

ORDINANCE NO. 4515

AN ORDINANCE ADOPTING A NEGATIVE DECLARATION AND AMENDING SECTION 17.06.020 (ZONING MAP 104-16) OF TITLE SEVENTEEN OF THE BAKERSFIELD MUNICIPAL CODE BY CHANGING THE ZONING FROM R-1 (ONE FAMILY DWELLING RESIDENTIAL) TO R-2/PUD (LIMITED MULTI-FAMILY DWELLING RESIDENTIAL/ PLANNED UNIT DEVELOPMENT) ON APPROXIMATELY 18 ACRES, GENERALLY LOCATED NORTHEAST OF HIGHWAY 178 AND MASTERSON STREET. (ZC NO. 07-2342).

WHEREAS, in accordance with the procedures set forth in the provisions of Title 17 of the Municipal Code of the City of Bakersfield, the Planning Commission held a public hearing on a petition to change the land use zoning of those certain properties being annexed to the City of Bakersfield generally located at the northeast corner of Highway 178 and Masterson Street; and

WHEREAS, by Resolution No. 40-08 on March 20, 2008, the Planning Commission recommended approval and adoption of an ordinance amending Title 17 of the Municipal Code to approve Zone Change No. 07-2342 as delineated on attached Zoning Map 104-16 marked Exhibit "B", by this Council and this Council has fully considered the recommendations made by the Planning Commission as set forth in that Resolution and restated herein; and

WHEREAS, the Planning Commission, as a result of said hearing, did make several general and specific findings of fact which warranted a negative declaration of environmental impact and changes in zoning of the subject property from R-1 (One Family Dwelling Residential) to R-2/PUD (Limited Multi-family Dwelling Residential/ Planned Unit Development), and the Council has considered said findings as restated herein and all appear to be true and correct; and

WHEREAS, a Negative Declaration with mitigation was advertised and posted on February 13, 2008, in accordance with CEQA; and

WHEREAS, the general plan designation for this area, with prior adoption of GPA No. 07-2342, allows multi-family residential development; and

WHEREAS, the City Council has considered and concurs with the following findings made by the Planning Commission as set forth in Resolution No. 40-08, adopted on March 20, 2008:

1. All required public notices have been given.
2. The provisions of the California Environmental Quality Act have been followed.
3. Based on the initial study and comments received, staff has determined that the proposed project could not have a significant effect on the environment. A Negative Declaration was prepared for the project in accordance with CEQA.
4. The proposed project is consistent with surrounding uses.

5. The proposed project, as shown on Exhibit "B", is consistent with the *Metropolitan Bakersfield General Plan*.
6. The public necessity, general welfare and good planning practices justify the requested zone change, as shown on Exhibit "B".
7. The laws and regulations relating to the preparation and adoption of Negative Declarations as set forth in CEQA, the State CEQA Guidelines, and the City of Bakersfield CEQA Implementation Procedures, have been duly followed by city staff and the Planning Commission.

SECTION 1.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Bakersfield as follows:

1. That the above recitals, incorporated herein, are true and correct.
2. The Negative Declaration is hereby adopted.
3. Section 17.06.020 (Zoning Map) of the Municipal Code of the City of Bakersfield be and the same is hereby amended by changing the land use zoning of that certain property in the City, the boundaries of which property is shown on Zoning Map 104-16 marked Exhibit "B" attached hereto and made a part hereof, and are more specifically described in attached Exhibit "C".
4. Such zone change is hereby made subject to the "Mitigation/Conditions of Approval" listed in attached Exhibit "A", and subject to approval of GPA No. 07-2342.


SECTION 2.

This ordinance shall be posted in accordance with the Bakersfield Municipal Code and shall become effective not less than thirty (30) days from and after the date of its passage.

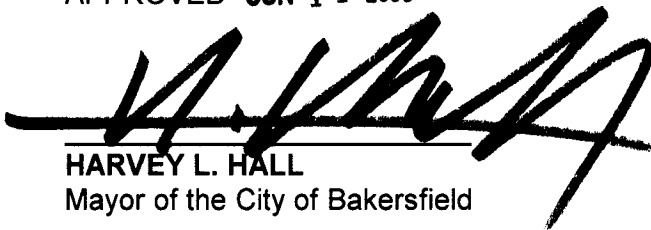
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I HEREBY CERTIFY that the foregoing Ordinance was passed and adopted, by the Council of the City of Bakersfield at a regular meeting thereof held on JUN 11 2008 by the following vote:

AYES:	COUNCILMEMBER	CARSON, BENHAM, WEIR, COUCH, HANSON, SULLIVAN, SCRIVNER
NOES:	COUNCILMEMBER	<u>none</u>
ABSTAIN:	COUNCILMEMBER	<u>none</u>
ABSENT:	COUNCILMEMBER	<u>none</u>


PAMELA A. McCARTHY, CMC
CITY CLERK and Ex Officio Clerk of the
Council of the City of Bakersfield

APPROVED JUN 11 2008


HARVEY L. HALL
Mayor of the City of Bakersfield

APPROVED as to form
VIRGINIA GENNARO
City Attorney

By: 

Exhibit A - Mitigation/Conditions of Approval
B - Zoning Map 104-16
C - Zone Change Legal Description

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CITY OF BAKERSFIELD
ORIGINAL

EXHIBIT A:
MITIGATION / CONDITIONS OF APPROVAL

**Mitigation/Conditions of Approval
General Plan Amendment/Zone Change 07-2342**

Cultural Resources (Mitigation Measures)

1. Prior to ground-disturbance activities associated with this project, a qualified professional archaeologist shall conduct a field survey of the entire project site. Results of the survey shall be submitted to the Bakersfield Planning Department prior to approval of grading plans. Any mitigation necessary as a result of the field survey shall be the responsibility of the developer to implement. *Mitigation for potentially significant archaeological impacts.*
2. Prior to ground-disturbance activities associated with this project, personnel associated with the grading effort shall be informed of the importance of the potential cultural and archaeological resources (i.e. archaeological sites, artifacts, features, burials, etc.) that may be encountered during site preparation activities, how to identify those resources in the field, and of the regulatory protections afforded to those resources. The personnel shall be informed of procedures relating to the discovery of archaeological remains during grading activities and cautioned to avoid archaeological finds with equipment and not collect artifacts. The applicant/developer of the project site shall submit documentation to the Planning Department that they have met this requirement prior to commencement of ground-disturbance activities. This documentation should include information on the date(s) of training activities, the individual(s) that conducted the training, a description of the training, and a list of names of those who were trained. Should cultural remains be uncovered, the on-site supervisor shall immediately notify a qualified archaeologist. *Mitigation for potentially significant archaeological impacts.*
3. If human remains are discovered during grading or construction activities, work would cease pursuant to Section 7050.5 of the California Health and Safety Code. If human remains are identified on the site at any time, work shall stop at the location of the find and the Kern County Coroner shall be notified immediately (Section 7050.5 of the California Health and Safety Code and Section 5097.98 of the California Public Resources Code which details the appropriate actions necessary for addressing the remains) and the local Native American community shall be notified immediately. *Mitigation for potentially significant archaeological impacts.*

Traffic and Circulation (Mitigation Measures)

4. Prior to the issuance of any building permit within the GPA/ZC area, the developer shall pay the applicable Regional Transportation Impact Fee (RTIF) to the satisfaction of the City of Bakersfield Public Works Department. *Mitigation for potentially significant traffic impacts.*

Biological Resources

5. Per Department of Fish and Game protocol, an adult season Blunt Nose Leopard Lizard Survey shall be conducted by a qualified biologist. The survey shall be submitted to the Planning Department prior to grading plan approval, tract recordation or approval of a Preliminary Development Plan, whichever occurs first. *Department of Fish & Game Condition*
6. The project site shall be surveyed by a qualified biologist to determine the existence of burrowing owl. Such determination shall be submitted to the Planning Department prior to grading plan approval, tract recordation or approval of a Preliminary Development Plan, whichever occurs first.



The burrowing owl is a migratory bird species protected by international treaty under the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703-711). The MBTA makes it unlawful to take, possess, buy, sell, purchase, or barter any migratory bird listed in 50 C.F.R. Part 10, including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations (50 C.F.R. 21).

Sections 3503, 3503.5, and 3800 of the California Department of Fish and Game Code prohibit the take, possession, or destruction of birds, their nests or eggs. To avoid violation of the take provisions of these laws, project-related disturbance at active nesting territories shall be reduced or eliminated during critical phases of the nesting cycle (March 1 – August 15, annually). Disturbance that causes nest abandonment and/or loss of reproductive effort (e.g., killing or abandonment of eggs or young) may be considered “taking” and is potentially punishable by fines and/or imprisonment. **Note: The burrowing owl is not covered under the Metropolitan Bakersfield Habitat Conservation Plan.** If any burrowing owl are found on the subject property during ground-disturbance activities, such activities shall be terminated and a qualified biologist shall be contacted immediately. *Department of Fish & Game Condition*

Public Works

7. Along with the submittal of any development plan, prior to approval of improvement plans, or with the application for a lot line adjustment or parcel merger, the following shall occur:
 - a. Provide fully executed dedication for Masterson Street to arterial standards for the full frontage of the area within the GPA request. Dedications shall include sufficient widths for expanded intersections and additional areas for landscaping as directed by the City Engineer. Submit a current title report with the dedication documents. If a tentative subdivision map over the entire GPA/ZC area is submitted, dedication can be provided with the map.
 - b. This GPA/ZC area is within the Breckenridge Drainage Area and shall follow the requirements of the PDA. Submit a comprehensive drainage study to be reviewed and approved by the City Engineer. The study shall show the development’s proportionate share of the necessary ultimate storm drainage facilities.
 - c. Submit verification to the City Engineer of the existing sewer system’s capability to accept the additional flows to be generated through development under the new land use and zoning.
 - d. In order to preserve the permeability of the sump and to prevent the introduction of sediments from construction or from storm events, all retention and detention basins (sumps) shall have a mechanical device in the storm drain system to remove or minimize the introduction of oil, grease, trash, and sediments to the sump. This device shall be reviewed and approved by the City Engineer, and shall provide the greatest benefit to the storm drain system with the least maintenance cost.
 - e. Developer is responsible for the construction of all infrastructure, both public and private, within the boundary of the GPA/ZC area. This includes the construction of any and all boundary streets to the centerline of the street, unless otherwise specified. The developer is also responsible for the construction of any off site infrastructure required to support this

development, as identified in these conditions. The phasing of the construction all infrastructure will be addressed at the subdivision map stage.

For orderly development.

8. Prior to issuance of a building permit, developer shall pay a major transportation facility fee in the amount of \$0.35 per square foot for commercial and/or \$2487 for residential dwelling unit (insert what applies). If prior to issuance of a building permit said fee is merged into the regional TIF program then payment of the regional TIF fee will be deemed to have satisfied the intent of this condition. This fee is a component of the City Council approved action plan to pursue funds needed to complete construction of major transportation facilities to serve growth and development within Metropolitan Bakersfield. *For orderly development*
9. The entire area covered by this General Plan Amendment shall be included in the Consolidated Maintenance District. The applicant shall pay all fees for inclusion in the Consolidated Maintenance District with submittal of any development plan, tentative subdivision map, Site Plan Review, or application for a lot line adjustment for any portion of this GPA area. *For orderly development.*
10. Payment of the proportionate share of the cost of the median for the arterial frontage of the property within the GPA/ZC request is required prior to recordation of any map or approval of any improvement plan for the GPA/ZC area. *For orderly development.*
11. Prior to issuance of building permits on the subject property, the applicant shall construct the east half of Masterson Street for the entire frontage of the subject property. Note: The City in the Hills development is responsible for construction of the western 2 lanes of Masterson Street from Paladino Drive to SR 178. *For orderly development.*

City Attorney Condition

12. In consideration by the City of Bakersfield for land use entitlements, including but not limited to related environmental approvals related to or arising from this project, the applicant, and/or property owner and/or subdivider ("Applicant" herein) agrees to indemnify, defend, and hold harmless the City of Bakersfield, its officers, agents, employees, departments, commissioners or boards ("City" herein) against any and all liability, claims, actions, causes of action or demands whatsoever against them, or any of them, before administrative or judicial tribunals of any kind whatsoever, in any way arising from, the terms and provisions of this application, including without limitation any CEQA approval or any related development approvals or conditions whether imposed by the City, or not, except for City's sole active negligence or willful misconduct.

This indemnification condition does not prevent the Applicant from challenging any decision by the City related to this project and the obligations of this condition apply regardless of whether any other permits or entitlements are issued.

The City will promptly notify Applicant of any such claim, action or proceeding, falling under this condition within thirty (30) days of actually receiving such claim. The City, in its sole discretion,

Exhibit A
GPA/ZC 07-1135, PUD 07-2345
Mitigation/Conditions of Approval
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shall be allowed to choose the attorney or outside law firm to defend the City at the sole cost and expense of the Applicant and the City is not obligated to use any law firm or attorney chosen by another entity or party.

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CITY OF BAKER, OREGON
ORIGINAL

EXHIBIT B:
ZONING MAP 104-16



EXHIBIT C:
ZONE CHANGE LEGAL DESCRIPTION

CITY OF BAKERFIELD
ORIGINAL

LEGAL DESCRIPTION

A.P.N.: 387-020-31

CURRENT ZONING: R-1

PROPOSED ZONING: R-2/PUD

CURRENT GENERAL PLAN DESIGNATION: LR

PROPOSED GENERAL PLAN DESIGNATION: HR

ALL THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 29 SOUTH, RANGE 29 EAST, M.D.M., CITY OF BAKERSFIELD, COUNTY OF KERN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 5 OF PARCEL MAP NO. 8362, ACCORDING TO THE MAP THEREOF RECORDED MAY 1, 1989 IN BOOK 38, PAGE 54 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THAT PORTION DEEDED TO THE CITY OF BAKERSFIELD, A MUNICIPAL CORPORATION, BY GRANT DEED RECORDED MARCH 20, 2007, AS DOCUMENT NO. 0207061531, OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

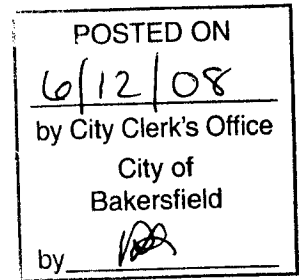
COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 16; THENCE SOUTH 00°21'44" WEST, ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 588.96 FEET; THENCE DEPARTING SAID WEST LINE, SOUTH 89°38'16" EAST, A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 1945.00 FEET, FROM WHICH POINT A RADIAL LINE BEARS SOUTH 89°38'16" EAST; THENCE ALONG THE FOLLOWING FOUR (4) COURSES:

- 1) SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 22°03'32", AN ARC DISTANCE OF 748.83 FEET TO THE SOUTH LINE OF SAID PARCEL 5; THENCE
- 2) NORTH 89°46'18" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 118.07 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 2055.00 FEET, FROM WHICH POINT A RADIAL LINE BEARS NORTH 69°31'58" EAST; THENCE
- 3) DEPARTING SAID SOUTH LINE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 01°59'53", AN ARC DISTANCE OF 71.66 FEET TO THE EAST LINE OF THE WEST 55.00 FEET OF SAID SOUTHWEST QUARTER; THENCE
- 4) NORTH 00°21'44" EAST, ALONG SAID EAST LINE, A DISTANCE OF 663.33 FEET TO THE POINT OF BEGINNING.



11-13-07
CITY OF BAKERSFIELD
ORIGINAL

ORDINANCE NO. 4515



AN ORDINANCE ADOPTING A NEGATIVE DECLARATION AND AMENDING SECTION 17.06.020 (ZONING MAP 104-16) OF TITLE SEVENTEEN OF THE BAKERSFIELD MUNICIPAL CODE BY CHANGING THE ZONING FROM R-1 (ONE FAMILY DWELLING RESIDENTIAL) TO R-2/PUD (LIMITED MULTI-FAMILY DWELLING RESIDENTIAL/ PLANNED UNIT DEVELOPMENT) ON APPROXIMATELY 18 ACRES, GENERALLY LOCATED NORTHEAST OF HIGHWAY 178 AND MASTERSON STREET. (ZC NO. 07-2342).

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WHEREAS, the Planning Commission, as a result of said hearing, did make several general and specific findings of fact which warranted a negative declaration of environmental impact and changes in zoning of the subject property from R-1 (One Family Dwelling Residential) to R-2/PUD (Limited Multi-family Dwelling Residential/ Planned Unit Development), and the Council has considered said findings as restated herein and all appear to be true and correct; and

WHEREAS, a Negative Declaration with mitigation was advertised and posted on February 13, 2008, in accordance with CEQA; and

WHEREAS, the general plan designation for this area, with prior adoption of GPA No. 07-2342, allows multi-family residential development; and

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