SERVICES AGREEMENT
Montgomery Creek Channel - Sunview Storm Drain
Project No. 5-0-00051
Tract No. 36939

Exhibit C



CONSERVATION SERVICES AGREEMENT
Montgomery Creek Channel - Sunview Storm Drain
Project No. 5-0-00051
Tract No. 36939

Exhibit D

Cost Share Calculation

It should be noted that the cost associated with HMMP implementation will not be known until a task order is issued for the actual work.

Item	District Cost for 5 yrs.	DEVELOPER Cost (5 yrs.)	Total cost for 5yrs
Approximate cost of HMMP Implementation @ 60-40% split	\$27,000	\$18,000	\$45,000*
Property Use Fee		\$8,027.00	\$8,027.00
Total	\$27,000	\$26,027**	\$53,027.00

The final cost will vary based on the final consultant cost for HMMP implementation. The fee is based on the following criteria:

- (a) **HMMP Implementation:** cost shown below is based on DEVELOPER's *percentage of the mitigation area X the total final HMMP implementation cost* (approximately 40 %).
- (b) **Land Use Fee:** Annual cost is based on an industry standard land rental rate (9% of the full value of the property). The annual rental fee has been calculated at \$1,605.40 for 0.63 acres.

***the HMMP implementation is approximate and will only be known when a proposal is submitted.**

****estimated onetime payment from DEVELOPER**

CONSERVATION SERVICES AGREEMENT
Montgomery Creek Channel - Sunview Storm Drain
Project No. 5-0-00051
Tract No. 36939

Notice of Determination

To: County Clerk
 County of Riverside
 2724 Gateway Drive
 Post Office Box 3044
 Riverside, CA 92507

From: Riverside County Flood Control
 1995 Market Street
 Riverside, CA 92501
 Contact: Randy Sheppard
 Phone: 951.955.1306
 rsheppea@rivco.org

Original Negative Declaration/Notice of
 Determination was routed to County
 Clerks for posting on.

8/30/18
 Date

KB
 Initial

Lead Agency (if different from above):

SUBJECT:

Filing of Notice of Determination in compliance with Section 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): N/A

Project Title: Conservation Services Agreement for Banning MDP Line H, Stage 1 Project and Tract 36939

Project Location (include county)

The proposed project area for the Conservation Services Agreement (CSA) is located within the District's existing Smith Creek Channel property and is generally bounded on the north by Charles Street, on the east by the City of Banning Water Reclamation Facility, on the south by Porter Street and on the west by South Hathaway Street in the city of Banning, Riverside County.

Project Description

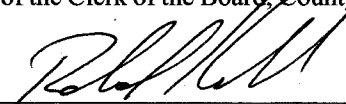
The Riverside County Flood Control and Water Conservation District (District) proposes to enter into a Conservation Services Agreement (CSA) with Banning Wilson 97, LLC to combine the compensatory mitigation efforts of the District's Banning MDP Line H Stage 1 Project and Tract No. 36939 within the District's existing Smith Creek Channel property. The CSA will implement certain regulatory permit mitigation requirements including monitoring and the removal of invasive vegetation on a total of approximately 1.6 acres. The CSA will address compensatory mitigation requirements for both the District and Banning Wilson 97, LLC and cost share those requirements. The CSA is a subsequent District discretionary action to further the previously approved Banning MDP Line H, Stage 1 Project, where the District, acting as lead agency for California Environmental Quality Act purposes, is responsible for ensuring implementation of the regulatory permit mitigation requirements to complete the Banning MDP Line H, Stage 1 Project. The current District action is limited to entering into the CSA for the purposes of implementing the regulatory permit mitigation requirements described above.

This is to advise that the Riverside County Flood Control and Water Conservation District (Lead Agency) has approved the above described project on August 28th, 2018 and has made the following findings and determinations regarding the above-described Conservation Services Agreement to implement certain regulatory permit requirements:

1. The Conservation Services Agreement will not have a significant effect on the environment.
2. A Mitigated Negative Declaration (SCH No. 2015061074) was prepared pursuant to the provisions of CEQA and adopted on December 15, 2015, Agenda Item 11-3 with Resolution No. F2015-37.
3. Mitigation measures were made a condition of the approval.
4. The Conservation Services Agreement will not result in any new significant environmental effects not identified in the Initial Study and MND (SCH No. 2015061074); will not substantially increase the severity of the environmental effects identified in the MND; no considerably different mitigation measures have been identified; and no mitigation measures found infeasible have become feasible.
5. Nothing further is required and no further environmental documentation is required for California Environmental Quality Act purposes because the activities associated with the Conservation Services Agreement were adequately analyzed in the earlier environmental documentation.

This is to certify that the previously adopted Mitigated Negative Declaration and the record of Project approval are available to the General Public at: The Office of the Clerk of the Board, County Administrative Center, 4080 Lemon Street, Riverside, CA 92501.

Public Agency Signature:


 Jason Uhley
 General Manager-Chief Engineer

Date:

20 Aug 2018

AUG 28 2018 11.3